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Monday
November 15, 1993

Briefings on How To Use the Federal Register
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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.

NEW YORK, NY

WHEN: November 23, 9:00 am—12:00 pm

WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

RESERVATIONS: 1–800–347–1997

WASHINGTON, DC

(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Contents

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development and Economic Cooperation Board, 60209

Agriculture Department
See Animal and Plant Health Inspection Service
See Farmers Home Administration

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 60101
PROPOSED RULES
Exportation and importation of animals and animal products:
Swine vesicular disease; pork and pork products from countries where disease is known to exist, 60146

Arms Control and Disarmament Agency
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 60177

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Meetings:
Agriculture Statistics Advisory Committee, 60178

Centers for Disease Control and Prevention
NOTICES
Asphalt products; occupational exposure, carcinogenic potential; scientific review of current intelligence bulletin; NIOSH meeting, 60202
Commercial dry cleaners; control of chemical exposures and ergonomic risk factors; NIOSH meeting, 60202
Workers' Family Protection Act; implementation; existing information request, 60202

Children and Families Administration
RULES
Grants:
Social services block grant program; reporting and recordkeeping requirements, 60118
Public assistance programs:
Aid to families with dependent children (AFDC)—
Essential persons; eligibility coverage and conditions, 60134

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Mississippi, 60178

Coast Guard
RULES
Vessel documentation and measurement:
Vessel documentation, instruments recording practices, and fees, 60256

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 60180, 60181

Defense Department
See Navy Department
PROPOSED RULES
Acquisition regulations:
Contractor accounting controls
Correction, 60244
Organizational conflict of interest
Correction, 60244
NOTICES
Meetings:
National Security Education Board advisors, 60181
Travel per diem rates, civilian personnel; changes, 60181

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Dislocated worker units; State designations; list, 60213

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
RULES
Protective force personnel; security skills training and qualifications standards
Correction, 60102

Environmental Protection Agency
RULES
Radiation protection programs:
Uranium and thorium mill tailings; health and environmental standards, 60340
NOTICES
Air programs:
Volatile organic compound (VOC) emissions; reactor processes and distillation operations; control techniques guidelines document availability, 60197
Confidential business information and data transfer to contractors, 60198
Meetings:
National Drinking Water Advisory Council, 60199
Municipal solid waste landfill permit programs; adequacy determinations:
Delaware, 60199

Executive Office of the President
See Trade Representative, Office of United States

Farmers Home Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Multi and single family housing programs; State allocations, 60165

Federal Bureau of Investigation
NOTICES
Meetings:
National Crime Information Center Advisory Policy Board, 60212

Federal Communications Commission
RULES
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Horizontal and vertical ownership limits, cross-ownership limitations and anti-trafficking provisions, 60135
Cable television systems—
Regulated cable services; rate freeze, 60141
NOTICES
Meetings; Sunshine Act, 60242

Federal Deposit Insurance Corporation
RULES
Capital maintenance:
Technical amendments, 60102
NOTICES
Meetings; Sunshine Act, 60242

Federal Election Commission
RULES
Political committees recordkeeping and reporting; best efforts
Correction, 60244

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 60187
Meetings; Sunshine Act, 60242
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 60194
Bonneville Power Administration, 60194
Columbia Gas Transmission Corp., 60194, 60195
Questar Pipeline Co., 60195
San Diego Gas & Electric Co. et al., 60196

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Railroad, 60239
National Railroad Passenger Corp. (Amtrak), 60239
Southeastern Pennsylvania Transportation Authority et al., 60240

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 60242, 60243

Federal Trade Commission
PROPOSED RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
General service fluorescent lamps, etc., 60147

Fish and Wildlife Service
NOTICES
Coastal Barrier Resource System; boundary modification process, 60288
Endangered and threatened species:
Recovery plans—
Grizzly bear, 60208

Food and Drug Administration
RULES
Color additives:
D&C Violet No. 2, 60106
Food additives:
Paper and paperboard components—
Polyamide-ethyleneimine-epichlorohydrin resin, 60109
Food for human consumption:
Food labeling—
Nutrient content claims; correction, 60105
Serving sizes; correction, 60109
Human drugs:
Boil treatment products (OTC); safety concerns, 60332

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 60202

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See Social Security Administration
RULES
Grants:
Social services block grant program; reporting and recordkeeping requirements, 60118

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities under OMB review, 60204

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 60205

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 60196, 60197

Housing and Urban Development Department
RULES
Minimum property standards; miscellaneous amendments, 60246

Immigration and Naturalization Service
NOTICES
Strategic plan; stakeholders' workshop, 60212

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 60205

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings from—
Thailand, 60179
United Kingdom, 60179

Interstate Commerce Commission
RULES
Rail carriers:
Car hire compensation, etc., 60144
PROPOSED RULES
Rulemaking petitions:
Railroad abandonments; protection of surveying benchmarks, 60164
NOTICES
Meetings; Sunshine Act, 60243
Railroad operation, acquisition, construction, etc.:
Chicago SouthShore & South Bend Railroad, 60211
Wisconsin & Southern Railroad Co., 60210
Railroad services abandonment:
Norfolk & Western Railway Co., 60211
Southern Pacific Transportation Co., 60210

Justice Department
See Federal Bureau of Investigation
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Davis, William, et al., 60212
Farber et al., 60212

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Opening of public lands:
Nevada, 60206
Organization, functions, and authority delegations:
Eastern States; public room hours of operation change, 60207
Realty actions; sales, leases, etc.:
Arizona, 60207
Withdrawal and reservation of lands:
New Mexico, 60208

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 60222

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Thomas Built Buses, Inc., 60240

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 60145
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 60180
Western Pacific Fishery Management Council, 60180

National Park Service
NOTICES
Meetings:
Missouri National Recreational River Advisory Group, 60209
Petroglyph National Monument Advisory Commission, 60209

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closures—
Marine Corps Air Station Cherry Point, NC, 60187

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 60223
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 60223

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 60243

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Robert W. McCurdy Medical Corp. et al., 60215
Tenneco, Inc., et al., 60216

Pension Benefit Guaranty Corporation
RULES
Single-employer and multiemployer plans:
Valuation of plan benefits, etc.—
Interest rates, etc., 60116

Personnel Management Office
NOTICES
Privacy Act:
Systems of records, 60226

Presidential Documents
PROCLAMATIONS
Special observances:
Women Veterans Recognition Week, National (Proc. 6622), 60359
ADMINISTRATIVE ORDERS
Chemical and biological weapons; continuation of export control regulations (Notice of November 12, 1993), 60361

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Securities and Exchange Commission
RULES
Securities:
Distribution of foreign securities to qualified institutional buyers, 60324

Foreign government issuers—
Financial statements; age rule and form requirements, 60304
Foreign issuers; trading practices exemptions during distributions in United States; policy statement, 60326
PROPOSED RULES
Securities:
Foreign company registration and reporting requirements simplification, etc., 60307
NOTICES
Agency information collection activities under OMB review, 60226
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 60226
New York Stock Exchange, Inc., 60227
Options Clearing Corp., 60229
Applications, hearings, determinations, etc.:
Collective Investment Trust for Citibank IRA's, 60230
Lincoln National Convertible Securities Fund, Inc., et al., 60231
Public utility holding company filings, 60235
United Financial Group, Inc., 60237

Social Security Administration
RULES
Supplemental security income:
Disposition of resources; time limits, 60103

State Department
RULES
International Traffic in Arms regulations; amendments, 60112, 60115
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee et al., 60239

Trade Representative, Office of United States
NOTICES
Trade relations agreements:
Romania, 60226

Transportation Department
See Coast Guard
See Federal Railroad Administration
See National Highway Traffic Safety Administration

United States Information Agency
NOTICES
Art objects, importation for exhibition:
In the Temple of Solomon and the Tomb of Caiaphas, 60241
Lucian Freud: Recent Work, 60241

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 60246

Part III
Department of Transportation, Coast Guard, 60256

Part IV
Department of the Interior, Fish and Wildlife Service, 60288

Part V
Securities and Exchange Commission, 60304

Part VI
Securities and Exchange Commission, 60324

Part VII
Department of Health and Human Services, Food and Drug Administration, 60332

Part VIII
Environmental Protection Agency, 60358

Part IX
The President, 60359

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.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Administrative Orders:
Notice:
November 12, 1993.....60361
Proclamations:
6622
7 CFR
354.....60101
9 CFR
Proposed Rules:
94.....60146
10 CFR
1046.....60102
11 CFR
104.....60244
12 CFR
325.....60102
16 CFR
Proposed Rules:
305.....60147
17 CFR
210.....60304
229.....60304
239.....60304
240 (3 documents).....60304, 60324, 60326
Proposed Rules:
229.....60307
230.....60307
239.....60307
249.....60307
20 CFR
416.....60103
21 CFR
5.....60105
74.....60106
101 (2 documents).....60105, 60109
176.....60109
310.....60332
22 CFR
121 (2 documents).....60112, 60115
24 CFR
200.....60246
29 CFR
2619.....60116
2676.....60116
40 CFR
192.....60340
45 CFR
96.....60118
233.....60134
46 CFR
1.....60256
67.....60256
47 CFR
76 (2 documents).....60135, 60141
48 CFR
Proposed Rules:
209.....60244
242.....60244
252.....60244
49 CFR
1033.....60144
Proposed Rules:
1105.....60164
1121.....60164
1152.....60164
50 CFR
675.....60145

Rules and Regulations

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

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

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 93-123-1]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances for travel between various locations in Colorado and New Mexico. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between various locations in Colorado and New Mexico. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

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.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from Metropolitan area	
	Within	Outside
Add:		
* * * * *		
Colorado:		
* * * * *		
Stapleton International Airport.	Ft. Collins	4
* * * * *		
New Mexico:		
* * * * *		
Santa Teresa	El Paso, TX .	1½
Santa Teresa	Las Cruces ..	1½
* * * * *		

Done in Washington, DC, this 8th day of November, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-28003 Filed 11-12-93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF ENERGY

10 CFR Part 1046

RIN 1992-AA16

Security Skills Training and Qualifications Standards for Protective Force Personnel; Correction

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published on August 31, 1993. 10 CFR part 1046 was originally published on March 3, 1986, to be effective on April 2, 1986 to established medical and physical fitness requirement for Department of Energy protective force personnel. The August 31, 1993 publication is a revision to add new requirements regarding access authorization and security skills. The revision was not intended to modify the requirements placed upon members of the protective force by the original rule. In the reprinting of the revision the implementation date for physical fitness standards was erroneously published as September 30, 1994. The actual implementation date for those requirements, which were not changed by this revision, was April 2, 1987.

EFFECTIVE DATE: The final rule was effective on September 30, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA-121, Washington, DC 20585, (301) 903-4244.

SUPPLEMENTARY INFORMATION:

Background

Part 1046.11 (b)(1) was originally published on March 3, 1986 and included the following notation: "(insert date 12 months from effective date of regulation)". This notation resulted in the date of April 2, 1987 (which was one year from the effective date) being inserted into the sentence. When the current revision was reprinted, this section was not affected and therefore was erroneously reprinted with the original notation from 1986, i.e. "(insert date 12 months from effective date of regulation)". Upon publication of the revision on August 31, 1993, the date of September 30, 1994 was inserted due to the notation.

Correction of Publication

Need for correction

As published part 1046.11(b)(1) contains an error which indicates an implementation date of one year from the effective date of the revision. The proper implementation date for this section was one year from the initial effective date of April 2, 1986. This change will reflect longstanding requirements and will not result in a field impact.

The publication on August 31, 1993 of the final regulations, which were the subject of FR Doc. 93-20985 is corrected as follows:

§ 1046.11 [Corrected]

On page 45792 in the second column in § 1046.11, paragraph (b)(1), the words "have until September 30, 1994 to" are removed and the word "shall" is added in their place.

Issued in Washington, DC, this 4th day of November 1993.

Robert J. Walsh,

Deputy Director, Office of Security Affairs.

[FR Doc. 93-27998 Filed 11-12-93; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: The FDIC is amending its regulations governing capital maintenance to correct typographical omissions and to redesignate the appendixes to subpart A of the part as appendixes to the part.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer, (202) 898-3807.

SUPPLEMENTARY INFORMATION: This document amends part 325: (1) By revising a footnote to include text that was inadvertently omitted from the final rule on leverage capital that was published in the March 11, 1991 issue of the **Federal Register** (56 FR 10154); and (2) by redesignating appendix A and appendix B to subpart A as appendixes to the part.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

In accordance with the foregoing, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L.

102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

2. Part 325 is amended by redesignating appendix A to subpart A of part 325 as appendix A to part 325 and appendix B to subpart A of part 325 as appendix B to part 325, and by revising the heading for newly designated appendix A to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

3. In newly designated appendix B to part 325, the heading is revised and the first sentence of the first paragraph of section IV.A. is amended by adding the word "such" after the words "value of", and footnote 2 in the last sentence of the third paragraph of section IV.A. is revised to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

* * * * *

IV. * * *

A. * * *[2] * * *

[2] This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

* * * * *

§ 325.2 [Amended]

4. In § 325.2, paragraphs (q), (s), (u), and (w) are amended by revising the reference "(appendix A to subpart A of part 325)" to read "(appendix A to part 325)".

Dated: November 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-27445 Filed 11-12-93; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AD48

Time Limits for Disposition of Resources in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: If an individual filing for supplemental security income (SSI) benefits has excess resources, payment of SSI benefits is permitted on the condition that the individual dispose of the excess resources within a time period specified by the Secretary. The prior regulations were not clear, however, as to when the time period for disposal of the property begins. We are issuing these rules to change the regulations to clarify that the time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property.

EFFECTIVE DATE: These rules are effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: We published proposed rules in a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on July 1, 1992 (57 FR 29244). We received one letter from an organization in which several issues were raised. After carefully considering the organization's comments, we are adopting the rule as proposed. We explain later in this preamble our reasons for not adopting the commenter's suggested changes.

Section 1613(b) of the Social Security Act (the Act) requires the Secretary to prescribe the period of time and the manner in which resources must be disposed of to be excluded in determining SSI eligibility. The Act permits payment of SSI benefits during this period on the condition that the individual dispose of the resources. Any benefits so paid are considered overpayments which must be paid back. They are recouped from the net proceeds of the disposition.

Regulations at § 416.1240(a) provide that when an individual has excess nonliquid resources, such individual "shall not be eligible for payment except under the conditions provided in this section." One of those conditions, set out at § 416.1240(a)(2)(i), is that the individual must agree in writing to dispose of the excess nonliquid resources within the time period specified in § 416.1242 in order to receive "conditional benefits." Under § 416.1242(a), the individual must agree in writing to dispose of nonliquid resources which would otherwise result in SSI ineligibility within 9 months for real property and 3 months for personal property. The time limit for disposing of personal property may be extended 3 months for "good cause."

Further, § 416.1242(a) provided that the disposition period would begin on the date the written agreement was signed by the individual and submitted to the Social Security Administration (SSA). In the case of an individual who is disabled, the regulations provided that the disposition period would begin "with the date the individual is determined to be disabled." In § 416.1002, we define the term "disability" to mean disability or blindness as defined in sections 1614(a)(2) and (3) of the Act. Therefore, in an SSI claim based on blindness the disposition period in the regulations began with the date we determined the individual to be blind.

The regulations at § 416.1242(a) were ambiguous as to the beginning of the resources disposal time limit. As written, the regulations did not preclude the commencement of a conditional benefits period prior to the month in which we determined that all nonresource requirements were met, nor did the regulations define the point at which we determine an individual to be disabled or blind.

The regulations at § 416.1242(a) could have been interpreted to mean that an individual may sign a conditional benefits agreement, and thus trigger the disposition period, before we determined whether all SSI eligibility requirements were met, other than resource requirements. Such an interpretation could create a situation where the individual might sell his or her property in anticipation of receipt of SSI benefits and later be determined not to be eligible for SSI for reasons other than resources, and, therefore, ineligible for any SSI benefits, including conditional benefits.

In addition, in an SSI disability or blindness case, the regulations also could have been interpreted to mean that the time limit for disposition of property began on the actual date we determined the individual to be disabled or blind. This interpretation

would place an illogical burden on the individual by requiring him or her to begin efforts to sell property before the individual received notice of the disability/blindness determination and before we determined that the individual meets all other factors of eligibility, for example, the income requirements.

To address these ambiguities, we have revised § 416.1242(a) to indicate that the time period for disposal of property begins on the date we accept the individual's signed written agreement. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202, with the exception of the resource requirements, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. The rule further states that if we receive a signed agreement prior to the date we determine that all nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

Public Comments

Comment: The commenter suggested extending the time period for disposal of personal property to 6 months and real property to 12–18 months to allow more time for an individual to make decisions about the disposal of his or her property.

Response: We did not adopt these recommended changes. Regulations at § 416.1242(b) provide that the 3-month time period for disposition of personal property will be extended an additional 3 months if it is found that the individual has "good cause" for failing to dispose of the property within the original time period. A finding of "good cause" for failing to dispose of a resource will be made pursuant to § 416.1242(c) if, despite reasonable and diligent efforts, an individual is prevented by circumstances beyond his control from disposing of a resource. As explained in SSI operating procedures, good cause for extending the 3-month period may be found if, for example, the individual has made good faith efforts to sell the personal property but has received no offer to buy it. Therefore, under current regulations at § 416.1242 (b) and (c), an individual who continues to make reasonable, but unsuccessful, attempts to sell excess personal property can receive conditional SSI benefits for up to 6 months.

Further, regulations at § 416.1245(b) provide that excess real property will not be included in an individual's countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether the individual's efforts to sell are reasonable, as well as unsuccessful, is the 9-month conditional benefits period described in § 416.1242.

After receiving 9 months of conditional benefits, an individual who continues to make reasonable, but unsuccessful, attempts to sell excess real property can, under current regulations, continue to receive SSI benefits for so long as reasonable efforts to sell continue. In such a case, only the 9 months of conditional benefits in the original disposal period are subject to recovery upon the disposition of the property. If the 9-month conditional benefits period were extended to 12–18 months, more benefits would become subject to recovery upon disposition of the property. Therefore, the policy change suggested by the commenter could disadvantage some individuals who receive SSI benefits while attempting to dispose of excess real property.

Comment: The commenter also suggested that written information be made available to individuals to help them understand the conditional benefits provision and that SSA personnel ensure that the conditional benefits provision is adequately explained to all individuals.

Response: We did not adopt this suggested change because we believe we already provide individuals adequate explanation of our conditional benefits policies and procedures in several ways. We include an explanation of conditional benefits in our general information pamphlets explaining the SSI program which are widely available in English and Spanish. Further, to ensure that people understand the SSI conditional benefits provision, SSA has created a fact sheet entitled "SSI Spotlight on Getting SSI While You Try to Sell Excess Resources." The fact sheet, which is available from all SSA field offices in English and Spanish, is written in easy-to-understand language and provides more information on conditional benefits than is contained in SSA's general information pamphlets.

SSA has additional procedures already in place which are designed to ensure that the conditional benefits provision is explained to individuals when appropriate. Current operating procedures require SSA personnel to explain the conditional benefits provision to all individuals who could benefit from its application in their cases. This includes individuals who inquire about SSI eligibility but have not yet filed an application, claimants whose SSI eligibility is likely to be denied because of excess nonliquid resources, and SSI recipients whose benefits are about to be suspended or terminated for the same reason. If an SSI claimant or recipient declines to qualify for the payment of conditional benefits, SSA personnel must document the claims file of his or her declination.

Comment: The commenter suggested, for individuals requiring other languages and/or means of communication, SSA staff must have documentation that the explanation of the time limits for the disposal of resources has been adequately communicated. The commenter also stated "adequate communication" for some individuals may mean contacting case managers and/or guardians, or the use of sign language interpreters.

Response: We did not adopt these suggested changes. SSA personnel are required to explain the conditional benefits provision to all individuals who could benefit from its application in their cases. We attempt to staff our field offices and teleservice centers with personnel having the language skills appropriate for their service areas. Our offices also assist individuals in obtaining interpreter services, when needed, to ensure the individuals understand their rights and responsibilities under the SSI program.

With regard to adequately communicating requirements to children or individuals with a reduced capacity to understand our policy, a proper applicant for a child claimant would be a parent or adult responsible for the child's care (including the manager or principal officer of an institution). An individual with reduced mental capacity may appoint an authorized representative to assist in pursuing his or her claim. If we determine that the individual is incapable of managing funds, we may appoint a representative payee for the claimant. In addition to providing an oral explanation of the conditional benefits requirements, we send notices of eligibility or changes in benefit amount to competent adult applicants or recipients and to legal guardians, authorized representatives and representative payees, as appropriate. If an individual is denied because of excess resources, the written denial

notice contains an explanation of conditional benefits.

For the reasons discussed above, we are not making the commenter's suggested changes to the proposed rules. These rules, as proposed, are adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for major rules are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations contain a reporting requirement in § 416.1242. The Social Security Administration would normally request clearance of this requirement (under the Paperwork Reduction Act) by the Office of Management and Budget (OMB). However, we are not doing so in this situation because we have already obtained OMB clearance to collect this information using Form SSA–8060, Agreement to Sell Property, under OMB control number 0960–0127.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for SSI benefits of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: August 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1242 is amended by revising paragraph (a) to read as follows:

§ 416.1242 Time limits for disposing of resources.

(a) In order for payment conditioned on the disposition of nonliquid resources to be made, the individual must agree in writing to dispose of real property within 9 months and personal property within 3 months. The time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202 of this part, with the exception of the resource requirements described in this subpart, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. If we receive a signed agreement prior to the date we determine that all nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and that the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

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[FR Doc. 93–27915 Filed 11–12–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Parts 5 and 101

[Docket Nos. 91N–0384, 84N–0153 and 91N–0317 et al.]

RIN 0905–AD08 and 0905–AB68

Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food; Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Technical Amendment; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 18, 1993 (58 FR 44020). The document responded to technical comments that the agency received and corrected inconsistencies and unintended technical consequences of the regulations for nutrient content claims and nutrient content claims used with a standardized term. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–156), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

In FR Doc. 93–19610, appearing on page 44020 in the **Federal Register** of Wednesday, August 18, 1993, the following corrections are made:

1. On page 44022, in the second column, in the first full paragraph, beginning in line 20, the phrase "information therefore, for these products. The" is corrected to read "information. Therefore, for these products, the".

2. On page 44025, in the first column, in the second paragraph, in line 6, the word "present" is corrected to read "prevent".

3. On page 44029, in the second column, in the third full paragraph, in line 4, "§ 130.1(d)(4)" is corrected to read "§ 130.10(d)(4)".

§ 101.62 [Corrected]

4. On page 44032, in the first column, in § 101.62 *Nutrient content claims for fat, fatty acid, and cholesterol content of foods*, in paragraphs (b)(2)(i)(B),

(d)(1)(i), (d)(1)(ii), (d)(2)(ii), (d)(2)(ii)(A), (d)(2)(iv), (d)(2)(iv)(A), (d)(4)(i), and (d)(4)(ii), the phrase "§ 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the as prepared form" is corrected to read "§ 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the 'as prepared' form" wherever it appears.

Dated: November 5, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-27919 Filed 11-12-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 74

[Docket No. 91C-0432]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. This action responds to a petition filed by Ethicon, Inc.

DATES: Effective December 16, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections by December 15, 1993.

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

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of December 2, 1991 (56 FR 61253), FDA announced that a color additive petition (CAP 1C0236) had been filed by Ethicon, Inc., P.O. Box 151, Somerville, NJ 08876-0151, proposing that the color additive regulations be amended in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in polyglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. Since the publication of the filing notice, the petitioner has advised FDA that the correct spelling of the name of the suture material is poliglecaprone 25. The petition was filed under section 706 (currently section 721)of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376) (currently 21 U.S.C. 379e).

II. Regulatory History

The regulatory history of D&C Violet No. 2 is summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). In the May 1990 final rule, FDA permanently listed D&C Violet No. 2 for use in coloring polymethylmethacrylate intraocular lens haptics (§ 74.3602) in response to a color additive petition (CAP 9C0216). In that final rule, FDA also transferred the listings for the use of the color additive in sutures from § 74.1602 (21 CFR 74.1602) under subpart B—Drugs, to § 74.3602 under subpart D—Medical Devices.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices when the color additive comes into direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). D&C Violet No. 2 is added to the poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body and during absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81-48-1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 1).

Residual amounts of reactants such as *p*-toluidine and other manufacturing aids are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives; numerous minor impurities are present in all chemical products, even in highly purified reagent grade chemicals.

V. Analysis of Data

A. Safety of the Color Additive

1. Legal Standard

Under section 721(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establish that the color additive is safe for that use. Under FDA regulations (21 CFR 70.3(i)), a color additive is safe if there is convincing evidence that establishes with reasonable certainty that no harm will result from its intended use. In addition, the anticancer or Delaney clause of the Color Additive Amendments (section 721(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal.

2. Exposure to the Color Additive

FDA concludes from the data submitted and other relevant information that the upper limit of total lifetime exposure to D&C Violet No. 2 from its use in coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures is 3 milligrams (mg). The agency calculated this upper limit of total lifetime exposure based on several factors. First, the color additive will be used at levels of 0.25 percent by weight of the poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures. Second, the agency made the following worst-case assumptions: (1) Five meters is the maximum total length of suture likely to be used in a single surgical operation, and 10 meters of suture would be used in multiple operations over a person's lifetime; (2) a lifespan of 70 years follows initial suture implantation; (3) a size 2/0 suture is used for general surgery; and (4) 100 percent of the color additive migrates from the suture into the body. Because these are conservative assumptions, the total lifetime exposure to D&C Violet No. 2 from its use in

coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures is likely to be far less than 3 mg.

3. Toxicology

FDA's safety evaluation of this use of D&C Violet No. 2 included a review of the available toxicity studies in the agency's files that were used previously to support the current listings for the use of D&C Violet No. 2 in externally applied drugs and cosmetics (§ 74.1602 and 21 CFR 74.2602, respectively), in sutures (§ 74.3602), and in contact lenses (§ 74.3602).

When presented with a substance whose use will result in extremely low levels of exposure, as from the proposed use of D&C Violet No. 2 in absorbable sutures, FDA does not ordinarily consider chronic toxicity testing to be necessary to determine the safety of the additive's use (Ref. 2). Although the agency does not normally require such testing, chronic studies supporting current listings for the use of D&C Violet No. 2 are available in the agency's files, and FDA's safety evaluation of the proposed use of the color additive in absorbable sutures included a consideration of these studies. Two-year carcinogenicity studies of dyed sutures implanted in rats and a lifetime skin-painting study in mice showed no indication of carcinogenicity. Additionally, teratology studies of sutures implanted in rats and rabbits exhibited no evidence of teratogenic effects.

In its evaluation of the safety of the proposed use of the subject additive, FDA has also considered the other safety data submitted previously to support current listings for the use of D&C Violet No. 2. These toxicity studies of D&C Violet No. 2 include acute oral toxicity studies in rats and dogs, acute toxicity studies of dyed sutures and suture components in rats and mice, an evaluation of the tissue response to dyed sutures implanted intramuscularly in rats, a biological evaluation of dyed sutures implanted in rabbit's eyes, a study of the tissue reaction to the color additive injected into rabbit muscle, in vitro cytotoxicity studies, a pyrogenicity study of sutures, and 7-month toxicity studies of implanted sutures in rats and mice.

In addition, FDA evaluated the toxicity studies that the petitioner provided to support the proposed use of D&C Violet No. 2 in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. These studies include a 120-day evaluation of dyed sutures implanted intramuscularly in rats and six mutagenicity studies, including one *Salmonella*/reverse mutation test (Ames test) using extracts of dyed sutures, one study of chromosomal aberrations and dyed suture in Chinese hamster ovary cells, one study of in vitro transformation and dyed suture in Balb/c-3T3 cells, two mouse lymphoma forward mutation assays using dyed suture, and one mouse lymphoma toxicity assay of dyed suture. Based on its review of these studies, in conjunction with previously submitted studies, the agency has concluded that the proposed use of D&C Violet No. 2 as a color additive in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) sutures is safe.

B. Carcinogenic Impurity

Although D&C Violet No. 2 has itself not been shown to cause cancer, it does contain minor amounts of a carcinogenic impurity, *p*-toluidine. The carcinogenicity of *p*-toluidine was discussed in the final rule, published in the **Federal Register** of April 2, 1982 (47 FR 14138), permanently listing D&C Green No. 6 for use in externally applied drugs and cosmetics. As stated in that document, data reported by the National Cancer Institute (NCI) demonstrates that *p*-toluidine was carcinogenic for male and female Charles River CD–1 (HaM/ICR derived) mice, causing an increased incidence of hepatomas (liver tumors) (Ref. 1).

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on *p*-toluidine (Ref. 3). The CAC further concluded that an estimate of the upper-bound level of human risk from potential exposure to *p*-toluidine, from the proposed use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures, could be calculated from the bioassay.

1. Prior Action

Prior to 1982, FDA refused to list a color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that scientific developments and experience with risk assessment procedures make it possible for FDA to establish the safety of an additive that contains a carcinogenic chemical but that has not itself been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives on the same basis.

The agency now considers the Delaney anticancer clause to be applicable only when the color additive as a whole is found to induce cancer. An additive that has not been shown to induce cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to list D&C Green No. 5, which contains a carcinogenic impurity but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

2. Risk Assessment

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives. The risk evaluation of the carcinogenic impurity *p*-toluidine has two aspects: (1) Assessment of the upper-bound lifetime exposure to the impurity from the proposed use of the color additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

C. Exposure to the Impurity

As explained above, FDA estimates that the maximum total lifetime exposure to D&C Violet No. 2 from its use in coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures is 3 mg. Under the current specifications for D&C Violet No. 2, the level of *p*-toluidine in the color additive is not to exceed 0.2 percent. Thus, the estimated maximum total lifetime exposure to *p*-toluidine that will result from the use of poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures colored with D&C Violet No. 2 that comply with the

applicable specifications is 0.24 nanograms (ng) per person per day.

D. Risk Extrapolation

FDA has estimated the upper-bound level of human risk from potential exposure to *p*-toluidine from use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures by extrapolating from the risk observed at the level of exposure in the NCI-sponsored animal studies to the very low level of estimated exposure for humans. The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiments to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate the actual risk because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the color additive.

Based on the estimated maximum total lifetime exposure of 0.24 ng per person per day, the upper-bound limit of individual lifetime risk from the potential exposure to *p*-toluidine from this proposed use of D&C Violet No. 2 is estimated to be 1.6×10^{-11}, or 1.6 in 100 billion (Ref. 4). Because of the numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to *p*-toluidine is expected to be substantially less than the worst-case estimated daily exposure. Therefore, the actual risk would be less than 1.6×10^{-11}. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to *p*-toluidine that results from the proposed use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

E. Specifications

D&C Violet No. 2 is currently produced as a certifiable color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602, the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

VI. Conclusions

Based upon the available toxicity data and the other relevant considerations discussed above, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures when it is used at a level not to exceed 0.25 percent by weight of the suture material. The agency also concludes on the basis of available data that the color additive will perform its intended coloring effect in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures and, thus, is suitable for this use. The agency, therefore, is amending § 74.3602 of the color additive regulations to provide for use of the color additive at a maximum level of 0.25 percent by weight in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

VII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), 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 (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VIII. Environmental Impact

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.

IX. References

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

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," Eds., F. Homburger, J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. Memorandum of Conference of the Cancer Assessment Committee, "Para-Toluidine," February 24, 1981.

4. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for *p*-Toluidine in D&C Violet No. 2 Used as a Color Additive for epsilon-Caprolactone/Glycolide Synthetic Absorbable Sutures CAP 1C0236 (Ethicon, Inc.)," December 9, 1992.

X. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 15, 1993, 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. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.3602 is amended by adding new paragraph (b)(2)(iii) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(iii) At a level not to exceed 0.25 percent by weight of the suture material for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures for use in general surgery.

* * * * *

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27920 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 90N–0165]

RIN 0905–AD08

Food Labeling; Serving Size; Technical Amendments; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of August 18, 1993 (58 FR 44039). The document made technical amendments to the regulations that established the general rules for declaring serving sizes as part of the nutrition label. The document responded to technical comments that the agency received in response to that document and corrected inconsistencies and unintended technical consequences of those regulations. The August 18, 1993, document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 202–205–5662.

In FR Doc. 93–19471, appearing on page 44039, in the Federal Register of Wednesday, August 18, 1993, the following corrections are made:

1. On page 44039, in the 2d column, in line 3, the phrase "or 100 milliliters (mL)" is corrected to read "100 milliliters (mL), 1 ounce (oz), or 1 fluid oz (fl oz)".

2. On page 44040, in the 3d column, in the 1st full paragraph, in line 12, the word "unpopped" is added before the word "popcorn".

3. On page 44044, in Table 2, under the product category "Dessert Toppings and Fillings:" in the "Label statement (new)" column, "(60 mL)" is corrected to read "(30 mL)".

4. On page 44045, in Table 2, under the product category "Sauces, Dips, Gravies, and Condiments" in the first entry in the "Label statement (new)" column, "(60 mL)" is corrected to read "(30 mL)"; and in the 3d entry, "(120 mL)" is corrected to read "(60 mL)".

5. On page 44046, in the 1st column, in the 1st full paragraph, beginning in line 8, the phrase "refrigerated or frozen pasta" is corrected to read "dry pasta"; and in line 11, "comment 21" is corrected to read "comment 20".

6. On page 44047, in the 2d column, in the 2d full paragraph, in line 12, the phrase "dry, fresh or frozen pasta" is corrected to read "fresh or frozen pasta".

§ 101.9 [Corrected]

7. On page 44049, in § 101.9 *Nutrition labeling of food*, in paragraph (b)(2)(G), in the 2d column, in line 5, "(b)(5)" is corrected to read "(b)(5)(vi)".

§ 101.12 [Corrected]

8. On page 44054, in § 101.12 *Reference amounts customarily consumed per eating occasion*, in paragraph (b), Table 2, under the product category "Dessert Toppings and Fillings:"in the "Label statement" column "(60 mL)" is corrected to read "(30 mL)".

9. On page 44055, in Table 2, under the product category "Miscellaneous Category:" in the "Label statement" column, in the 2d entry "1/4 tsp" is corrected to read "1 tsp"; and under the product category "Sauces, Dips, Gravies and Condiments:" in the "Label statement" column, "(60 mL)" is corrected to read "(30 mL)".

10. On page 44056, under the product category "Sauces, Dips, Gravies and Condiments" in Table 2, in the "Label statement" column, "(120 mL)" is corrected to read "(60 mL)".

11. On page 44057, in Table 2 in footnote 2, the phrase "dry, fresh, and frozen pasta" is corrected to read "fresh and frozen pasta".

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27918 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 91F–0479]

Indirect Food Additives: Paper and Paperboard Components

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 polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1, 2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1, 2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food. This action responds to a food additive petition filed by BASF Corp.

DATES: Effective November 15, 1993; written objections and requests for a hearing by December 15, 1993.

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

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 14, 1992 (57 FR 1484), FDA announced that a food additive petition (FAP 0B4193) had been filed by BASF Corp., Eight Campus Dr., Parsippany, NJ 07054. The petition proposed to amend the food additive regulations to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1, 2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-

α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

In its evaluation of the safety of the additive, FDA also considered the impurities that might be present in the additive. The additive itself has not been shown to cause cancer. However, epichlorohydrin, ethylene oxide, 1,4-dioxane, and ethyleneimine, all of which could be present as impurities in the additive, have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as the four above-mentioned impurities, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney, clause (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that has not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the polyamide-ethyleneimine-epichlorohydrin resin will result in extremely low levels of exposure to this additive. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. On the basis of available acute toxicity data and the low level of exposure to the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limits of risk presented by the carcinogenic chemicals that may be present as impurities in this additive, epichlorohydrin, ethylene oxide, 1,4-dioxane, and ethyleneimine. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Epichlorohydrin

The agency used data in a carcinogenesis bioassay (Ref. 4) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity, epichlorolydrin, in the proposed use of this resin. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic to rats under the conditions of the study, in that the test material caused significantly increased incidence of stomach papillomas and carcinomas in the test animals.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The Center's Quantitative Risk Assessment Committee (QRAC) concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to epichlorohydrin stemming from the proposed use of the additive could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use of the additive. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine with reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and on the level of epichlorohydrin that may be present in the additive, FDA estimated the hypothetical worst-case exposure to epichlorohydrin from the use of the additive to be no greater than 39 picograms (pg) per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin from the use of this polyamide-ethyleneimine-epichlorohydrin resin is 1.8×10^{-12}, or 1.8 in 1 trillion (Ref. 10). Because of numerous conservatisms in the

exposure estimate, actual lifetime-averaged individual exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the additive.

B. Ethylene Oxide

The agency used data from a carcinogenesis bioassay on ethylene oxide performed by the Institute of Hygiene, University of Mainz, Germany (Ref. 6) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity, ethylene oxide, in the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study, in that the test material caused significantly increased incidence of squamous cell carcinomas in situ of the forestomach and carcinoma in situ of the glandular stomach.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The QRAC concluded that the ethylene oxide bioassay provided an appropriate basis with which to calculate an estimate of the upper-bound limit of lifetime human risk from potential exposure to ethylene oxide from the proposed use of the additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethylene oxide is present at the limit of detection, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be no greater than 21 pg per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 3.9×10^{-11} or 3.9 in 100 billion (Ref. 7). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

C. 1, 4-Dioxane

The agency used data from a carcinogenesis bioassay conducted by the National Cancer Institute (Ref. 8) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity 1,4-dioxane in the proposed use of this resin. The results of the bioassay demonstrated that 1, 4-dioxane was carcinogenic for female rats under the conditions of the study, in that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1, 4-dioxane. The QRAC concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to 1,4-dioxane stemming from the proposed use of the resin could be calculated from the bioassay.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and on the level of 1, 4-dioxane that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 1, 4-dioxane from the use of the additive to be no greater than 3 nanograms (ng) per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of this polyamide-ethyleneimine-epichlorohydrin resin is 1.1×10^{-10}, or 1.1 in 10 billion (Ref. 7). Because of numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to 1, 4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1, 4-dioxane that might result from the proposed use of the additive.

D. Ethyleneimine

The agency used data in a carcinogenesis bioassay on ethyleneimine conducted for the National Cancer Institute (Ref. 9) to estimate the upper-bound level of lifetime human risk from the potential presence of the impurity ethleneimine in the proposed use of the additive. The results of the bioassay on ethyleneimine establish that the material was carcinogenic for male and female mice under the conditions of the study in that the test material caused significantly increased incidence of lung and liver neoplasia in both male and female mice.

CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethyleneimine. QRAC concluded that the ethyleneimine bioassay provided an appropriate basis with which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to ethyleneimine stemming from the proposed use of the additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethyleneimine is present at the limit of detection, FDA estimated the hypothetical worst-case exposure to ethyleneimine from the use of the additive to be no greater than 1 pg per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from the potential exposure to ethyleneimine from the use of the subject additive is 3.4×10^{-10} or 3.4 in 10 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethyleneimine is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethyleneimine that might result from the proposed use of the additive.

E. Need For Specifications

The agency has also considered whether specifications are necessary to control the amounts of epichlorohydrin, ethylene oxide, 1, 4-dioxane, and ethyleneimine in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) The trace amounts of the four impurities that might be present in the additive would be expected to be virtually eliminated from the paper during subsequent paper processing operations and by the heat during drying steps, and, therefore, these impurities would not become components of food at other than extremely small amounts; and (2) the upper-bound limit of lifetime risk from exposure to the impurities, even under worst-case assumptions, is very low (epichlorohydrin—1.8 in 1 trillion, ethylene oxide—3.9 in 100 billion, 1,4-dioxane—1.1 in 10 billion, and ethyleneimine—3.4 in 10 billion).

F. Conclusions on Safety

FDA has evaluated the data in the petition and other relevant material. The

agency concludes that the proposed food additive use is safe, and that § 176.180 (21 CFR 176.180) 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.

III. Environmental Impact

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.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 15, 1993, 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.

V. References

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

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by Homburger, F., J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.
3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, dated July 16, 1990.
4. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann*, 71:922–923, 1980.
5. Report of the Quantitative Risk Assessment Committee, "Ethylene amine and Epichlorohydrin as Contaminants in Polyamide-ethyleneimine-epichlorohydrin Resins for Use in the Manufacture of Paper and Paperboard in FAP OB4193 (BASF Corp.), dated March 5, 1993."
6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1, 2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.
7. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for Ethylene Oxide and 1, 4-dioxane in Polyamide-ethyleneimine-epichlorohydrin Resins for Use in the Manufacture of Paper and Paperboard, FAP OB4193 (BASF Corp.), dated April 10, 1991."
8. "Bioassay of 1, 4-dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.
9. Innes, J. R. M. et al., "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of the National Cancer Institute*, 42:1101, 1969.
10. Report of the Quantitative Risk Assessment Committee—Update—Subject: Ethylene Amine and Epichlorohydrin as Contaminants in Polyamide-ethyleneimine-epichlorohydrin Resins for use in the Manufacture of Paper and Paperboard in FAP OB4193 (BASF Corp.), dated May 13, 1993."

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding a new entry under the heading "List of substances" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Polyamide-ethyleneimine-epichlorohydrin resin (CAS Reg. No. 115340–77–7), prepared by reacting equimolar amounts of adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl).	
* * * * *	

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27921 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Politico—Military Affairs

22 CFR Part 121

[Public Notice 1896]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act which governs the export of defense articles and defense services. It revises Category V of the U.S. Munitions List (USML) which covers explosives to be more consistent with multilateral export controls of the COCOM International Munitions List (IML). In addition, this final rule enumerates some commodities which are not controlled under the USML when not compounded with items controlled by the USML. This rule change is intended to reduce the burden

on exporters of defense articles by removing certain items and achieving consistency between the unilateral export controls of the USML and multilateral export controls of the COCOM IML.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, Office of Defense Trade Controls, Department of State 703 875–5662 or fax 703 875–6647.

SUPPLEMENTARY INFORMATION: On April 27, 1992, a final rule change was published which revised Category V of the USML to coincide with coverage contained under COCOM IML#8. Upon completion of the COCOM negotiations in June, 1992, IML# 8 was further revised. This final rule reflects the final outcome of the 1992 COCOM negotiations for IML#8. In addition, it clarifies coverage of certain substances and confirms coverage under Category V of boron carbide fuels of 85% purity or higher; butadienenitrileoxide (BNO); 3-nitraza-1,5 pentane diisocyanate; polynitrocarbonates; Bis (2-methyl aziridinyl) methylamino phosphine oxide (methyl BAPO); guanidine nitrate; military aircraft fuels and military fuel thickeners. It also removes from the USML and transfers control to the Commerce Department's CCL the following commodities: Nitroglycerin; Trinitrotoluene (TNT) Trinitrophenylmethylnitramine (TETRYL); Pentaerylthritol Tetranitrate (PETN) and Protech. Finally, it specifies which substances are not subject to USML control when they are not compounded with controlled items.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters by clarifying USML coverage of explosives. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404–0013.

List of Subjects in 22 CFR Part 1218

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); Executive Order 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.12 is revised to read as follows:

§ 121.12 Military explosives and propellants.

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate.

Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:

(1) Spherical aluminum powder of particle size 60 micrometres or less manufactured from material with an aluminum content of 99% or more;

(2) Metal fuels in particle sizes less than 60 micrometres whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following: Zirconium, magnesium and alloys of these; beryllium; fine iron powder with average particle size of 3 micrometres or less produced by reduction of iron oxide with hydrogen; boron or boron carbide fuels of 85% purity or higher and average particle size of 60 micrometers or less;

(3) Any of the foregoing metals or alloys of paragraphs (a) (1) and (2) of this section, whether or not encapsulated in aluminum, magnesium, zirconium or beryllium;

(4) Perchlorates, chlorates and chromates composited with powered metal or other high energy fuel components;

(5) Nitroganidine (NQ);

(6) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen;

(7) Carboranes; decaborane; pentaborane and derivatives;

(8) Cyclotetramethylenetetranitramine (HMX); octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; (octogen, octogene);

(9) Hexanitrostilbene (HNS);

(10) Diaminotrinitrobenzene (DATB);

(11) Triaminotrinitrobenzene (TATB);

(12) Triaminoguanidinenitrate (TAGN);

(13) Titanium subhydride of stiochiometry TiH 0.65–168;

(14) Dinitroglycoluril (DNGU, DNGU); tetranitroglycoluril (TNGU, SORGUYL);

(15) Tetranitrobenzotriazolobenzotriazole (TACOT);

(16) Diaminohexanitrobiphenyl (DIPAM);

(17) Picrylaminodinitropyridine (PYX);

(18) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);

(19) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;

(20) Ammonium perchlorate;

(21) 2-(5-cyanotetrozolato) penta amminecobalt (III) perchlorate (CP);

(22) cis-bis (5-nitrotetrazolato) penta amminechobalt (III) perchlorate (or BNCP);

(23) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;

(24) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofurozan);

(25) 2,4,6-trinitro-2,4,6-triaza-cyclohexanone (K–6 or keto-RDX);

(26) 2,4,6,8-tetranitro-2,4,6,8-tetraaza-bicyclo (3,3,0)-octanone-3(tetranitrosemiglycouril, K–55, or keto-bicyclic HMX);

(27) 1,1,3-trinitroazetidine (TNAZ);

(28) 1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin (TNAD);

(29) Hexanitrohexaazaisowurtzitane (CL-20 or NNIW; and chlathrates of CL-20);

(30) Polynitrocubanes with more than four nitro groups;

(31) Ammonium dinitramide (ADN or SR–12);

(32) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro-1,3,5-trinitro-1,3,5-triazine; 1,3,5-trinitro-1,3,5-triaza-cyclohexane; hexogen, hexogene;

(33) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);

(34) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl functionality of less than 2.28, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 degrees C of less than 47 poise;

(b) "Additives" include the following:
(1) Glycidylazide Polymer (GAP) and its derivatives;
(2) Polycyanodifluoroamino-ethyleneoxide (PCDE);
(3) Butanetrioltrinitrate (BTTN);
(4) Bis-2-Fluoro-2,2-dinitroethylformal (FEFO);
(5) Butadienenitrileoxide (BNO);
(6) Catocene, N-butyl-ferrocene and other ferrocene derivatives;
(7) 3-nitraza-1,5 pentane diisocyanate;
(8) Bis(2,2-dinitropropyl) formal and acetal;
(9) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluroamino groups;
(10) 1,2,3-Tris [1,2-bis(difluoroamino)ethoxyl propane; Tris vinoxy propane adduct, (TVOPA);
(11) Bisazidomethyloxetane and its polymers;
(12) Nitratomethylmethyloxetane or poly (3-nitratomethyl, 3-methyl oxetane); (Poly-NIMMO); (NMMO);
(13) Azidomethylmethyloxetane (AMMO) and its polymers;
(14) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine and its salts;
(15) Polynitroorthocarbonates;
(16) Tetraethylenepentamine-acrylonitrileglycidol (TEPANOL); cyanoethylated polyamine adducted with glycidol and its salts;
(17) Polyfunctional aziridine amides with isophthalic, trimesic BITA or butylene imine trimesamide isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;
(18) Basic copper salicylate; lead salicylate;
(19) Lead beta resorcylate;
(20) Lead stannate, lead maleate, lead citrate;
(21) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO), bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide (BOBBA 8), and other MAPO derivatives;
(22) Bis(2-methyl aziridinyl) methylamino phosphine oxide (methyl BAPO);
(23) Organo-metallic coupling agents, specifically:
(i) Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate or titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato-O], or LICA 12;
(ii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatemethyl] butanolato-1 or tris(dioctyl)pyrophosphato, or KR3538;
(iii) Titanium IV, [2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioctyl) phosphate;
(24) FPF–1 poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal;
(25) FPF–3 poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diolformal;
(26) Polyglycidylnitrate (PGN) or poly(nitratomethyl oxirane); (poly-GLYN) (PGN);
(27) Lead-copper chelates of beta-resorcylate and/or salicylates;
(28) Triphenyl bismuth (TPB);
(29) bis-2-hydroxyethylglycolamide (BHEGA);
(30) Superfine iron oxide (Fe_2O_3 hematite) with a specific surface area greater than 250 m^2/g and an average particle size of 0.003 micrometres or less;
(31) N-methyl-p-nitroaniline;
(c) "Precursors" include the following:
(1) 1,2,4-trihydroxybutane (1,2,4-butanetriol);
(2) Guanidine nitrate;
(3) 1,3,5-trichlorobenzene;
(4) Bischloromethyloxetane (BCMO);
(5) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol); and triol;
(6) Propyleneimide, 2-methylaziridine;
(7) 1,3,5,7,-tetraacetyl-1,3,5,7-tetraaza-cyclooctane (TAT);
(8) Dinitroazetidine-t-butyl salt;
(9) Hexabenzylhexaazaisowurtzitane (HBIW);
(10) Tetraacetyldibenzylhexa-azaisowurtzitane (TAIW);
(11) 1,4,5,8-tetraazadecaline.
(d) Military high energy solid or liquid fuels specially formulated for military purposes: (1) Aircraft fuels controlled by § 121.12(a) are finished products not their independent constituents. (2) military materials containing thickeners for hydrocarbon fuels specially formulated for use in flamethrowers or incendiary munitions; metal stearates or palmates (also known as octol); and M1, M2 and M3 thickeners;
(e) Any substance, or mixture meeting the following performance requirements:
(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;
(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;
(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for non-metallized, or greater than 270 seconds for aluminized compositions;
(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenized, 250 seconds for non-metallized and 266 seconds for metallized compositions;
(5) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm (1.5 in) per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 294K (21 degrees C);
(6) Any other gun propellants having a force constant greater than 1,200 kJ/kg;
(7) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K (−40 degrees C).
(f) Liquid oxidizers comprised of or containing the following:
(1) Inhibited red fuming nitric acid (IRFNA));
(2) Oxygen difluoride.

Note: Category V includes the following substances when compounded or mixed with military explosives, fuels or propellants controlled under this category:

—Ammonium picrate
—Black powder
—Hexanitrodiphenylamine
—Difluoroamine (HNF2)
—Nitrostarch
—Potassium nitrate
—Tetranitronaphthalene
—Trinitroanisol
—Trinitronaphthalene
—Trinitroxylene
—Fuming nitric acid non-inhibited and non-enriched
—Acetylene
—Propane
—Liquid oxygen
—Hydrogen peroxide in concentrations less than 85%
—Misch metal
—N-pyrrolidinone and l-methyl-2-pyrrolidinone
—Dioctylmaleate
—Ethylhexylacrylate
—Triethylaluminum (TEA), trimethylaluminum (TMA) and other pyrophoric metal alkyls and aryls of lithium, sodium, magnesium, zinc or boron
—Nitrocellulose
—Nitroglycerin (or glyceroltrinitrate, trinitroglycerine (NG)
—2,4,6 trinitrotoluene (TNT)
—Pentaerythritol tetranitrate (PETN)
—Trinitrophenylmethylnitramine (Tetryl)
—Ethylenediaminedinitrate (EDDN)
—Lead azide, normal and basic lead styphnate, and primary explosives or priming composition containing azides or azide complexes
—Triethyleneglycoldinitrate (TEGDN)
—2,4,6-trinitroresorcinol (styphnic acid)
—Diethyldiphenyl urea, dimethyldiphenyl urea and methylethyldiphenyl urea (Centralites)
—N,N-diphenylurea (unsymmetrical diphenylurea)
—Methyl-N,N-diphenylurea (methyl unsymmetrical diphenylurea)

—Ethyl-N,N-diphenylurea (ethyl unsymmetrical diphenylurea)
—2-nitrodiphenylamine (2–NDPA)
—4-nitrodiphenylamine (4–NDPA)
—2,2-dinitropropanol
—Chlorinetrifluoride.

§ 121.14 [Reserved]

3. Section 121.14 is removed and reserved.

Dated: September 21, 1993.

Dr. Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–27907 Filed 11–12–93; 8:45 am]

BILLING CODE 4710–25–M

22 CFR Part 121

[Public Notice 1897]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services.

It reduces the burden on munitions exporters by eliminating the more stringent restrictions on the export of these vessels, components, and parts when designated as Significant Military Equipment (SME). This rule also removes certain craft and vessels that are not inherently military from State Department control and distinguishes between combatant vessels and non-combatant vessels.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Rose Marie H. Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: This rule amends § 121.1, Category VI of the ITAR which defines vessels of war and special naval equipment. It establishes certain patrol craft, auxiliary vessels and special naval equipment, components and parts residing on the USML as non-SME. In addition, this rule amends § 121.15 of the ITAR which lists the types of naval vessels subject to State Department control under Category VI. The revised list distinguishes between combatant vessels and non-combatant vessels. After consultation with the Department of Defense, the Department of State has determined that certain patrol craft, auxiliary vessels and special naval equipment components and parts described in Category VI should not be designated as SME since they do not meet the guidelines established in § 120.19(a) and that § 121.15 should be amended accordingly.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. In addition, this amendment affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control No. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629 Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VI is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VI—Vessels of War and Special Naval Equipment.

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels and any vessels specifically designed or modified for military purposes. (See § 121.15.)

(b) Patrol craft without armor, armament or mounting surfaces for weapon systems more significant than .50 caliber machine guns or equivalent and auxiliary vessels. (See § 121.15.)

* (c) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults, mine sweeping equipment (including mine countermeasures equipment deployed by aircraft) and other significant naval systems specifically designed or modified for combatant vessels.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor.

* (e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.20)

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in paragraphs (a) through (e) of this category.

(g) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

3. Section 121.15 is revised to read as follows:

§ 121.15 Vessels of war and special naval equipment.

Vessels of war means vessels, waterborne or submersible, designed, modified or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) Combatant vessels: (1) Warships (including nuclear-powered versions):

(i) Aircraft carriers.
(ii) Battleships.
(iii) Cruisers.
(iv) Destroyers.
(v) Frigates.
(vi) Submarines.

(2) Other Combatants:

(i) Patrol Combatants (e.g., including but not limited to PHM).
(ii) Amphibious Aircraft/Landing Craft Carriers.
(iii) Amphibious Materiel/Landing Craft Carriers.
(iv) Amphibious Command Ships.
(v) Mine Warfare Ships.
(vi) Coast Guard Cutters (e.g., including but not limited to: WHEC, WMEC).

(b) Combatant Craft: (1) Patrol Craft (patrol craft described in § 121.1, Category VI, paragraph (b) are considered non-combatant):

(i) Coastal Patrol Combatants.
(ii) River, Roadstead Craft (including swimmer delivery craft).
(iii) Coast Guard Patrol Craft (e.g., including but not limited to WPB).

(2) Amphibious Warfare Craft:

(i) Landing Craft (e.g., including but not limited to LCAC).
(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft and Mine Countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(c) Non-Combatant Auxiliary Vessels and Support Ships:

(1) Combat Logistics Support:

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) Support Ships:

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, AVT).

(d) Non-Combatant Support, Service and Miscellaneous Vessels (e.g., including but not limited to: DSRV, DSV, NR, YRR).

Dated: September 21, 1993.

Dr. Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93-27908 Filed 11-12-93; 8:45 am]

BILLING CODE 4710-25-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in December 1993, and to multiemployer plans with valuation dates in December 1993.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This rule adopts the December 1993 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during December 1993 and multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1993.

For annuity benefits, the interest rates will be 5.60% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25% for the period during which benefits are in pay status and 4.0% during the period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) These annuity and lump sum interest assumptions are unchanged from the November 1993 interest assumptions.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during December 1993, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1993, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that the promulgation of this rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. In appendix B, Rate Set 2 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i^t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $1<y\leq n^1$), interest rate i^1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n^1<y\leq n^1+n^2$), interest rate i^2 shall apply from the valuation date for a period of $y-n^1$ years, interest rate i^1 shall apply for the following n^1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n^1+n^2$), interest rate i^3 shall apply from the valuation date for a period of $y-n^1-n^2$ years, interest rate i^2 shall apply for the following n^2 years, interest rate i^1 shall apply for the following n^1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i^1	i^2	i^3	n^1	n^2
• • •	•	•	•	•	•	•	•	•
2	12-1-93	1-1-94	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i^t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i^1, i^2, . . . , and referred to generally as i^t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i, are:					
	i_t	for t=	i_t	for t=	i_t	for t=
• • •	•	•	•	•	•	•
December 1993	.0560	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

4. In appendix B, Rate Set 2 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V^{y:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status

on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*		*	*		*		*
2	12-1-93	1-1-94	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * *	*	*	*	*		*
December 1993	.0560	1-25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 9th day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-28000 Filed 11-14-93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

RIN 0970-AB06

Social Services Block Grant Program; New Reporting Requirements

AGENCY: Administration for children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing this final rule to implement new annual reporting requirements for the Social Services Block Grant program. Also, as required by statute, we are publishing uniform definitions of services which states must use in submitting certain information required in their annual reports.

DATES: The effective date of this regulation is December 15, 1993. However, the reporting requirements in the statute became effective upon their enhancement on October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Bryant Tudor (202) 401-5535 or Frank Burns (202) 401-5536, Administration for Children and Families, Office of Community Services, Fourth Floor—East Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

SUPPLEMENTARY INFORMATION:

I. Program Description

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) amended title XX of the Social Security Act (the Act), 42 U.S.C. 1397, to establish the Social Services Block Grant (SSBG) program. Under this program, grants are made to the 50 states, the District of Columbia, and other eligible jurisdictions (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands) for use in funding a variety of social services directed towards the needs of individuals and families residing within each state.

Social services are directed at five goals in the Social Services Block Grant statute to: Prevent, reduce or eliminate dependency; achieve or maintain self-sufficiency; prevent neglect, abuse or exploitation of children and adults; prevent or reduce inappropriate care; and secure admission or referral for institutional care when other forms of care are not appropriate.

In fiscal year 1991, $2.8 billion was allotted to states based on the statutory formula. Within the specific limitations in the law (42 U.S.C. 1397d), each state has the flexibility to determine what services will be provided, who is eligible to receive services, and how funds are distributed among the various services within the state. State or local SSBG agencies may provide these services directly or purchase them from other public or private agencies and/or individuals.

II. New Statutory Requirements

Prior to the enactment of the Family Support Act of 1988, section 2006 of the Social Security Act (42 U.S.C. 1397e) required each state to report biennially on activities carried out under the SSBG. The report was required to include an accurate description of such activities, a complete record of the purposes for which funds were spent, and the extent to which funds were spent consistent with the state's pre-expenditure report required by section 2004 (42 U.S.C. 1397c).

Section 607 of the Family Support Act of 1988, Public Law 100–485, amended section 2006 to require that reports be submitted annually rather than biennially. In addition, a new subsection 2006(c) was added to require that the following specific information be submitted as a part of each state's annual report:

(1) The number of individuals who received services paid for in whole or in part with funds made available under this title, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) The amount spent in providing each type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) The criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs);

(4) The methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

Section 2006(c) also directs the Secretary to establish uniform definitions of services for use by the states in preparing the above information and "to make such other provision as may be necessary to assure that compliance with these requirements will not be unduly burdensome on the States."

III. Background

The SSBG was enacted in fiscal year 1981 to replace the previous title XX program that had been in effect since 1975. Reporting requirements implementing the prior title XX program included the Social Services Reporting Requirements (SSRR)—a system of quarterly and annual reports from states of unduplicated counts of recipients, by service, by eligibility category, by expenditure of funds, by method of provision, and by title XX goal, as well as special reports on child day care.

When the SSBG was enacted, the Department decided not to go beyond the language of the statute in implementing the biennial reporting requirements. However, beginning in 1983, the Office of Human Development Services, the office which previously administered the SSBG, funded the American Public Welfare Association to operate a Voluntary Cooperative Information System to collect data on state SSBG services, expenditures and numbers of individuals served. States have supported the concept of a voluntary information collection system, but not all states have participated or submitted complete data on their use of SSBG funds.

IV. Notice of Proposed Rulemaking

On April 5, 1990, the Department published a Notice of Proposed Rulemaking (NPRM) to implement the new reporting requirements enacted in the Family Support Act of 1988 (55 FR 12678).

The proposed rule contained, but did not go beyond, the reporting requirements contained in the statute. The NPRM also proposed uniform definitions of 26 services that states would be required to use in preparing the information required by section 2006(c), and a one-page reporting form for the numerical data required by section 2006(c).

We received comments from 32 state agencies in 29 states, two local service provider organizations, and three national organizations, including one national organization representing state SSBG agencies. In addition, we met with representatives of state SSBG agencies responsible for complying with the new reporting requirements.

V. Summary of Changes in the Final Rule

In developing the final rule, the Department maintained its commitment to the principles stated in the NPRM:

1. All requirements or procedures were evaluated to assure that compliance with and implementation of the requirement would not be unduly burdensome on the states.

2. The uniform service definitions the Department developed did not affect state flexibility in the selection of the services a state chose to provide, in the state definition of these services, or in the state's use of its SSBG funds.

3. No additional federal funds are being requested for state implementation of the new statutory requirements.

4. While no monetary penalties are assessed for noncompliance, a state would be subject to an audit finding for failure to submit an annual report containing the information specified in section 2006 of the Act.

In general, the majority of the comments supported the Department's proposed approach and the specific provisions of the NPRM. However, after full consideration of all of the comments, we have made the following changes or retained the following provisions:

(1) We have amended § 96.74(a)(3) to add a requirement that states report a total amount of federal, state and local funds for each service. The language of the law is clear in requiring reports of the number of persons served in whole or in part with SSBG funds; the law is not explicit about whether SSBG funds or total social services funding should be reported. We received many comments pointing out that SSBG funding in many states represents only a fraction of the total state expenditures for most services. Many comments suggested that average costs, limited to SSBG funds, per adult recipient and child recipient would be meaningless. This additional information will provide a context for understanding the recipient and expenditure figures reported by states.

(2) Section 96.74(b)(3) continues to require states to report actual numbers of recipients and actual expenditures when this information is available, but allows states to use data based on sampling and/or estimates when actual figures are unavailable.

(3) The determination, stated in the NPRM, that no federal purpose would be served by requiring states to report an unduplicated count of recipients has been retained in the final rule. Many states commented that unduplicated counts would be unduly burdensome and would require costly systems development to implement.

(4) We have attempted to increase the reliability and uniformity of data by clarifying how states should count recipients of services to determine the total number of recipients of each service. Section 96.74(b)(3) directs states to consider a service provided to a recipient for the length of the reporting period (one year) or any fraction thereof as a single service.

(5) Section 96.74(b)(3) also directs states to count only a single recipient for each service. We have suggested that the states consider the recipient to be the

individual who directly interacts with the service provider. We have made this change in response to questions about which individuals states should count when services are delivered on behalf of families.

(6) Section 96.17(a)(2) clarifies that states may use either the federal or the state fiscal year as the reporting period for the annual report.

(7) We have accepted almost all of the specific editorial and technical comments we received regarding changes in the Uniform Definitions of Services. The definitions remain descriptive and broadly inclusive, with illustrative examples of component services and activities.

(8) We have added two new services definitions in the Uniform Definitions of Services. Employment Services are now defined as a discrete service category; they formerly had been considered a component of Employment, Education and Training Services. A new services definition, Independent and Transitional Living Services, has also been added.

(9) To permit greater specificity in reporting expenditure data, we have revised § 96.74(b)(4), and the reporting form, to add several sub-categories to item 30, non-service expenditures. This section now requires reporting of funds transferred to or from the SSBG, balances carried over by a state from the previous fiscal year, balances carried forward to the next fiscal year, and other administrative costs and activities.

(10) We have deleted the requirement in § 96.74(b)(4) that the total in the Expenditure column of the reporting form (services plus other expenditures) must equal the state's allotment for that fiscal year.

VI. Summary of Comments and the Departmental Response

We appreciate the thoughtful comments and recommendations and, in some cases, detailed analysis we received on the NPRM. All written comments were analyzed and form the basis for changes we have made in these final rules. The discussion which follows includes a summary of the major comments, our responses to those comments, and the changes that have been made in the final rule as a result of the comments.

1. General Comments

Most states and organizations were supportive of the approach taken in the NPRM, especially of the Department's efforts to implement the new statutory requirements with minimum burden on the states.

Comments:

- The regulations accomplish the dual task of obtaining information on the uses of Social Services Block Grant funds and minimizing the burden placed on states. They accomplish the goal of adequate accountability without the redirection of an undue amount of resources from service provision to administrative activity.

However, several comments objected to the implementation of any additional requirements under the SSBG.

Comments:

- We recognize that the new reporting requirements are imposed by statute. Even so, we believe that they are inherently inconsistent with the block grant concept, which was implemented with the understanding that reporting requirements would be minimized.
- When the SSBG was implemented states were granted flexibility and were relieved of many burdensome requirements in exchange for block grant funding. We are now still under block grant funding but are returning the onerous reporting requirements of pre-block grant years.

Department's response:

No changes are required by these comments.

2. SSBG Funds Only Part of the Total State Social Service Program

A serious concern affecting the consistency, reliability and interpretation of the data raised by several states is that, in most states, services are only partially funded with SSBG funds. This means that, as proposed in the NPRM, states would report the number of people served in whole or part with SSBG funds but report on services expenditures based on SSBG dollars alone. This could lead to erroneous conclusions about the costs of services because average expenditures would be understated. Generally, states seemed to recognize a need for accountability, but wanted the data they report to be accurate and useful.

Comments:

- Since SSBG funds might pay a portion of the total cost of a service, reports of average costs per service recipient will be incomplete and virtually meaningless.
- It is recommended that more consideration be given to providing guidance to states which will minimize the potential for greatly overstating the numbers of recipients of SSBG funded services. One method, of course, is that if SSBG funds 5 percent of a service, then 5 percent of the recipients would be reported. Without some specific guidance to states the data on per recipient costs will almost certainly contain very large variations and will have very little value to planners or policy makers.
- As an example, in FY 1990, the state projects $208 million in social services expenditures, but the state's SSBG allotment is $129.3 million. If Congress is interested in the social services delivered to needy citizens, it would be necessary to report as we do now the entire picture of services that fall within SSBG.
- The proposed requirement describes services which are funded in whole or in part by SSBG. In many cases, in our state, SSBG funds only a fractional portion of the total service provided and, as a result, this will not be reflected accurately in the total cost per client figure.
- The expenditures per child and the expenditures per adult may be very misleading because the SSBG funds cover only a portion of the actual services cost.

Department's response:

After much consideration, we agreed that a change was needed and have added a new requirement in § 96.74(a)(3). For each of the service categories, states should report (or estimate, or determine the amount through sampling) the amount of federal, state and local funds that support the service.

We recognize that there is wide variation among states in their use of and coordination with other sources of funding for social services programs. Some states include within their services programs only SSBG and state funds, while others include funds from other federal programs, e.g., the Community Services Block Grant, the Job Opportunities and Basic Skills (JOBS) program, Child Welfare Services, the Older Americans Act, and Medicaid, as well as state and local funding. We are requesting that the states provide, as part of their annual report, a listing of the programs and amounts of funding which constitute their overall services programs. We have made a corresponding change in the reporting form (see appendix B).

3. Estimation and Sampling of Data

Out of concern for the accuracy and reliability of data, one comment suggested that estimation and sampling not be allowed under the final rule.

Comment:

- In the rules, it is proposed that if accurate data was not available then sampling or estimating would be

allowed. Even a small amount of sampling or estimating may invalidate the data or raise questions about the reliability of the information. It has been the experience of this agency that when estimations are used, the budgeting process becomes questionable in the eyes of the public or lawmakers.

However, most of the comments endorsed the use of estimation and sampling as a way of relieving undue burdens on state data collection efforts, and, in some cases, as the only way such information could become readily available.

Comments:

- Major systems development, at great cost to this state, would be necessary if 'actual' statistics were required. We ask that the option of providing 'estimates' be sustained in the final regulation.
- SSBG dollars are widely spread over salaries and services and may be mixed with other funds. It is therefore difficult to collect data that represent discrete SSBG services. In some programs, we will have to rely heavily on estimated data.
- Our ability to meet the new requirements is dependent on retaining the assurance that estimates can be reported when actual recipient or expenditure data is not available.
- In the past, the block grant client counts and expenditures have been estimated, based on the assumption that all clients of Departments of Social Services and Human Service Departments in target groups other than Developmental Disability, Mental Health and Alcohol or other Drug Abuse are funded by SSBG funds. We could continue to use this estimation method.

Department's response:

We continue to be favorably impressed with the sense of responsibility displayed by state agencies in their desire that the information collected be as accurate as possible. While we agree that actual counts of recipients and expenditure data provide more reliable information, we are charged by law to minimize the burden on states, and believe that such a requirement would be too burdensome. Therefore, we have made no changes in this section of the rule as proposed. Section 96.74(b)(3) requires that states use sampling and estimation techniques only where actual figures are unavailable; that data be identified as actual figures, or figures based on sampling or estimation; and that the sampling and/or estimation process(es) be described. We believe that the availability of this information is sufficient to inform researchers and policymakers of the limitations of the data. The reporting form has been revised to indicate whether data are actual, estimated or based on sampling.

4. Duplicated Counts of Services Recipients

In the preamble to the notice of proposed rulemaking, we noted that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." We are aware that only a few states have the capability of producing an unduplicated count. The comments we received reflect this.

Two states suggested that unduplicated counts be required.

Comments:

- The NPRM states that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." In discussions this position was restated by federal representatives. We are convinced that if states provide duplicated counts, then information on costs per recipient will have little meaning. Since the amount of duplication would be unknown either within an individual state's report or from state to state, little use could be made of the information.
- The biggest problem we see here is the counting of clients. If states are allowed to provide duplicated counts of clients, the data become almost meaningless. We recommend that states be asked to provide an unduplicated count of clients within each Service Category. States which cannot provide an unduplicated count should be allowed to estimate. "Not Available" is more meaningful than a duplicated number.

Most states, however, favor the position taken in the NPRM.

Comments:

- Given the current variability in states' SSBG data collection capabilities, the reports of individuals receiving services will range from carefully screened unduplicated counts to grossly duplicated totals.
- Although the **Federal Register** background section states that "no federal purpose would be served by requiring states to report an unduplicated count of recipients," we believe they probably mean across service categories. The public law itself uses the term "individual" in reference to the count of service recipients. Unless the rule can allow that clients not be unduplicated within each service as well as across services, we will have problems reporting. The only method to prevent duplication, even within services, is to have a statewide automated system based on a single client identifier. We have a number of service areas not using our Client Information System (CIS) (e.g., prevention, homemaker/housekeeper) or where our most valid, reliable data come from a source other than CIS (e.g., emergency shelter, foster care).
- True unduplicated counts both within and across services cannot be provided at present. In most cases, client data and expenditures are derived separately. Combining the two databases will always result in estimation of per-client expenditures, particularly where unduplicated client data are not available.
- A question arises with reference to the statement under the NPRM Background section that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." We initially assumed that this meant that there was no requirement for a state to report an unduplicated count for the entire aggregate population of recipients for all services funded in whole or in part with SSBG funding, and that data on individuals served per service category would need to be reported as an unduplicated count. However, from information provided at a recent workshop, we understand that duplicated counts per service category are to be permitted. We recommend that this information be set forth in the final rule and/or the instructions for the finalized SSBG reporting form.
- This state, except for a limited number of counties, is unable at this time to provide an unduplicated count. Therefore, the total column on the example form in appendix B would be a duplicated count. The expenditure total would be an accurate count.
- Our ability to meet the new requirements is dependent on retaining the policy criterion that there will be no requirement that states report an unduplicated count of recipients within or among uniform service categories.

Department's response:

We continue to believe that these new requirements of law should be implemented without placing undue burdens on states. Because many states are unable to produce an unduplicated count of recipients without major changes in their data collection procedures, or without setting up a new data collection system at considerable cost, we are not making changes in this section of the regulation. However, states are required, under § 96.74(b)(3), to provide actual numbers of recipients when this information is available, and to identify and describe estimation and/

or sampling procedures when these procedures are used. We have also changed § 96.74(b)(3) to require that duplicated counts be identified. Similar changes have been made in the reporting form and instructions in appendix B.

5. Data Collection Issues

A number of comments related to basic reporting issues concerned the methods states should use to count the recipients of social services.

Comments:

• Lack of consistency in reporting would result in misleading information. For example, a child in foster care for 12 months could be counted 12 times if counted each month, four times if counted quarterly, and once if counted annually. Additionally, if the same child receives other services such as transportation, is he to also be counted for transportation as well as foster care? What should take precedence?

• It is not clear as to what constitutes a client being served. For example, would a client who received homemaker services once a week for ten weeks be considered as "one" client or would the service be reported as "ten" since it had been provided ten times to the client?

Department's response:

We have clarified in § 96.74(b)(3) that states should consider a service provided for the annual reporting period—or any fraction thereof—to be a single service provided to a single recipient. For example, a child in foster care, who received a foster care service funded in whole or part under the SSBG for twelve months, should be counted as one child receiving one service. If a child was in foster care for three months, returned home for three months, and returned to foster care for six months, that child should also, if possible, be counted as one child receiving one service. We believe this change will contribute to the consistency, accuracy and reliability of the data.

A related issue concerns the difficulty in determining the individual to whom services are provided, especially in cases where the services are designed to benefit a family.

Comments:

• The proposed rules do not state whether reported services should be associated with a single client or whether a service should be associated with all family members who benefit from it. For example, counseling to a parent which serves to protect a child could be reported as having been provided to both. Child day care provided to allow a parent to receive employment training could be similarly reported.

• For uniformity, simplicity, and consistency in data reporting, we recommend that the requisite recipient data for certain service categories be limited to one type of recipient only. Thus, for Foster Care for Children, the appropriate recipient number would be restricted to the count of foster children, or that number of individuals deemed to be in foster care placement, state custody, and/or under foster care casework supervision, and the state's definition of child for this category would include those individuals remaining in foster care placement after reaching the age of majority.

• The definition of "children/adults" is left to the discretion of the states. Our current data base captures services to specific target populations, such as adolescents, adults, children, and families. However, certain services are not provided exclusively to "children" or "adults," but to "families." Thus, we recommend that an attempt be made to clarify how services to "families" are to be reported, since we believe this has both philosophical, as well as practical implications for our clients.

Department's response:

In § 96.74(b)(3), we have clarified how states should count recipients, i.e., one recipient per service. We suggest, but do not mandate, that the individual who interacts directly with the provider of services should be considered the recipient of services. Therefore, a child would be considered the recipient of child day care services, even if those services are provided primarily to enable a parent to receive employment or training. Similarly, an adult receiving counseling services would be considered the services recipient, even if those services are provided, in part, for the protection of a child. However, within a family, several family members could each be receiving different services, or the same service, and be counted separately. For example, if each member of a family is receiving counseling, each family member should be counted separately.

While we appreciate that states are increasingly focusing on providing services to families, and support this philosophically, the statute requires states to report data by adults and by children.

In a related comment, one state asked about different definitions for "adult" and "child" under different services.

Comment:

• A similar issue is the adult and child distinction. Each state will be using their own definition of "adult" and "child," and will include the definition in their annual report. Within this state, the definitions of "adult" and "child" will differ by service category and by eligibility.

Department's response:

Since this does not conflict with the statute, it is an area where state discretion should take precedence. There is no requirement that each state's definition of "adult" and "child" remain consistent for every service.

Comment:

• One national organization suggested that each state be required to report on services delivered to children and to various categories of adults by age. The suggestion was four categories: Children (birth to 17); young adults (18–39); midlife adults (40–59); and older adults (60+).

Department's response:

Because it was our intent to not go beyond the requirements of the statute, to minimize reporting burdens, and to preserve state flexibility where possible, we are not accepting this suggestion.

6. Reporting Period

One state suggested that the reporting period be the same for all states.

Comment:

• We recommend that all states be required to use the federal fiscal year when reporting SSBG expenditures. Very little is consistent from state to state; a uniform reporting period would facilitate comparability and timely compilation of data. Since estimation is allowed, state fiscal year adjustment should be feasible and not unduly burdensome.

However, other states commenting on the language in § 96.17(a)(2) expressed concern that the regulations should accommodate a reporting period that gives the states the flexibility to use the same program year they use for planning purposes.

Comments:

• A major concern of this state relates to language in the proposed rule which implies that the annual report would require service information to be reported according to the federal fiscal year of funds allotment rather than the state fiscal year of funds expenditure. Our fiscal and programmatic data related to SSBG funded services is presently maintained according to the period of budget expenditure by state fiscal year (July 1 through June 30).

Tracking SSBG funded services by federal fiscal year would entail implementing special data collection systems.

• The state completes its report for the period covered by the state fiscal year which runs July 1 through June 30. It is our interpretation that the report will be due six months after the end of the state fiscal year, which would be December 31, or subsequently when the state submits its application for the federal fiscal year, which would be by June 30 of the following year.

Department's response:

It was our intention in the proposed rule to minimize reporting burdens on states. The program year used by each state is the appropriate period for that state to use in reporting, as these generally coincide with state planning, budget and legislative cycles. We have modified the language in § 96.17(a)(2) to clarify that either the state or federal fiscal year may be used.

7. Effective Date

Several states expressed concern about the timing of the implementation of the new reporting requirements.

Comments:

• We would require a six-month lead time for intra-agency coordination and the implementation of methodological change.

• We would recommend at least a two-year phase-in of the requirements, in order to give states enough time to make the needed system changes, programmatic changes, and reporting changes to enable us to comply with the new federal statute.

• States need adequate time to establish a system to obtain the requested information and train staff. We support establishing an implementation date at least six months from the approval date of the regulations.

• The state will require a minimum of six months to one year lead time from the promulgation of the final regulations in order to make the system changes to comply with the reporting requirements and disseminate these requirements to the county departments of human services and service providers.

• There is a possibility that some of the requirements, as well as the services definitions might change in the final rule. State data collection should not be required until after the final regulations are published.

Department's response:

These regulations implement requirements of law that have been in effect since the enactment of the Family Support Act of 1988 (Public Law 100–485) on October 13, 1988. The Department provided each state agency administering the SSBG with a copy of the new statutory requirements in an Information Memorandum (HDS–IM–89–1) issued February 2, 1989. A Program Instruction (HDS–PI–89–14), issued November 24, 1989, required states to submit annual reports based on the new requirements. The NPRM was published on April 5, 1990.

The Program Instruction directed states to prepare annual reports, and gave states the option to base those reports on state definitions of services, and the recipient and expenditure data available. This report could be submitted in any format of the state's choice, although a number of states have been using the reporting form which appeared in the NPRM. States are reminded that this requirement for an annual report remains in effect.

Because these reporting requirements are minimal, have been in effect for more than four years, and because the Department has not imposed requirements that would be unduly burdensome, states must submit an annual report which meets the requirements of this final rule, using the specified reporting form, beginning with the state or federal fiscal year following the year in which the final rule is published. That report must be submitted within six months of the end of the period covered by the report, or at the time the state submits its application for funding for the fiscal year which begins at the expiration of that six-month period, as stated in § 96.17(a). Each state is encouraged to begin using the reporting form and uniform services definitions immediately.

The Department will be collecting, analyzing and publishing these data as a resource for Congress, the states, researchers and others beginning with the fiscal year in which this regulation is published.

8. Non-Service Expenditures

Several states commented about reporting non-service expenditures, with one state suggesting that specific additional information be reported.

Comment:

• We would suggest the addition of cells to the reporting form for the following entries:

1. Monies transferred into SSBG.
2. Monies transferred out of SSBG.
3. Monies carried over from the previous fiscal year.
4. Monies representing certified match.

Department's response:

The SSBG statute gives states the flexibility to transfer funds among certain block grants. States also have two years to expend SSBG funds. To reflect this, we have revised § 96.74(b)(4) to require states to report, under category 30—non-services expenditures—sub-categories for transfers from or to the SSBG, carry over balances (i.e., the amount of funds reserved from the previous fiscal year), and carry forward balances (i.e., the amount the state intends to expend in the following fiscal year). Also, recognizing that state expenditures need not equal the state's allotment each year, we have removed the requirement in § 96.74(b)(4) that the total in the expenditure column of the reporting form must equal the state's allotment for that fiscal year. Since state matching is not required under the SSBG, we did not accept the recommendation that we add a sub-category to show "certified match." The amount of such funds or other local of donated funds will be reported in the new category of services funding as state or local funds (see § 96.74(a)(3).

9. Services Definitions: General

A few states misunderstood the NPRM to require the use of the uniform services definitions in the design of their state programs. In addition, many states expressed concern about the reliability of data because of the variation among state service programs and the amount of overlap among the services definitions.

Comments:

• Policy criterion number 2, "The uniform service definitions the Department is required to issue will not affect state flexibility in the selection of the services a state chooses to provide, in the state definition of these services, or in the state's use of SSBG funds," appears to negate the intent of the reporting requirements.

• The Uniform Definition of Services appears to be the first transformation of the block grant into a specific grant system. State discretion is restricted and the federal government is put in the position of determining the state's needs, rather than relying on the judgment of the state and its local entities.

• Because the service categories have been defined broadly (and even overlap) to encompass different service delivery patterns, there will be great variation from state to state in the services reported within each category.

• Given the flexibility in reporting afforded to states by the new rules, the resulting information will be of limited

analytical value. It would seem desirable to establish consistency in reporting by the states so that the information can be interpreted similarly for all states and in aggregate.

• We applaud your efforts to standardize reporting practices and appreciate the diversity of data collection and reporting practices among the states. In general, we believe that there is considerable overlap in the definitions of the 26 services, and that the overlap may complicate their interpretation and limit the confidence which can be placed in aggregate data.

• Definitions, as given, are in many areas inconsistent and open to interpretation by the reporting person. For example, case management—which occurs in multiple service areas—could be reported as case management rather than a more specific service area. As a result, uniform/consistent reporting would not be achieved.

Department's response:

First, we agree that, given our approach to allow as much flexibility as possible, consistency of data among states will not be easily achieved. However, we believe that the overall purpose of these data is to serve as general indicators of trends in state-administered social services programs, rather than as definitive reports. We do not, for example, intend that the data would be subject to rigorous analysis, evaluation efforts, or to the same standard of verification that would apply to a fiscal audit. We believe this approach will provide useful data without the need to divert funds for social services into expensive systems development at the state level.

Second, the uniform service definitions in the NPRM represented the Department's effort to produce a framework, for reporting purposes only, that would encompass most of the activities currently described and funded by states under the SSBG. We want to emphasize that the uniform services definitions are not meant to direct how states define or deliver services; all of the flexibility under the block grant statute is retained. We do not expect the uniform services definitions to be identical to those used in any state. However, we do believe they offer a reasonable framework for reporting. States are asked to review their own services and if at all possible use the uniform services definitions for services which correspond. If this is not possible, states can use the "other services" category.

The Department has made minor editorial and technical changes in specific definitions, and added two new services definitions, as described below.

10. Changes in Services Definitions

We specifically raised three reporting issues in the NPRM—asking for recommendations of services that may have inadvertently been omitted; whether case management, counseling and transportation should be reported discretely or as components of other services; and whether the definition of home based services was appropriate.

a. New Services Definitions:

Comment:

• A comment from a national organization representing 37 state SSBG agencies suggested adding a definition for "Independent and Transitional Living Services." These are services designed to help older youth in foster care or homeless youth make the transition to independent living, or to help adults make the transition from an institution, or from homelessness, to independent living.

Department's response:

We have accepted this suggestion and added a new definition.

Comment:

• Another comment suggested that we examine the definition of "Employment, Education and Training Services," and break out employment as a separate service.

Department's response:

Based on this comment, and on a growing pattern by states of providing education and training services that are not necessarily related to employment, we have developed separate definitions for "Education and Training Services" and "Employment Services."

Comment:

• Another comment suggested that we add "money management/protective payee" as a new services definition.

Department's response:

We agree that this is an important activity which some states may provide, typically as a part of another service. Under the uniform definitions, states could report this activity as a component of case management, adult protective services or adult foster care; they could also report as a separate service under "other services," item 29. However, we have not defined this activity as a separate service because no state currently includes this as a separate service in their pre-expenditure reports.

b. Case Management, Counseling and Transportation

We invited comment on the issue of whether case management, counseling and transportation should be reported as separate services or included only as components of the services, or both. Most states commented that a high degree of flexibility was necessary in this area.

Comments:

• We agree with the recommendation that states should have the option to report counseling, case management and transportation as separate services. The state provides these services for the most part as separate services, although they may also be provided as components of other services. We would prefer to be unable to report them in either category.

• Although consistency in reporting procedures should be a goal of the new requirements, we agree that states should not be required to separately report the number of services recipients and the costs of counseling, case management and transportation when these services are component parts of other services.

Several states, however, expressed concern that the reporting requirement constituted an "either/or" situation.

Comments:

• We agree with the proposal to allow reporting separately or within other services. However, it is not clear whether a state is expected to do all one or the other. We suggest the requirements specifically allow states to mix methods as appropriate. An example might be transportation. If the state has a contract which can be accessed by multiple services, it would be reported under the category of transportation; but if they also have another service, it would be reported within that service.

• In our present service program structure transportation is considered a subordinate and integral activity (and not a separate service program area) for our direct delivered child protection and child welfare program services. However, in our purchase of services programs, transportation services are treated as a separate and distinct service category. We have historically annotated the SSBG reporting to indicate this qualification and would recommend that such a practice could still be allowed and would not be anomalous under the new reporting requirements.

Department's response:

We have accepted the comments that request maximum state flexibility. We emphasize that states need not choose between methods of reporting. Case management, counseling and transportation (and other services) may be reported as discrete services or as components of other services. States that offer these services both discretely

and as components of other services may report both ways.

c. Home Based Services

We also invited comment on the definition of home based services. At issue was whether home health services should be reported as part of home based services or separately, as we proposed. Another issue was whether the component activities we had included under the definition of home based services—including homemaker services, chore services, and home management services—should be reported separately. One state recommended that home health services be reported as a component of home based services. However most of the comments we received agreed with the NPRM.

Comments:

- The state will be able to separately report home health services under Health Related Services. However, we see no need to separately report the components of home based services.
- Home health services should not be reported under the definition "Home Based Services," as home health services by their definition require trained health care providers to provide services and should be tracked under the definition "Health Related and Home Health Services." Home based services by definition are services provided, in general, by untrained providers (i.e., homemakers, choreworkers, etc.) and therefore should be reported under the definition "home based services."
- For the purposes of program monitoring and planning, the state tracks the services collectively listed by the proposed rules under "home based services" separately. Various in-home services may be provided as part of a service plan related to protection, disability or other reason. There should be no need to break out the separate services, however, under "home based services" unless this is done for all service categories.

Department response:

Based on the comments we have decided to retain the approach we proposed—that is, home health services should be reported under the category "Health Related Services," or under "other services," category 29, and such other activities as homemaker services, chore services, home management services and home maintenance services, should be reported under the category "Home Based Services."

Comment:

- A related comment suggested that the prevention of abuse of adults be added to the definition of home based services.

Department's response:

We agree and have changed the phrase "to prevent child abuse and neglect" to "to prevent the abuse or neglect of a child or adult."

d. Day Care Services

Comment:

- One comment suggested that "plan development" be included as a component activity in the definition of both child and adult day care.

Department's response:

We have accepted this suggestion.

Another comment mentioned the difficulty in defining the term "recipient" in relation to activities that are incidental to the provision of a service.

Comment:

- Child care licensing is currently defined as a program expenditure in the State. It will be very difficult to develop a reliable estimate of "service recipients" for this activity.

Department's response:

The final regulation retains state flexibility to report such administrative activities either as part of a service (where that activity is covered in the uniform service description in appendix A, as is the case here), or as an "other expenditure" on the reporting form, i.e., an administrative cost. This is an issue for other services as well—recruitment and home certification are included as possible activities in adoption and foster care services, for example. We suggest that if such administrative activities are a part of the state's definition of the service, no recipient count should be attempted. Alternatively, if a state wishes to report day care licensing as an "other service" and indicate the number of individuals, agencies or organizations with which the state has worked, the state should do so, adding an explanation of the data elsewhere in the annual report.

e. Special Services for Persons With Disabilities

Comments:

- We received several comments suggesting a change in the title of the service definition "Special Services for the Developmentally Disabled, the Blind, and the Physically Disabled."

Department's response:

In response, we have changed the title of this definition to "Special Services for Persons with Developmental or Physical Disabilities, or Persons with Visual or Auditory Impairments." We also added language to show that such services may be provided to "maximize the potential of persons with disabilities," and added family support, transportation, respite care and recreation as possible component activities.

f. Prevention and Intervention Services

Comment:

- One comment suggested that prevention and intervention services should more explicitly include preventing the removal of a child or adult from the home.

Department's response:

A statement to that effect now appears in the definition.

Comments:

- Several comments questioned the need for two services—prevention and intervention services and protective services—that appear similar in content. Other comments asked how such activities as family violence services or child abuse investigation could be reported.

Department's response:

We agree that there is some overlap between the services definitions, because they describe similar activities. In general, we have defined the services categories broadly so that states may choose the category which is closest to their own service definition. As noted in the NPRM, we tried to develop definitions that are descriptive and inclusive rather than detailed and limiting. Many states offer the component activities described under one definition or the other, and a significant number of states (12) offer both "protective" and "preventive" or "intervention" services for adults or children.

We have therefore decided to retain both services in the uniform services definition. In addition, we have added the term "family violence services" to both definitions. Similarly, child abuse investigations may be reported under either category.

Comment:

- Another comment suggested that the service definition of "prevention and intervention" place greater emphasis on prevention, and note that alternate placements or living arrangements are a possible consequence of abuse or neglect.

Department's response:

We have accepted this comment, but have retained language to show that activities designed to ameliorate the

consequences of abuse or neglect may also be reported under this definition.

g. Residential Treatment Services

Comments:

• We received several comments regarding residential treatment services appearing both as a separate services definition, and as a component activity of other services, including: Special services for persons with developmental or physical disabilities, or persons with visual or auditory impairments; special services for youth involved in or at risk of involvement in criminal activities; and substance abuse services. One comment suggested that we delete the definition for residential treatment services because of this overlap.

Department's response:

Section 2005 of the SSBG statute limits the use of SSBG funding for residential treatment services. Section 2005(a)(3) prohibits the use of SSBG funds for payment of room and board except for the cost of subsistence during rehabilitation, temporary shelter provided as a protective service, or room and board provided for a short term as an integral but subordinate part of a social service. Similarly, section 2005(a)(4) prohibits the use of SSBG funding for the provision of medicare care, other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual, unless it is an integral but subordinate part of a social service. Section 2005(a)(5) prohibits federal funding for social services provided to individuals in hospitals, skilled nursing facilities, or prisons except services provided to an alcoholic or drug dependent individual, or rehabilitation services.

Each state defines services within these statutory restrictions. Residential treatment services are intensive, often short-term, and relatively expensive. As a result, many states maintain separate recordkeeping for residential treatment as a separate service, even when it is provided as an integral but subordinate part of another social service, e.g., short term residential care of an emotionally disturbed child. For this reason we have decided to maintain residential treatment services as a separate services definition, while maintaining the flexibility for states which separately define residential treatment as a component of another service to report under a different category.

h. Case Management Services

Comment:

• One comment focused on case management services, directing our attention to the definition of case management services under the Medicaid program, which allows payment for case management services, but prohibits duplicate payment when case management is funded under another program. This comment pointed out that, with the limited availability of funding for services, one funding source should not jeopardize the delivery of services through another funding source.

Department's Response:

We agree that similar or identical services may be provided through various federal programs and our purpose is not to jeopardize funding. We believe this is a matter of cost allocation at the state level to avoid duplicate claims for the same service to the same client. The phrase "duplicative payment" does not prohibit a state from using SSBG funds for case management of social services and Medical funds for case management of medical services.

i. Foster Care Services

Comment:

• One state suggested that the service definitions be coordinated with the Foster Care, Adoption and Child Welfare programs under titles IV–B and IV–E of the Social Security Act, to assure that the definitions would not jeopardize funding under those titles.

Department's response:

There is no definition of foster care services, only of foster care (i.e., maintenance payments) under these titles. However, in response to the comment, we have included in the definition of foster care services all of the allowable settings for foster care under titles IV–B and IV–E.

Comment:

• Regarding coordination with title IV–E, another comment asked why activities may be defined as services under the SSBG but as administrative costs under title IV–E.

Department's response:

The title IV–E statute provides that activities other than maintenance costs, e.g., case management, which support the provision of foster care may be reimbursed as administrative costs. It is the state's choice whether to provide such activities, for children who are eligible under titles IV–B or IV–E, as administrative expenses under those programs, or as services under the SSBG.

11. Eligibility Criteria and Sliding Fee Scales

The statute requires states to report the criteria applied in determining eligibility for each service. In this regard one state inquired about the use of sliding fee scales as a criterion for eligibility.

Comment:

• Section 94.74(a)(4) states that, among other possible criteria applied in determining eligibility for each service, information on sliding fee scales must be included. The state uses or allows sliding fee scales in a small number of service categories. However, client eligibility is not affected by client payment or non-payment of the fee, therefore, our interpretation of the proposed regulation is that the state does not have fee scales which are a criterion for determining client eligibility.

Department's response:

We understand that payment of the fee, in this case, is not a criterion for receipt of the service. However, in this and in all instances where sliding fee scales are used to determine eligibility, the state should report that information. The SSBG statute, in section 2006(c)(3) is clear that states must report:

> "the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs)."

We believe such data are of interest to the citizens of the state as well as to the Department, Congress and others. We also believe such data, in many instances, are readily available, e.g., as part of the state's pre-expenditure report, or in state agency reports to the Governor or to the legislature, or easy to estimate.

Comment:

Another comment inquired about the specific information required under § 96.74(a)(4):

• For example, in many states eligibility guidelines vary from service to service and provider to provider. Are states required to submit income eligibility guidelines or sliding fee scales for every service and provider or a sample or guidelines or fee scales used within the state?

Department's response:

The statute requires states to submit information about "the criteria applied in determining eligibility for each service." If eligibility differs by services, or by providers, the state should describe all the eligibility requirements for each service.

12. Definition of "Public" and "Private" Means of Service Provision

The statute requires states to report on the methods by which each service is

provided, showing separately the services provided by public agencies, private agencies, or both. One state mentioned that the distinction between "direct delivered" and "purchased" services is not always the same as the distinction between "public" and "private" means of service provision:

• A potential difficulty for adapting to the proposed rule could be encountered in how the terms "public" and "private" are defined as distinct methods of service provision. The state's SSBG plan makes a distinction in delivery method between "direct delivered" and "purchased" services. Included among our purchase of services contractors are community action agencies which are subdivisions of local public governing bodies. A strict interpretation of the "private" method of service provision might exclude provision by entities affiliated with local public governing bodies.

Department's response:

Given the language in section 2006(c)(4) of the law that requires states to report "the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies," we are not making a change in the regulation. We understand that some states may need to identify which "purchased services" are obtained from public agencies and which from private agencies in order to respond to this requirement. For those service categories where services are provided both by public agencies and also by private organizations (either non-profit or for-profit), the state should simply indicate both methods of service provision on the reporting form.

13. Services Provided by Indian Tribes

One national organization recommended reporting in relation to Indian tribes.

Comment:

• We believe that it is important for the reporting requirements to mandate that states separately report the amount of money distributed to Indian tribes and the services provided by those tribes.

Department's response: We are reluctant go beyond the statute and have, therefore, decided not to accept this suggestion. States may, if they wish, include specific information about services provided by Indian tribes as part of their annual report. Four states currently report this information.

14. Reporting Race and Ethnic Background

One state suggested reporting racial and ethnic data.

Comment:

• Since services provided under the Social Services Block Grant must comply with the Civil Rights Act, it would seem prudent to collect data on the racial and ethnic characteristics of the population being served.

Department's response:

Similarly, because we are reluctant to impose burdens beyond what the law requires, we have not accepted this suggestion, although states may include such information in their annual reports.

15. Coordination With Other Reporting Systems

Comment:

• Several states specifically mentioned other reporting systems that are being or will be implemented in the near future, especially the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the summary data component of the National Child Abuse and Neglect Data System (NCANDS).

Department's response:

We have coordinated our efforts with officials responsible for those systems and have been assured that the Uniform Definitions of Services in appendix A are compatible with the provision of federally-funded adoption, foster care and child welfare services under titles IV–B and IV–E of the Social Security Act and the Child Abuse Prevention and Treatment Act.

However, AFCARS and NCANDS are different from the reports required by this final regulation. We expect the proposed AFCARS system to require detailed information about individual cases. The recently-implemented summary data component of NCANDS is a voluntary system that asks states to compile relatively detailed aggregate data about reports of child abuse and neglect; a second component of NCANDS, the detailed case data component, will be phased in during 1993 and 1994 and will ask states to maintain and report individual case data.

This regulation, by contrast, does not require the development of an extensive data collection system. Rather, it requires only annual aggregate information about statewide expenditures and relies, in many cases, on data that is either readily available to states, or easy to estimate.

16. No Additional Funds Requested

Several states commented that additional funding would be required to implement these requirements.

Comments:

• We request a reconsideration of the decision to provide no new federal support for systems development or enhancements mandated by stronger federal reporting requirements.

• Like other states, we are attempting to update and integrate our information systems and comply with new federal reporting mandates with limited resources. Any effort to make the reporting requirements more comprehensive would require additional federal funding.

• Little thought appears to have been given to costs involved in implementing the new reporting requirements. The title XX Social Services reporting systems in place prior to 1982 were not maintained. To implement a new reporting system will require substantial funds.

• Our state will need to implement a major change to its data base to capture the required new information. Further, many of the small non-profit agencies which contract with the Department for these needed social services do not have the sophisticated electronic equipment or the staff to implement them. This will require a costly Department investment in equipment revision and update, as well as technical assistance and training for our provider agencies, if it is to be successful.

• Initiation and maintenance of a new system will be costly at all levels of administration, when demands for direct services are continuing to grow.

• The proposed data collection will have a significant impact on the state. There will be a need to modify our current data collection mechanisms. The biggest cost will be to the agencies who have to supply the data.

• States are now operating on reduced staffs and budgets. Some may be partially computerized, while others have not had the money to enter into the electronic data processing arena. The additional reporting requirements will impose requirements that are a throwback to the pre-SSBG era. The information requested was gathered by the state prior to 1981, using the estimation process, and dropped after the implementation of the SSBG.

Department's response:

We do not believe these new reporting requirements will necessitate the kind of extensive systems development some of the comments envision. The extensive and rigorous data that were

required under the former Social Services Reporting Requirements (SSRR) are not required here. Based on our informal discussions with states, we believe the flexibility afforded the states by permitting estimation and sampling also should prevent the need for extensive systems development.

We also believe that much of the information required is already gathered by many states for their pre- and post-expenditure reports, or for their own planning, budgetary and legislative purposes. For example, data on estimated numbers of recipients and expenditures may also be available from purchasing or contracting offices, without requiring additional reporting from sub-grantees. For these reasons, along with budgetary constraints at the federal level, we maintain our previous position not to request additional funding for the implementation of these requirements.

17. Federal Central Office Administration

One state inquired about the administration of the new requirements.

Comment:

• We recommend that there be one designated contact person to provide clarification and interpretation to the states regarding the uniform definitions and reporting instructions, rather than various Regional Office staff having responsibility for such clearances.

Department's response:

Final rules for these new reporting requirements were being prepared during the time the Department was being reorganized. As part of this reorganization, which created the Administration for Children and Families (ACF), it was determined that the SSBG will be administered by the Office of Community Services within ACF, which also has responsibility for two other block grant programs. The headquarters office was also given responsibility for all matters concerning the administration of the SSBG program. Therefore, all pre-expenditures and annual reports should be submitted directly to the headquarters office of the Administration for Children and Families, to the attention of the contact person(s) listed above.

18. Audits

One state raised the question of the relationship between these reporting requirements and audits.

Comment:

• Will the auditors under the Single Audit Act need to verify the report? If an ineligible client was found in an audit would the proportionate share of her SSBG funding be disallowed?

Department's response:

Because the new requirements allow estimation and sampling where actual figures are unavailable, the data should not be subject to the same standard that applies to a fiscal audit. We would expect auditors to review the state's annual report, just as they would review other documents pertaining to the program. An auditor may recommend a disallowance during the course of an audit but the annual report would not be the basis.

Failure by a state to submit an annual report would be the basis for an audit exception.

VII. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory analysis be prepared for major rules, which are defined to include any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. The proposed regulatory changes would add new requirements to pre-existing state reporting duties and are thus unlikely to have an effect on the economy of $100 million, or any of the other effects specified in the Executive Order. Therefore, the Secretary concludes that this regulation is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C., Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This regulation, if promulgated, will affect only state governments. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Public reporting burden for the collection of information requirements in 45 CFR 96.74 is estimated to average 5,906 hours per response.

This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

These information collection requirements are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). A notice will be published in the **Federal Register** when OMB approves the information collection requirements.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action programs, Drug abuse, Energy, Grant programs-energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Investigations, Low and moderate income housing, Maternal and child health, Mental health program, Public health, Reporting and recordkeeping requirements, Social Security.

(Catalog of Federal Domestic Assistance Number 93.667, Social Services Block Grant)

Dated: July 1, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: August 30, 1993.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 96 of title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w et seq.; 42 U.S.C. 300x et seq.; 42 U.S.C. 300y et seq.; 42 U.S.C. 701 et seq.; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 et seq.; 42 U.S.C. 1397 et seq.; 31 U.S.C. 1243 note.

2. Section 96.1 is amended by revising paragraph (f) to read as follows:

§ 96.1 Scope.

* * * * *

(f) Social Services (Pub. L. 97–35, sections 2351–55, 42 U.S.C. 1397–1397(e)) as amended.

* * * * *

3. Section 96.17 is revised to read as follows:

§ 96.17 Annual reporting requirements.

(a) Except for the low-income home energy assistance program activity reports, a state must make public and submit to the Department each annual report required by statute:

(1) Within six months of the end of the period covered by the report; or

(2) At the time the state submits its application for funding for the federal or

state fiscal year, as appropriate, which begins subsequent to the expiration of that six-month period.

(b) These reports are required annually for preventive health and health services (42 U.S.C. 300w–5(a)(1)), community mental health services (42 U.S.C. 300x *et. seq.*), the prevention and treatment of substance abuse block grant (42 U.S.C. 300x–21 *et. seq.*), maternal and child health services (42 U.S.C. 706(a)(1)), and the social services block grant (42 U.S.C. 1397e(a)). See § 96.82 for requirements governing the submission of activity reports for the low-income home energy assistance program.

4. A new § 96.74 is added to read as follows:

§ 96.74 Annual reporting requirements.

(a) *Annual report.* In accordance with 42 U.S.C. 1397e, each state must submit an annual report to the Secretary by the due dates specified in § 96.17 of this part. The annual report must cover the most recently completed fiscal year and, except for the data in paragraphs (a) (1) through (4) of this section, may be submitted in the format of the state's choice. The annual report must address the requirements in section 2006(a) of the Act, include the specific data required by section 2006(c), and include other information as follows:

(1) The number of individuals who receive services paid for in whole or in part with federal funds under the Social Services Block Grant, showing separately the number of children and the number of adults who received such services (section 2006(c)(1));

(2) The amount of Social Services Block Grant funds spent in providing each service, showing separately for each service the average amount spent per child recipient and per adult recipient (section 2006(c)(2));

(3) The total amount of federal, state and local funds spent in providing each service, including Social Services Block Grant funds;

(4) The method(s) by which each service is provided, showing separately the services provided by public agencies, private agencies, or both (section 2006(c)(4)); and

(5) The criteria applied in determining eligibility for each service such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs (section 2006(c)(3)).

(b) *Reporting requirement.* (1) Each state must use the uniform definitions of services in appendix A of this part, categories 1–28, in submitting the data required in paragraph (a) of this section. Where a state cannot use the uniform definitions, it should report the data under category 29, "Other Services." The state's definitions of each of the services listed in category 29 must be included in the annual report.

(2) Each state must use the reporting form issued by the Department to report the data required in paragraphs (a) (1) through (4) of this section.

(3) In reporting recipient and expenditure data, each state must report actual numbers of recipients and actual expenditures when this information is available. For purposes of this report, each state should, if possible, count only a single recipient for each service. States should also consider a service provided to a recipient for the length of the reporting period (one year) or any fraction thereof as a single service. Data based on sampling and/or estimates will be accepted when actual figures are unavailable. Each state must indicate for each service whether the data are based on actual figures, sampling, or estimates and must describe the sampling and/or estimation process(es) it used to obtain these data in the annual report. Each state must also indicate, in reporting recipient data, whether the data reflects an unduplicated count of recipients.

(4) Each state must use category 30, "Other Expenditures," to report non-service expenditures. Only total dollar amounts in this category are required, i.e., they need not be reported by recipient count or cost per adult/child. This will include carry over balances, carry forward balances, funds transferred to or from the SSBG program, and administrative costs as defined by the state.

(5) Each state must use its own definition of the terms "child" and "adult" in reporting the data required in paragraphs (a) (1) through (5) of this section.

(6) Each state's definition of "child" and "adult" must be reported as a part of the eligibility criteria for each service required in paragraph (a)(5) of this section. The data on eligibility criteria may be submitted in whatever format the state chooses as a part of its annual report.

(c) *Transfer of computer data.* In addition to making the annual report available to the public and to the Department, a state may submit the information specified in paragraphs (a) (1) through (4) of this section using electronic equipment. A full description of procedures for electronic transmission of data, and of the availability of computer diskettes, is included in Appendix B to this part.

5. Appendices A and B are added to part 96 as follows:

Appendix A to Part 96—Uniform Definitions of Services

1. Adoption Services
2. Case Management Services
3. Congregate Meals
4. Counseling Services
5. Day Care Services—Adults
6. Day Care Services—Children
7. Education and Training Services
8. Employment Services
9. Family Planning Services
10. Foster Care Services for Adults
11. Foster Care Services for Children
12. Health Related and Home Health Services
13. Home Based Services
14. Home Delivered Meals
15. Housing Services
16. Independent and Transitional Living Services
17. Information and Referral Services
18. Legal Services
19. Pregnancy and Parenting Services for Young Parents
20. Prevention and Intervention Services
21. Protective Services for Adults
22. Protective Services for Children
23. Recreational Services
24. Residential Treatment Services
25. Special Services for Persons with Developmental or Physical Disabilities, or Persons with Visual or Auditory Impairments
26. Special Services for Youth Involved in or At Risk of Involvement in Criminal Activity
27. Substance Abuse Services
28. Transportation Services
29. Other Services

Uniform Definitions of Services

1. Adoption Services

Adoption services are those services or activities provided to assist in bringing about the adoption of a child. Component services and activities may include, but are not limited to, counseling the biological parent(s), recruitment of adoptive homes, and pre- and post-placement training and/or counseling.

2. Case Management Services

Case management services are services or activities for the arrangement, coordination, and monitoring of services to meet the needs of individuals and families. Component services and activities may include individual service plan development; counseling; monitoring, developing, securing, and coordinating services; monitoring and evaluating client progress; and assuring that clients' rights are protected.

3. Congregate Meals

Congregate meals are those services or activities designed to prepare and serve one or more meals a day to individuals in central dining areas in order to prevent institutionalization, malnutrition, and feelings of isolation. Component services or activities may include the cost of personnel, equipment, and food; assessment of nutritional and dietary needs; nutritional education and counseling; socialization; and other services such as transportation and information and referral.

4. Counseling Services

Counseling services are those services or activities that apply therapeutic processes to personal, family, situational, or occupational problems in order to bring about a positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or drug abuse.

5. Day Care Services—Adults

Day care services for adults are those services or activities provided to adults who require care and supervision in a protective setting for a portion of a 24-hour day. Component services or activities may include opportunity for social interaction, companionship and self-education; health support or assistance in obtaining health services; counseling; recreation and general leisure time activities; meals; personal care services; plan development; and transportation.

6. Day Care Services—Children

Day care services for children (including infants, pre-schoolers, and school age children) are services or activities provided in a setting that meets applicable standards of state and local law, in a center or in a home, for a portion of a 24-hour day. Component services or activities may include a comprehensive and coordinated set of appropriate developmental activities for children, recreation, meals and snacks, transportation, health support services, social service counseling for parents, plan development, and licensing and monitoring of child care homes and facilities.

7. Education and Training Services

Education and training services are those services provided to improve knowledge or daily living skills and to enhance cultural opportunities. Services may include instruction or training in, but are not limited to, such issues as consumer education, health education, community protection and safety education, literacy education, English as a second language, and General Educational Development (G.E.D.). Component services or activities may include screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; transportation; and referral to community resources.

8. Employment Services

Employment services are those services or activities provided to assist individuals in securing employment or acquiring or learning skills that promote opportunities for employment. Component services or activities may include employment screening, assessment, or testing; structured job skills and job seeking skills; specialized therapy (occupational, speech, physical); special training and tutoring, including literacy training and pre-vocational training; provision of books, supplies and instructional material; counseling, transportation; and referral to community resources.

9. Family Planning Services

Family planning services are those educational, comprehensive medical or social services or activities which enable individuals, including minors, to determine freely the number and spacing of their children and to select the means by which this may be achieved. These services and activities include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods (including natural family planning and abstinence), and the management of infertility (including referral to adoption). Specific component services and activities may include preconceptional counseling, education, and general reproductive health care, including diagnosis and treatment of infections which threaten reproductive capability. Family planning services do not include pregnancy care (including obstetric or prenatal care).

10. Foster Care Services for Adults

Foster care services for adults are those services or activities that assess the need and arrange for the substitute care and alternate living situation of adults in a setting suitable to the individual's needs. Individuals may need such services because of social, physical or mental disabilities, or as a consequence of abuse or neglect. Care may be provided in a community-based setting, or such services may arrange for institutionalization when necessary. Component services or activities include assessment of the individual's needs; case planning and case management to assure that the individual receives proper care in the placement; counseling to help with personal problems and adjusting to new situations; assistance in obtaining other necessary supportive services; determining, through periodic reviews, the continued appropriateness of and need for placement; and recruitment and licensing of foster care homes and facilities.

11. Foster Care Services for Children

Foster care services for children are those services or activities associated with the provision of an alternative family life experience for abused, neglected or dependent children, between birth and the age of majority, on the basis of a court commitment or a voluntary placement agreement signed by the parent or guardian. Services may be provided to children in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, pre-adoptive homes or supervised independent living situation. Component services or activities may include assessment of the child's needs; case planning and case management to assure that the child receives proper care in the placement; medical care as an integral but subordinate part of the service; counseling of the child, the child's parents, and the foster parents; referral and assistance in obtaining other necessary supportive services; periodical reviews to determine the continued appropriateness and need for placement; and recruitment and licensing of foster homes and child care institutions.

12. Health Related and Home Health Services

Health related and home health services are those in-home or out-of-home services or activities designed to assist individuals and families to attain and maintain a favorable condition of health. Component services and activities may include providing an analysis or assessment of an individual's health problems and the development of a treatment plan; assisting individuals to identify and understand their health needs; assisting individuals to locate, provide or secure, and utilize appropriate medical treatment, preventive medical care, and health maintenance services, including in-home health services and emergency medical services; and providing follow-up services as needed.

13. Home Based Services

Home based services are those in-home services or activities provided to individuals or families to assist with household or personal care activities that improve or maintain adequate family well-being. These services may be provided for reasons of illness, incapacity, frailty, absence of a caretaker relative, or to prevent abuse and neglect of a child or adult. Major service components include homemaker services, chore services, home maintenance services, and household management services. Component services or activities may include protective supervision of adults and/or children to help prevent abuse, temporary non-medical personal care, house-cleaning, essential shopping, simple household repairs, yard maintenance, teaching of homemaking skills, training in self-help and self-care skills, assistance with meal planning and preparation, sanitation, budgeting, and general household management.

14. Home Delivered Meals

Home-delivered meals are those services or activities designed to prepare and deliver one or more meals a day to an individual's residence in order to prevent institutionalization, malnutrition, and feelings of isolation. Component services or activities may include the cost of personnel, equipment, and food; assessment of nutritional and dietary needs; nutritional education and counseling; socialization services; and information and referral.

15. Housing Services

Housing services are those services or activities designed to assist individuals or families in locating, obtaining, or retaining suitable housing. Component services or activities may include tenant counseling; helping individuals and families to identify and correct substandard housing conditions on behalf of individuals and families who are unable to protect their own interests; and assisting individuals and families to understand leases, secure utilities, make moving arrangements and minor renovations.

16. Independent and Transitional Living Services

Independent and transitional living services are those services and activities designed to help older youth in foster care or homeless youth make the transition to

independent living, or to help adults make the transition from an institution, or from homelessness, to independent living. Component services or activities may include educational and employment assistance, training in daily living skills, and housing assistance. Specific component services and activities may include supervised practice living and post-foster care services.

17. Information and Referral Services

Information and referral services are those services or activities designed to provide information about services provided by public and private service providers and a brief assessment of client needs (but not diagnosis and evaluation) to facilitate appropriate referral to these community resources.

18. Legal Services

Legal services are those services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist individuals in seeking or obtaining legal help in civil matters such as housing, divorce, child support, guardianship, paternity, and legal separation. Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

19. Pregnancy and Parenting Services for Young Parents

Pregnancy and parenting services are those services or activities for married or unmarried adolescent parents and their families designed to assist young parents in coping with the social, emotional, and economic problems related to pregnancy and in planning for the future. Component services or activities may include securing necessary health care and living arrangements; obtaining legal services; and providing counseling, child care education, and training in and development of parenting skills.

20 Prevention and Intervention Services

Prevention and intervention services are those services or activities designed to provide early identification and/or timely intervention to support families and prevent or ameliorate the consequences of, abuse, neglect, or family violence, or to assist in making arrangement for alternate placements or living arrangements where necessary. Such services may also be provided to prevent the removal of a child or adult from the home. Component services and activities may include investigation; assessment and/or evaluation of the extent of the problem; counseling, including mental health counseling or therapy as needed; developmental and parenting skills training; respite care; and other services including supervision, case management, and transportation.

21. Protective Services for Adults

Protective services for adults are those services or activities designed to prevent or remedy abuse, neglect or exploitation of adults who are unable to protect their own interests. Examples of situations that may require protective services are injury due to maltreatment or family violence; lack of adequate food, clothing or shelter; lack of essential medical treatment or rehabilitation services; and lack of necessary financial or other resources. Component services or activities may include investigation; immediate intervention; emergency medical services; emergency shelter; developing case plans; initiation of legal action (if needed); counseling for the individual and the family; assessment/evaluation of family circumstances; arranging alternative or improved living arrangements; preparing for foster placement, if needed; and case management and referral to service providers.

22. Protective Services for Children

Protective services for children are those services or activities designed to prevent or remedy abuse, neglect, or exploitation of children who may be harmed through physical or mental injury, sexual abuse or exploitation, and negligent treatment or maltreatment, including failure to be provided with adequate food, clothing, shelter, or medical care. Component services or activities may include immediate investigation and intervention; emergency medical services; emergency shelter; developing case plans; initiation of legal action (if needed); counseling for the child and the family; assessment/evaluation of family circumstances; arranging alternative living arrangement; preparing for foster placement, if needed; and case management and referral to service providers.

23. Recreational Services

Recreational services are those services or activities designed to provide, or assist individuals to take advantage of, individual or group activities directed towards promoting physical, cultural, and/or social development.

24. Residential Treatment Services

Residential treatment services provide short-term residential care and comprehensive treatment and services for children or adults whose problems are so severe or are such that they cannot be cared for at home or in foster care and need the specialized services provided by specialized facilities. Component services and activities may include diagnosis and psychological evaluation; alcohol and drug detoxification services; individual, family, and group therapy and counseling; remedial education and GED preparation; vocational or pre-vocational training; training in activities of daily living; supervised recreational and social activities; case management; transportation; and referral to and utilization of other services.

25. Special Services for Persons With Developmental or Physical Disabilities, or Persons With Visual or Auditory Impairments

Special services for persons with developmental or physical disabilities, or persons with visual or auditory impairments, are services or activities to maximize the potential of persons with disabilities, help alleviate the effects of physical, mental or emotional disabilities, and to enable these persons to live in the least restrictive environment possible. Component services or activities may include personal and family counseling; respite care; family support; recreation; transportation; aid to assist with independent functioning in the community; and training in mobility, communication skills, the use of special aids and appliances, and self-sufficiency skills. Residential and medical services may be included only as an integral, but subordinate, part of the services.

26. Special Services for Youth Involved in or at Risk of Involvement With Criminal Activity

Special services for youth involved in or at risk of involvement with criminal activity are those services or activities for youth who are, or who may become, involved with the juvenile justice system and their families. Components services or activities are designed to enhance family functioning and/or modify the youth's behavior with the goal of developing socially appropriate behavior and may include counseling, intervention therapy, and residential and medical services if included as an integral but subordinate part of the service.

27. Substance Abuse Services

Substance abuse services are those services or activities that are primarily designed to deter, reduce, or eliminate substance abuse or chemical dependence. Except for initial detoxification services, medical and residential services may be included but only as an integral but subordinate part of the service. Component substance abuse services or activities may include a comprehensive range of personal and family counseling methods, methadone treatment for opiate abusers, or detoxification treatment for alcohol abusers. Services may be provided in alternative living arrangements such as institutional settings and community-based halfway houses.

28. Transportation Services

Transportation services are those services or activities that provide or arrange for the travel, including travel costs, of individuals in order to access services, or obtain medical care or employment. Component services or activities may include special travel arrangements such as special modes of transportation and personnel to accompany or assist individuals or families to utilize transportation.

29. Other Services

Other Services are services that do not fall within the definitions of the preceding 28 services. The definition used by the State for each of these services should appear elsewhere in the annual report.

Appendix B to Part 96—SSBG Reporting Form and Instructions

Instructions

This form must be used by states as the reporting instrument to satisfy the requirements of 45 CFR 96.74(a) (1) through (4). Following are instructions on how to complete the form:

General

1. Enter the name of the state submitting the form.

2. Enter the fiscal year for which the form is being submitted. Either the state or federal fiscal year may be used:

3. Enter the month and year of the beginning and end of the fiscal year—e.g., 07/91 to 06/92.

Services

4. The "service" column contains a list of services that are to be used for national reporting. This list in no way mandates how a state is to design its program of services under the SSBG, but rather is to be used only to obtain nationally comparable statistics. If the services that your state provides reasonably fit the uniform service definitions in appendix A, use them. In cases where no fit is possible between the state services and the services on the form, use item number 29—the other services category. Please list all services reported under item 29, using a separate sheet if necessary. The state's definition of these services must appear in the state's annual report.

Recipient Data

In reporting the following data:

- Each state should use its own definitions of the terms "adult" and "child." These definitions should be described elsewhere in the annual report. If the definitions of adult and child vary by services, all such definitions must be included.
- States should, if possible, consider as the "recipient" of the service the individual to whom the service is provided. This means that the child would be considered the recipient of child day care services, even if such services are provided to allow the child's adult caretaker to pursue employment. Similarly, an adult who receives counseling services should be considered as the recipient of that service, even if the service is provided as part of a child's protective services plan. In cases where each member of a family, for example, receives an individual service such as counseling, each family member should be considered as a separate recipient.
- States should, if possible, consider as a service, i.e., a count of one, any service provided to a single recipient for the duration of the reporting period (one year), or any fraction thereof. In cases where an individual received a service during the reporting period, then discontinued the service, and then received the service again, the individual should only be counted once, if possible.
- The criteria applied in determining eligibility for each service—such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs—should be described elsewhere in the annual report.

5. Under "Number of Recipients—Adults" enter the number of adults who have received each service funded in whole or part under the SSBG.

6. Under "Number of Recipients—Children" enter the number of children who have received each service funded in whole or part under the SSBG.

7. Under "Number of Recipients—Total" enter the total number of recipients of each service. This should be the sum of the adults and children reported in the preceding "adult" and "children" columns.

Expenditure Data

8. Under "Expenditures—Total $" enter all funds that the state expends on each service. This should include SSBG funds as well as funds from other federal sources, state funds, and local funds. A listing of the sources of these funds, and the amounts allocated, should appear elsewhere in the annual report.

9. Under "Expenditures—SSBG $" enter the total SSBG funds expended for each service. This column should be totaled, and the sum placed at the bottom of the column in the "Totals" box.

10. Under "Expenditures—Per Adult" enter the average amount of SSBG funds expended on each adult recipient of each service.

11. Under "Expenditures—Per Child" enter the average amount of SSBG funds expended on each child recipient of each service.

12. Item 30 in the "Total SSBG $" column should contain other expenditures and income as follows:

a. "Transfers In" should contain funds transferred from other federal block grants to the SSBG program. A listing of the source(s) of block grant funds and their amounts should appear elsewhere in the annual report.

b. "Transfers Out" should show funds transferred from the SSBG program to other federal block grants. A listing of the program(s) to which SSBG funds were transferred, and the amounts, should appear elsewhere in the annual report.

c. "Carry Forward" should show funds the state intends to carry over from the reporting fiscal year to the following fiscal year. The SSBG statute permits states two years to expend SSBG funds.

d. "Carry Over" should show funds carried from a previous fiscal year into the current reporting year.

e. "Administrative Costs" should show all other non-service use of SSBG funds—e.g., funds expended for training, licensing activities, or overhead costs.

f. This column should be totaled, and the sum placed at the bottom of the column in the "Totals" box.

13. Under "Provisions Method—Public/Private" enter a check mark on "X" in the appropriate column(s) to indicate whether a service was provided by public agencies or private agencies. In some cases, a given service may have been provided by both methods, in which case both columns would be checked for that service.

14. Enter the name, title, and telephone number of a contact person who can answer questions about the data.

15. Code Column:

Six of the columns on this form have a "C" column to the right of them. These are "Code" columns to permit a state to indicate, for expenditure data, whether each cell of data is A (actual), E (estimated), or S (sampled), and for recipient data, whether the data is based on an unduplicated (U) or duplicated (D) count of recipients. These codes will permit the Department to determine the relative degree of statistical validity of the data. Actual recipient counts and expenditure amounts must be used when available. If actual counts are not available, sampling and/or estimating may be used to derive the numbers in this report. A description of the sampling and/or estimation methods used to derive any data must appear elsewhere in the annual report.

Report Submission Using PC Diskettes

States with personal computer (PC) equipment may submit this data using PC diskettes in addition to the hardcopy form which will be included in the complete annual report. Diskettes may be either 5¼" or 3½"; data may be submitted using Lotus 1–2–3, Quattro Pro, DBase III or IV, Wordstar, Word Perfect, or ASCII formats. Use of Lotus 1–2–3 is preferred, but any of the other formats listed may be used. If a state wishes to use a format other than one listed here, please call Bryant Tudor on (202) 401–5535 or Frank Burns on (202) 401–5536, or write to the Office of Community Services, Administration for Children and Families, Fourth Floor—East Wing, 370 L'Enfant Promenade, SW., Washington, DC 10447. Use of diskettes can greatly reduce transcription errors and also facilitate processing of the data once received. We anticipate that many states will want to avail themselves of this method of reporting.

BILLING CODE 4184-01-M

ANNUAL REPORT OF SERVICES FUNDED BY THE SOCIAL SERVICES BLOCK GRANT (SSBG) FOR FISCAL YEAR 19__

Contact: _____
Title: _____
Date: _____

STATE:

Report Covers Period of: _____ (Mo./Yr.) to _____ (Mo./Yr)

		Number of Recipients					Expenditures							Provision Method	
	Service	Adults	C	Children	C	Total	Total $	C	SSBG $	C	Per Adult	Per Child	C	Public	Private
1	Adoption Services														
2	Case Management														
3	Congregate Meals														
4	Counseling Services														
5	Day Care - Adults			[redacted]								[redacted]			
6	Day Care - Children	[redacted]									[redacted]				
7	Educ./Training Services														
8	Employment Services														
9	Family Planning Services														
10	Foster Care Svcs. - Adults			[redacted]								[redacted]			
11	Foster Care Svcs. - Children	[redacted]									[redacted]				
12	Health Related Services														
13	Home Based Services														
14	Home Delivered Meals														
15	Housing Services														
16	Indep./Trans. Living Svcs.														
17	Info. & Referral Services														
18	Legal Services														
19	Pregnancy & Parenting														
20	Prevention/Intervention														
21	Protective Svcs. - Adults			[redacted]								[redacted]			
22	Protective Svcs. - Children	[redacted]									[redacted]				
23	Recreation Services														
24	Residential Treatment														
25	Spec. Svcs. - Youth at Risk														
26	Special Svcs. - Disabled														
27	Substance Abuse Services														
28	Transportation														
29	Other Services														
30	Other Expenditures	[redacted]									[redacted]				
	a. Tranfers In														
	b. Tranfers Out														
	c. Carry Forward														
	d. Carry Over														
	e. Administrative Costs														
	TOTAL →														

[FR Doc. 93–27677 Filed 11–12–93; 8:45 am]
BILLING CODE 4184–01–C

Administration for Children and Families

45 CFR Part 233

RIN 0970–AA93

Aid to Families With Dependent Children and Adult Assistance Programs: Essential Persons

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule applies to State agencies administering the Aid to Families with Dependent Children (AFDC) program under title IV–A and the Adult Assistance programs under titles I, X, XIV and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act. It revokes the current regulations pertaining to "essential persons" under the AFDC program and revises others to restore Federal "essential person" policy to what it was prior to the effective date of the revoked regulations for both the AFDC and Adult Assistance programs.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mack Stores, (202) 401–9275.

SUPPLEMENTARY INFORMATION: The current regulations at 45 CFR 233.20(a)(2)(vii) limit the categories of individuals that a State may consider to be "essential persons" under the AFDC program. Under these regulations, the "essential persons" specified by a State in its State plan would have to provide at least one of the following benefits or services: (1) Child care which enables a caretaker relative to work full-time outside the home, (2) care for an incapacitated family member in the home, (3) child care that enables a caretaker relative to attend high school or General Education Development (GED) classes on a full-time basis, (4) child care not to exceed two months that enables a caretaker relative to participate in employment search or another AFDC work program, and (5) child care that enables a caretaker relative to receive training on a full-time basis. These regulations were promulgated on January 24, 1989 (54 FR 3452).

In 1990 the district court for the Eastern District of Pennsylvania in *Vance* v. *Sullivan*, C.A. No. 89–9100, and the district court for the District of Maine in *McKenney* v. *Sullivan*, C.A. No. 89–0244–P, held that the above limitations conflict with section 402(a)(7)(A) of the Social Security Act. The courts interpreted section 402(a)(7)(A) as providing States with the authority to identify in their State plans the categories of individuals who may be recognized as "essential persons". These decisions were not appealed.

As a result of these decisions, the Department of Health and Human Services issues two action transmittals. The first is FSA–AT–91–1, "Essential Person Policy" (January 4, 1991). The purpose of that action transmittal was to notify States of a change in HHS's essential person policy pending its planned action to revoke 45 CFR 233.20(a)(2)(vii). That change was to deem in effect the "essential person" policy set forth in 45 CFR 233.20(a)(2)(vi) as in effect on December 31, 1988. The action transmittal set forth specific options for States which, in reliance on 45 CFR 233.20(a)(2)(vii), had changed their title IV–A State plans to recognize essential persons under the requirements of those regulations. The second action transmittal is ACF–AT–91–16, "Essential Person Policy" (May 16, 1991). Among other things, this action transmittal provided that: (1) If a State wishes to recognize "essential persons" or to change its "essential person" policy, it must file a State plan amendment for Federal review, and (2) the proposed amendment will be reviewed in accordance with the requirements of 45 CFR 233.20(a)(2)(vi), as in effect on December 31, 1988.

Consistent with the preceding actions, 45 CFR 233.20(a)(2)(vii) is being revoked and 45 CFR 233.20(a)(2)(vi) is being amended retroactively to read as it did on December 31, 1988. The result is that 45 CFR 233.20(a)(2)(vi) would apply to both the AFDC program and the Adult Assistance programs as it had done prior to promulgation of 45 CFR 233.20(a)(2)(vii).

Justification for Dispensing with Notice of Proposed Rulemaking

This revocation of 45 CFR 233.20(a)(2)(vii) follows from two adverse court decisions that the Department did not appeal. The amendment of 45 CFR 233.20(a)(2)(vi) to read as it did on December 31, 1988, would simply reinstitute the previous longstanding regulatory policy that had been codified at that section since 1969 and applied to the AFDC program and Adult Assistance programs. *See* 34 FR 1394 (Jan. 29, 1969). Further, the policy in the current "essential person" regulations at 45 CFR 233.20(a)(2)(vi) providing Guam, Puerto Rico, and the Virgin Islands with discretion to identify categories of "essential persons" in State plans governing the Adult Assistance programs would remain the same. Accordingly, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for wavier of a notice of proposed rulemaking on the grounds that it is not necessary.

Executive Order 12991

The final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because this regulation will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Result in significant adverse effects on competition employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Assistance Programs 13.780, Assistance Payments—Maintenance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: April 21, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved June 15, 1993.

Donna E. Shalala,

Secretary.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

For the reasons set forth in the preamble, 45 CFR part 233 is amended as follows:

1. The authority citation for part 233 is revised to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note); Pub. L. 94–114, 89 Stat. 579; Pub. L. 99–603, 100 Stat. 3359; Pub. L. 97–458, 96 Stat. 2513; Pub. L. 98–64, 97 Stat. 365; Pub. L. 99–514. 100 Stat. 2916; Pub. L. 100–241, 101 Stat. 1812.

2. Section 233.20 is amended by removing and reserving paragraph (a)(2)(vii) and revising paragraph (a)(2)(vi) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * *

(2) * * *

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (A) specify the persons whose needs will be included in the individual's need, and (B) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(vii) [Reserved]

* * * * *

[FR Doc. 93–27963 Filed 11–12–93; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264, FCC 93–456]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission implements section 11(c)(2) of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) by prescribing national subscriber limits and limits on the number of channels that can be occupied on a cable system by a video programmer in which the cable operator has an attributable interest. The Commission declines at this time to impose limits on the degree to which multichannel video programming distributors may engage in the creation or production of video programming as authorized by section 11(c)(2)(C) of the 1992 Act. This action was taken in compliance with the 1992 Cable Act.

EFFECTIVE DATE: Section 76.504 will become effective January 10, 1994. Section 76.503 is stayed pending final judicial resolution of the District Court decision in *Daniels Cablevision* v. *United States*. Notice will be given in the **Federal Register** when an effective date is established for § 76.503.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau, (202) 632–6990.

SUPPLEMENTARY INFORMATION: The public reporting burden for this collection of information (§ 76.503) is estimated to average 1 hour per response. The public recordkeeping burden for § 76.504 is estimated to average 15 hours per year per recordkeeper. This includes 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 the burden, to the Federal Communications Commission, Office of the Managing Director, AMD–PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–XXXX), Washington, DC 20503.

This is a synopsis of the Second Report and Order (Second Report) in MM Docket No. 92–264, FCC 93–456, adopted September 23, 1993, and released October 22, 1993. The complete text of this Second Report is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Second Report and Order

1. In this Second Report, the Commission implements section 11(c)(2) of the 1992 Cable Act by prescribing national subscriber limits and limits on the number of channels that can be occupied on a cable system by a video programmer in which the cable operator has an attributable interest ("channel occupancy limits"). The Commission declines at this time to impose limits on the degree to which multichannel video programming distributors may engage in the creation or production of video programming as authorized by section 11(c)(2)(C) of the 1992 Act.

2. The Notice of Proposed Rule Making and Notice of Inquiry (NPRM/NOI) initiating this proceeding may be found at 58 FR 03523 (January 11, 1993), and sought comment generally on the objectives and scope of section 11(c)(2) of the 1992 Cable Act and more specifically on various issues regarding the level at which subscriber limits and channel occupancy limits would be reasonable and the appropriate implementation of such limits. In addition, the Commission questioned whether it was necessary or appropriate to adopt limits on the degree to which multichannel video programming distributors ("multichannel distributors") should be permitted to participate in the creation or production of video programming. The Commission subsequently issued a Report and Order and Further Notice of Proposed Rule Making (R&O/FNPRM) 58 FR 42013, August 6, 1993 which sought further comment on specific proposals regarding the adoption and implementation of subscriber limits and channel occupancy limits.

3. Briefly, this Report and Order contains the following determinations. The Commission establishes a 30 percent limit on the number of homes passed nationwide that any one entity can reach through cable systems in which such entity has an attributable interest. Horizontal ownership will be determined for this purpose based on the same criteria used by the Commission in the broadcast context. In addition, to promote a diversity of views the Commission will permit ownership of additional cable systems, up to 35 percent of homes passed nationwide, provided such systems are minority-controlled. However, in view of the recent federal district court decision holding that the Commission's statutory authority to adopt horizontal ownership limits is unconstitutional, and to avoid potential confusion and uncertainty during the period of judicial review the Commission is staying the effective date of the horizontal ownership rules until final judicial resolution of the District Court's decision. (See *Daniels Cablevision* v. *United States*, No. 92–2292 (D.D.C. released September 16, 1993). The vertical ownership limits adopted pursuant to section 11, which were upheld by the Court are not stayed and will become effective as set forth below.

4. With respect to vertical ownership limits, the Commission adopts a 40 percent limit on the number of channels that can be occupied on a vertically integrated cable system by video programmers in which the cable operator has an attributable interest. In order to promote a diversity of views the Commission will allow carriage of

vertically integrated programming services on two additional channels, or up to 45 percent of a system's channel capacity, whichever is greater, provided such video programming services are minority-controlled. Vertical attribution is defined for this purpose by reference to the Commission's broadcast attribution criteria. The channel occupancy limits will apply only up to 75 channels, and channel capacity beyond 75 channels will not be subject to vertical ownership restrictions at the present time.

5. The Commission further concludes that in view of the structural and behavioral restrictions already required under the 1992 Act, additional restrictions on the ability of multichannel distributors to engage in the creation or production of video programming are unwarranted. The Commission believes that at the present time the objectives of such a restriction are fully addressed by the vertical and horizontal ownership limits required by section 11, as well as by the carriage agreement and program access provisions contained in section 12, and section 19 of the 1992 Cable Act.

6. Recognizing the conflicting advantages and disadvantages of vertical integration and horizontal concentration, Congress directed the Commission to consider and balance the following public interest objectives in establishing the ownership limits mandated by section 11: (A) To ensure that no cable operator or group of cable operators can unfairly impede the flow of video programming from the programmer to the consumer; (B) to ensure that cable operators do not favor affiliated video programmers in determining carriage and do not unreasonably restrict the flow of video programming of affiliated video programmers to other video distributors; (C) to take account of the market structure, ownership patterns, and other relationships of the cable industry, including the market power of the local franchise, joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests; (D) to take into account any efficiencies and other benefits that might be gained through increased ownership or control; (E) to make rules and regulations that reflect the dynamic nature of the communications marketplace; (F) to impose no limitations that prevent cable operators from serving previously unserved rural areas; and (G) to impose no limitations that will impair the development of diverse and high quality programming.

7. The Commission first considers subscriber limits. Section 11 of the 1992 Cable Act requires that the Commission prescribe regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person or in which such person has an attributable interest. Regarding the applicable market for such limits, the R&O/FNPRM proposed to adopt exclusively national subscriber limits and asked commenters to indicate whether national subscriber limits would suffice to implement the objectives of the 1992 Cable Act. With respect to regional limits, the Commission tentatively concluded that the benefits of regional concentration outweigh the potential anticompetitive harm that such concentration may have on the local advertising and programming marketplace.

8. The Report and Order, while differing with those commenters who assert that the Commission is without authority to adopt regional subscriber limits, the Commission declines to adopt such limits at this time. Based on the record in this proceeding and on our interpretation of the 1992 Cable Act, the Commission believes that Congress was primarily concerned with national concentration in the cable industry. Moreover, Congress' objectives in requiring horizontal ownership limits—to prevent the "concentration of the media in the hands of a few" and to limit the ability of MSOs to exercise undue market power in the program acquisition market—can best be served by the adoption of national subscriber limits. The Commission believes that issues of regional concentration would be better addressed by other provisions of the 1992 Act designed to promote the introduction of competition to established cable franchises.

9. In addition, the Commission finds no basis in the record for imposing regional limits that could reduce investment in the development of regional programming, upgraded cable infrastructure and improved customer service. The Commission concludes that the potential benefits and efficiencies of regional concentration outweigh any anti-competitive affects in the local programming or advertising marketplace. In the absence of record evidence suggesting that any cable operator possesses undue power in the local programming or advertising market, the Commission finds it unnecessary to adopt regional limits at this time.

10. Regarding measurement and percentage limitation, the R&O/FNPRM sought comment on its proposal to establish subscriber limits as a share of homes passed. The R&O/FNPRM further proposed to adopt a 25 percent limit on the number of homes passed by cable systems owned by any one entity, although it continued to seek comment on a limit in the range of 20 percent to 35 percent of homes passed. The R&O/FNPRM also asked commenters to indicate whether it would be appropriate in calculating compliance with the subscriber limits to subtract the number of homes passed by cable systems where effective competition—as defined in the 1992 Cable Act—is established. Finally, commenters were asked to address the Commission's proposal to allow ownership of additional cable systems, beyond the specified limit, provided such systems are minority-controlled.

11. In adopting ownership limits the Commission seeks to balance two competing concerns raised by Congress: on the one hand, the possibility that large horizontally integrated MSOs might have the ability to preclude the launch of new video programming services and on the other hand, the benefits and efficiencies that result from greater horizontal concentration. Based on our consideration of these statutory factors and on the preponderance of the data provided in the record, the Commission concludes that a horizontal ownership limit prohibiting any one entity from having an attributable interest in cable systems that in the aggregate reach more than 30 percent of cable homes passed nationwide strikes the proper balance. A 30 percent horizontal ownership limit is generally appropriate to prevent the nation's largest MSOs from gaining enhanced leverage from increased horizontal concentration. Nonetheless, it also ensures that the majority of MSOs continue to expand and benefit from the economies of scale necessary to encourage investment in new video programming services and the deployment of advanced cable technologies.

12. The Commission believes that a 30 percent limit is reasonable to prevent the types of anti-competitive conduct which concerned Congress, particularly when coupled with the behavioral restrictions contained in sections 12 and 19 of the 1992 Cable Act. Moreover, sections 4 and 5 require cable operators to carry the signals of local commercial and non-commercial broadcast stations. And section 612 of the Communications Act requires cable systems to make a specified percentage of channels available to unaffiliated programmers. The cumulative effect of these regulations coupled with a horizontal

ownership limit of 30 percent should protect against any one cable system exerting undue power that could prevent the success of new video programming services or "unfairly impede the flow of video programming to the consumer." A 30 percent limit combined with the above mentioned provisions will be appropriate to address the diversity aims which underlie the statutory horizontal ownership provisions. At the same time such a limit will allow the majority of cable operators to expand their system ownership and avail themselves of any efficiencies and other benefits which might be gained through increased ownership or control of cable systems.

13. While the R&O/FNPRM proposed a 25 percent horizontal ownership limit, the Commission considered a number of factors in concluding that a 30 percent limit was reasonable, including indications in the legislative history that Congress did not intend necessarily to require the divestiture of any existing interests.[1] Thus, the Commission determined that in the absence of definitive evidence that existing levels of ownership are sufficient to impede the entry of new video programmers or have an adverse affect on diversity, existing arrangements should not be disrupted. The Commission, based on a review of the record, finds that such divestiture is unnecessary.

14. As proposed in the R&O/FNPRM, in order to encourage a diversity of viewpoints the Commission will allow ownership of additional cable systems reaching up to 35 percent of cable homes passed, provided such additional cable systems are minority-controlled. The Commission is convinced that the minority ownership incentive adopted in this Report and Order in connection with the horizontal ownership limits will be an important means of furthering the goal of increasing minority ownership and participation in the cable industry, and thus ensuring the inclusion of minority views in programming. The Commission believes that the increased diversity that this additional minority ownership will encourage outweighs the marginal impact on competition that could result from the increased concentration. Notably, the Commission provides a similar incentive in the broadcast context to increase the diversity of viewpoints available to the public.

15. The Commission declines to calculate compliance with the national subscriber limits by subtracting the number of homes passed by cable systems in areas where effective competition is established. The statutory provisions and the implementing rules adopted focus on ensuring that system operators are constrained in terms of the total share of the market they may occupy in order that no single operator exerts an undue influence, particularly at the national level, on the diversity of programming services available through cable television. The presence of competition in particular markets ameliorates some of the concerns involved and provides members of the public in those markets with the opportunity, through the competitor they select, to influence directly the services offered in those markets. The presence of effective competition in any given system or group of systems does not, however, directly respond to the concern with the exercise of undue control by a single entity at the national level.

16. The R&O/FNPRM next proposed to adopt the broadcast attribution standard to implement horizontal ownership limits. The Commission now finds that the broadcast attribution criteria contained in § 73.3555 of the Commission's rules are appropriate to implement the horizontal ownership limits. (For the sake of convenience, the actual rules now being adopted reference the standards set forth in the notes to § 76.501 of the rules. These are derived from and are not substantively different from those generally referred to as the broadcast attribution rules, i.e., § 73.3555.) Pursuant to these criteria, all voting stock interests of 5 percent or more are attributable. Non-voting stock interests (including most "preferred" stock classes) are not attributable. There are several exceptions to the presumption of attribution created by the 5 percent benchmark. Most notably there is a single majority shareholder exception, which provides that minority interests will not be attributed where there is a single 51 percent shareholder. In addition, the interests of "insulated" limited partners are not attributed.

17. The R&O/FNPRM asked commenters to address how compliance with the subscriber limits should be monitored and enforced. The Commission concludes that, in order to enforce most efficiently and effectively the horizontal ownership limits, a system of certification should be instituted. Although public information is available from various sources regarding the number of homes passed by the largest cable operators, such sources generally apply different attribution criteria than the Commission has decided to employ. Therefore, the Commission will require entities holding attributable interests in cable systems reaching 20 percent or more of homes passed nationwide to certify to the Commission, prior to the acquisition of any additional cable systems, that such acquisition will not result in a violation of the horizontal ownership limits adopted herein.[2] Where a transaction will result in a cable operator exceeding the limit, the cable operator must seek either a permanent or temporary waiver from the Commission, which might also include a commitment to divest a sufficient number of systems so as to come into compliance with these ownership limits after the acquisition is completed. The Commission will consider waiver requests only in limited circumstances where an acquisition temporarily places a cable operator over the permissible number of subscribers or where an MSO seeks to expand service into an otherwise unserved rural area.

18. Finally, in view of the fact that the cable television industry is so dynamic and fluid, the Commission believes that periodic review of the ownership limits is necessary. As proposed in the R&O/FNPRM, the Commission plans to review the subscriber limits every five years to determine whether such limits are reasonable under the prevailing market conditions and whether such limits continue to serve the objectives for which they were adopted.

19. The Commission secondly considers issues concerning channel occupancy limits. Section 11 of the 1992 Cable Act also requires the Commission to establish reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an attributable interest. As with the establishment of horizontal ownership limits, the Commission seeks to establish channel occupancy limits which strike the proper balance between

[1] We note in this regard that the largest existing MSO, TCI, using the attribution standards adopted herein, has an interest in cable systems passing approximately 23.8 million homes or 27 percent of homes passed nationwide. *See* TCI submission dated September 22, 1993. This number is larger than the number used for corporate and other reporting requirements because, *inter alia*, it includes systems in which an "attributable interest" is held rather than systems that are treated as "consolidated" for certain corporate and other reporting purposes. Compare, Television Digest, June 7, 1993, p. 4 (TCI and consolidated subsidiaries in which the ownership interest is greater than 50 percent as of December 31, 1992, pass 17.7 million homes).

[2] The Commission contemplates that the MSO whose aggregate attributable interests in cable systems equals or exceeds 20 percent of homes passed nationwide will be responsible for filing the requisite certification. Thus, if a system in which TCI holds an attributable interest acquires an additional cable system, TCI will be the party responsible for certifying to the Commission that the transaction will not result in a violation of FCC rules.

competing statutory objectives: To ensure that vertically integrated cable operators do not favor affiliated video programmers, or unfairly impede the flow of video programming to cable subscribers, on the one hand and, on the other, to encourage MSOs to continue to invest in the development of diverse and high quality video programming services.

20. In that regard, the Commission first reviews the issue of application of channel occupancy limits. The R&O/FNPRM indicated that the statutory language and legislative history were unclear regarding how Congress intended such channel occupancy limits to be applied. In particular, the Commission questioned whether Congress intended such limits to apply only to video programmers affiliated with the operator of the particular cable system in question or whether such limits were intended to apply to carriage of all cable affiliated video programming on all cable systems. The Commission also questioned whether in calculating a system's channel capacity we should subtract the number of broadcast, PEG and leased access channels.

21. Given the ambiguity, the R&O/FNPRM proposed to apply such limits only to video programmers affiliated with the particular cable operator. The R&O/FNPRM also proposed to include all activated channels including broadcast, PEG and leased access channels in calculating system capacity.

22. The Commission agrees with the majority of commenters on this issue, who assert that the most logical interpretation of the statutory language is to apply such limits only to video programmers that are vertically integrated with the particular cable operator in question. The Commission believes that this represents the most reasoned approach given Congress' stated objective of encouraging a diversity of voices and preventing unaffiliated programmers from being denied carriage on vertically integrated cable systems. In the absence of significant empirical evidence of existing discriminatory practices, we see no useful purpose in limiting the ability of cable operators to carry programming affiliated with a rival MSO. Such a restriction would be unduly burdensome on MSO investment in cable programming and would be contrary to the purpose of the statute. Moreover, we seek to adopt reasonable carriage limits that will balance both the benefits and concerns associated with vertical integration.

23. With respect to calculating channel capacity, the Commission concludes that all activated channels should be taken into account. The Commission notes that cable operators are obligated by the 1992 Cable Act to carry local broadcast and noncommercial educational channels, and are required to reserve channel capacity for lease to unaffiliated programmers. Consequently, it would be unreasonable to use such channels to reduce the base of channels available for carriage of vertically integrated programming. The Commission disagrees with NATOA's argument that the legislative history requires that the Commission subtract all broadcast, PEG and leased access channels prior to application of the channel occupancy limits. The Senate Report language relied upon by NATOA is included in an example meant to illustrate how the Commission may decide to calculate channel occupancy limits and does not appear to prohibit the Commission from adopting an alternative approach if it finds such an approach to be reasonable to promote the legislative objectives. In any event, this language is not included in the statute itself.

24. Finally, the Commission addresses the arguments advanced by some commenters that the channel occupancy provisions of the 1992 Act violate the First Amendment. At the outset, it should be noted that the Commission has an obligation to execute and enforce the provisions of section 11 enacted by Congress and therefore is not free to declare an act of Congress unconstitutional. Nevertheless, the Commission believes that the statute is constitutional. The Commission notes that Congress, in enacting the cable access provisions under the Cable Communications Policy Act of 1984, Public Law 98–549, and the cable must carry obligations under the 1992 Cable Act, carefully considered the First Amendment rights of cable operators and others and concluded that these provisions were constitutionally permissible as consistent with and in furtherance of the goals of the First Amendment. The Commission believes that the channel occupancy limits provided in Section 11 are generally analogous to the cable access and must carry provisions and, similarly, do not believe that these limits infringe the First Amendment rights of cable operators or others. Moreover, the federal district court in *Daniels Cablevision, Inc.* v. *United States*, which struck down the subscriber limit authority in section 11, upheld other provisions of the 1992 Cable Act in dispute, including the section 11 channel occupancy limits, as "facially compatible with the First Amendment."

25. The Commission secondly considers the issue of a vertical ownership attribution standard. The R&O/FNPRM proposed to employ the broadcast attribution criteria for purposes of determining vertical integration in the context of channel occupancy limits. Commenters were asked whether these criteria were appropriate or whether a higher attribution standard would be appropriate to encoaurge continued MSO investment in cable programming. Commenters were also asked to indicate whether a higher equity threshold should be adopted where more than one MSO holds a non-controlling interest in a video programming service.

26. In the context of establishing limits on vertical integration in the cable industry the Commission is concerned with identifying interests in cable programming services that are sufficient to afford influence or control over programming decisions. The Commission also seeks to identify interests that might potentially provide cable operators with an incentive to favor an affiliated video programming service over an unaffiliated or competing video programming service. However, these concerns must be balanced with the objective of preserving the benefits and efficiencies of vertical integration and encouraging continued MSO investment in new video programming services. The Commission concludes that the broadcast attribution criteria are strict enough to identify all interests that afford the potential to exert influence or control over management or programming decisions, yet flexible enough to permit continued MSO investment in new video programming services. Moreover, the Commission believes that interests of 5 percent or greater may be substantial enough to motivate cable to systems to favor an affiliated programmer over a programmer in which the cable system has no attributable interest.

27. The Commission declines to adopt a higher attribution threshold where more than one MSO holds a noncontrolling interest in a video programming service. Although the Commission recognizes that common ownership of a programming service by several MSOs may decrease the ability of any one MSO to assert influence or control over programming decisions, the Commission nonetheless continues to believe that such minority interests may be sufficient to provide cable operators with an incentive to favor an affiliated video programming service over an unaffiliated service.

28. On the issue of percentage limitation, the R&O/FNPRM proposed a 40 percent limit on the number of channels that could be occupied by affiliated video programmers. Commenters were asked to indicate whether such a limit would be reasonable and would encourage MSOs to continue to invest in new video programming services. The Commission noted its intention to establish a channel occupancy limit that would maximize the number of voices available to cable viewers without impairing the ability or incentive of cable operators to invest in new and existing video programming services.

29. The Commission determines that a 40 percent limit on the number of channels [3] that can be occupied by affiliated video programming services is reasonable to serve Congress' competing objectives in requiring such restrictions.[4] The Commission believes that a 40 percent limit is appropriate to balance the goals of increasing diversity and reducing the incentive and ability of vertically integrated cable operators to favor their affiliated programming, with the benefits and efficiencies associated with vertical integration. Moreover, Congress directed the Commission not to adopt limitations "which would impair the development of diverse and high quality video programming." In this regard, the Commission notes that cable operators' ability to carry affiliated programming is already significantly curtailed by statutorily mandated carriage obligations.

30. The Commission also notes that channel occupancy limits are not the only means by which Congress intended to prevent anti-competitive conduct by vertically integrated MSOs. Sections 12 and 19 of the 1992 Cable Act establish specific behavioral restrictions prohibiting discrimination by vertically integrated cable operators and video programming services. These provisions impose more narrowly tailored behavioral restraints, specifically prohibiting anti-competitive conduct by vertically integrated cable operators and programmers, while channel occupancy limits impose broader structural constraints, which affect the ability of all cable operators to carry programming in which they have an attributable interest. In addition, the must carry, leased access and PEG requirements imposed by other provisions of the Communications Act help to ensure that a diversity of views is available to cable subscribers. In light of the foregoing, the Commission believes that the channel occupancy limits need not be unduly restrictive in order to prevent the incentive and the ability of cable operators to favor their affiliated programmers or to promote a diversity of views to cable subscribers.

31. In addition, in order to promote the presentation of a diversity of viewpoints on cable the Commission will allow carriage of vertically integrated video programming services, on two additional channels or up to 45 percent of a cable system's channel capacity, whichever is greater, provided such additional video programming services are minority-controlled. The Commission believes that allowing such expanded carriage of minority-controlled video programming services will encourage additional MSO investment in minority-owned programming services, which will in turn promote minority ownership of video programming services and increase the diversity of viewpoints presented to cable subscribers. In this regard, the Commission believes that the diversity benefits of such increased minority ownership outweigh the access concerns associated with such an increase in integration. The Commission declines, however, to adopt a similar policy for minority-oriented programming.

32. The R&O/FNPRM next proposed to count all vertically integrated pay-per-view, pay-per-channel and multiplexed services against a system's channel occupancy limits. The Commission further proposed, however, to exempt local and regional programming networks from such limits in order to encourage the development of more local cable programming.

33. The Commission concludes that vertically integrated pay channels and multiplexed channels should not be exempted from the 40 percent channel occupancy limits. Although such channels provide subscribers with a valuable service and increase the diversity of programming available on cable, the Commission sees no compelling public interest objective to be served by such an exemption. The Commission also rejects the argument advanced by Viewer's Choice that pay-per-view services are not video programmers as contemplated by section 11 of the 1992 Cable Act. Accordingly, the Commission finds that such vertically integrated pay services should be counted against the 40 percent channel occupancy limit.

34. The Commission also disagrees with those who argue that multiplexed channels should not be counted toward the channel occupancy limits because they provide subscribers with time diversity and counter programming. The Commission does recognize, however, that some of these pay and multiplexed services as they develop are likely to occupy channels and subscriber attention in ways that are different from channels historically distributed on basic cable programming service tiers or even on a pay basis. These differences are likely to be increasingly reflected as cable systems expand beyond their traditional channel capacities. Thus, the discussion below regarding the application of channel occupancy limits to higher capacity systems is an appropriate means of addressing some of the concerns raised here with respect to multiplexed and other less traditional services.

35. The Commission determines, however, that the channel occupancy limits should apply only to video programming services distributed to cable systems on a nationwide basis. A programming service need not be distributed in every state to be regarded as a national programming service. A programming service that is distributed to cable systems in numerous states across the country or in a variety of regions may also be considered a national programming service. Programming services distributed only to a particular community or to a discrete region will be exempt from such limits. Without such an exception commenters argue that MSOs will favor national programming services which can be marketed to larger audiences across the country producing greater subscriber and advertising revenues.

36. The R&O/FNPRM next considered the effect of fiber optic cable and digital signal compression. The Commission indicated that emerging technologies such as digital signal compression and fiber optic cable would expand channel capacity such that channel occupancy limits would eventually be unnecessary

[3] We will measure the vertical ownership limits on a per channel basis, using the traditional 6MHz per channel definition. However, given the dynamic state of cable technology, we recognize that it may soon be common for cable operators to provide several channels using a single 6MHz bandwidth segment. Accordingly, as with our other rules we intend to review periodically this definition, and if necessary to make adjustments to ensure that it is consistent with the current state of technology.

[4] In order to calculate the exact number of channels on a vertically integrated cable system that can be devoted to carriage of programming in which the cable operator has an attributable interest, parties should round up or down to the nearest decimal point. For example, on a system with 34–36 channels, 14 channels could be occupied by affiliated video programming services and on a system with the 54–56 channels, 22 could be devoted to the carriage of affiliated programming services. In addition, where a single channel is shared by affiliated and unaffiliated video programming services, such channel will be counted as an affiliated channel only if the affiliated programming service accounts for 50 percent or more of the channel's programming time.

to ensure that cable operators did not favor vertically integrated programmers. Accordingly, comments were invited on whether the Commission should establish a threshold beyond which such channel occupancy limits would not apply. The Commission also questioned whether such a cap should be adopted in this proceeding or at some future date. In this regard, commenters were asked whether there is an identifiable channel capacity threshold associated with the next generation of cable technology which would provide an appropriate level beyond which channel occupancy limits should no longer apply.

37. The Commission continues to believe that expanded channel capacity will reduce the need for channel occupancy limits. As indicated in the R&O/FNPRM, the expanded channel capacity that will result from fiber optic cable and digital compression technology will help obviate the need for such limits as a means of encouraging cable operators to carry unaffiliated or competing video programming services. Although information on how multichannel video distributors will respond to greatly increased channel capacity as necessarily somewhat speculative, the record indicates that vastly large cable systems will likely be inclined to deliver targeted "niche" video programming services aimed at correspondingly smaller audience sizes. In addition, pay-per-view and pay-per-channel offerings—also with more limited audiences—will increase as channel capacity increases. Also, as channel capacity becomes more abundant and relatively less costly, "multiplexing" is likely to increase and more capacity will be used to increase the convenience of program starting times rather than to distribute separate channels of original programming.

38. Occupancy limits in these circumstances do not parallel occupancy limits for more restricted capacity systems where most services are distributed on discrete channels to a significant portion of a system's subscribership. Accordingly, the Commission believes that occupancy limits can be relaxed once the number of cable channels on a system increases beyond the number distributed using traditional technology. Conventional cable distribution, in the absence of dual cable distribution plant, signal compression, or "fiber to the block," enables the distribution of approximately 75 video channels. At the present time, this threshold appears to be a reasonable cut-off for application of the channel occupancy limit. Thus the Commission will apply the channel occupancy limits only up to 75 channels on a cable system owned by a vertically integrated MSO.[5] Any additional channel capacity made possible through the use of advanced cable technologies will not be subject to the channel occupancy limits at this time. This limitation will be subject to periodic review along with the other provisions of these rules and may be eliminated if developments warrant.

39. The R&O/FNPRM considered effective competition, observing that once effective competition has been established and a cable operator no longer occupies a program access bottleneck position, channel occupancy limits may no longer be necessary or desirable. Thus, the Commission proposed to phase out channel occupancy limits in communities where effective competition is established. Commenters were asked to indicate whether the definition of effective competition for this purpose should include cable systems subscribed to by fewer than 30 percent of the homes located in the franchise area.

40. The Commission concludes that channel occupancy limits should not be eliminated in communities where effective competition exists. Although it is argued that the development of effective competition will preclude cable operators from exercising undue power in these situations, the effective competition standard was not adopted for this specific purpose and it is not clear that the presence of effective competition for any cable system addresses all of the relevant concerns that Congress expressed in enacting section 11 of the Act. Thus, at this time, the Commission is not prepared to say that the presence of "effective competition" is a reasonable basis for removing the channel occupancy caps. However, as with a number of other aspects of these rules, further analysis as to whether the restrictions might be phased out where effective competition develops will be appropriate as the Commission gains more experience with the rules.

41. The R&O/FNPRM next proposed to grandfather any existing vertical relationships which exceed the channel occupancy limits ultimately adopted and asked commenters to address this proposal. The Commission now determines that the public interest would be disserved by requiring cable operators to delete vertically integrated video programming services in order to comply with the channel occupancy caps. Accordingly, the Commission will grandfather all vertically integrated video programming services carried as of December 4, 1992 (the effective date of the 1992 Cable Act), which exceed the channel occupancy limits adopted herein. The Commission notes, however, that once additional capacity becomes available on a grandfathered system, the cable operator shall be prohibited from expanding its carriage of vertically integrated video programming services until such system is in full compliance with the channel occupancy limits.

42. R&O/FNPRM observed that the 1992 Cable Act and its legislative history were silent on the issue of enforcement of the channel occupancy limits and proposed to enforce channel occupancy limits through a process of certification whereby cable operators would certify annually to the Commission that their cable systems are in compliance with the channel occupancy limits. However, the Commission now determines that a preferable and less burdensome approach is to require cable operators to maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. Such information should be retained for a period of at least three years in the cable operator's public file.

43. In this regard, The Commission welcomes the assistance of local franchise authorities in monitoring compliance with the channel occupancy limits in their franchise area. Where a franchise authority has questions as to whether a local cable operator is in violation of the channel occupancy limits, such franchise authority may request to inspect the cable operator's records at reasonable times and during regular business hours. After such inspection, franchise authorities believing that a violation exists should file a complaint with the Commission. Other parties seeking to report potential violations of the channel occupancy limits may also contact the local franchise authority or report the matter directly to the Commission. If the Commission ultimately finds a cable

[5] The channel occupancy limits need not necessarily apply to the first 75 channels. For example, on a cable system with 75 channels no more than 30 channels (40 percent of 75) can be devoted to the carriage of affiliated video programming and thus no less than 45 channels (60 percent of 75) must be occupied by unaffiliated video programming services. On a system with 100 channels at least 45 channels would still be required to be devoted to the carriage of unaffiliated programming services, however, these 45 channels could be any of the system's 100 channels.

operator to be in violation of its channel occupancy rules, the Commission may impose appropriate sanctions, including cease and desist orders and forfeitures.

44. Third and finally, the Commission considered issues relating to limits on participation in program production. In that regard, the NPRM/NOI asked commenters to indicate whether it was necessary or appropriate to adopt additional restrictions on the degree to which multichannel distributors may participate in the creation or production of video programming, given the structural and behavioral restrictions contained in the 1992 Cable Act which are similarly designed to prevent anti-competitive conduct by vertically integrated cable systems and video programming services.

45. In view of the structural and behavioral restrictions already required under the 1992 Act, the Commission does not believe that additional restrictions on the ability of multichannel distributors to engage in the creation or production of video programming are warranted at the present time. The Commission concludes that at the present time the objectives of such a restriction are fully addressed by the other provisions of section 11, section 12, and section 19 of the 1992 Cable Act.

Administrative matters

Final Regulatory Flexibility Analysis

46. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small cable systems. As detailed in the full text of the Second Report and Order, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens on the cable systems and programming services subject to the vertical and horizontal ownership limits. The full text of the Commission's final regulatory flexibility analysis may be found in appendix C of the Second Report and Order

Ordering Clauses

47. Accordingly, *it is ordered that,* Pursuant to the authority contained sections 2(a), 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. 102–385, part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below, and will become January 10, 1994, subject to approval by the Office of Management and Budget. However, the effective date of the horizontal ownership limits contained in § 76.503 of the Commission's rules is stayed pending final judicial resolution of the District Court decision in *Daniels Cablevision* v. *United States,* No. 92–2292 (D.D.C. released September 16, 1993) holding the statutory authority for such rules unconstitutional.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission

LaVera F. Marshall,

Acting Secretary.

Amendatory Text

Part 76 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

2. Section 76.503 is added to subpart J to read as follows:

§ 76.503 National subscriber limits.

(a) Except as set forth in paragraph (b) of this section no person or entity shall be permitted to reach more than 30 percent of all homes passed nationwide through cable systems owned by such person or entity or in which such person or entity holds an attributable interest.

(b) Ownership of cable systems reaching up to 35 percent of all homes passed nationwide shall be permitted provided the additional cable systems, beyond 30 percent of homes passed nationwide, are cable systems, beyond 30 percent of homes passed nationwide, are minority-controlled.

(c) Prior to acquiring additional cable systems any person or entity holding an attributable interest in cable systems reaching 20 percent, or more, of homes passed nationwide must certify to the Commission that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

(d) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(e) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(f) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to § 76.501.

3. Section 76.504 is added to Subpart J to read as follows:

§ 76.504 Limits on carriage of vertically integrated programming.

(a) Except as otherwise provided in this section no cable operator shall devote more than 40 percent of its activated channels to the carriage of national video programming services owned by the cable operator or in which the cable operator has an attributable interest.

(b) The channel occupancy limits set forth in paragraph (a) of this section shall apply only to channel capacity up to 75 channels.

(c) A cable operator may devote two additional channels or up to 45 percent of its channel capacity, whichever is greater, to the carriage of video programming services owned by the cable operator or in which the cable operator has an attributable interest provided such video programming services are minority-controlled.

(d) Cable operators carrying video programming services owned by the cable operator or in which the cable operator holds an attributable interest in excess of limits set forth in paragraph (a) of this section as of December 4, 1992, shall not be precluded by the restrictions in this section.

(e) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(f) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(g) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(h) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to § 76.501.

[FR Doc. 93–27630 Filed 11–12–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266; FCC No. 93–494]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order extending the freeze of regulated cable service revenues from November 15, 1993 until February 15, 1994. This Order will establish an additional opportunity for local franchising authorities and subscribers to participate in assuring the reasonableness of cable service rates prior to expiration of the freeze.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Order

Adopted: November 10, 1993.

Released: November 10, 1993.

By the Commission: Chairman Quello issuing a separate statement; Commissioner Duggan issuing a separate statement; Commissioner Barrett dissenting.

I. Introduction

1. In this Order, on our own motion, we reconsider the expiration date of the freeze of regulated cable service revenues, and extend the expiration date of the freeze from November 15, 1993 until February 15, 1994.

II. Background

2. In the Rate Order, 58 FR 29736 (May 21, 1993), we established a comprehensive regulatory framework providing for rate regulation of the basic service tier by local franchising authorities and of cable programming services tiers by the Commission as required under the Cable Act of 1992. We established June 21, 1993 as the effective date of our rate regulations. At the same time, we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services tiers, cable operators could raise rates, effectively undermining the statutory goal that rates for cable services remain reasonable. In particular, we were concerned that cable operators could raise rates to potentially unreasonable levels, as determined under the rate regulations ultimately adopted. We determined that a freeze of regulated cable service revenues until August 3, 1992 would provide a reasonable opportunity for local franchise authorities to become certified to regulate the basic service tier and for consumers to invoke by complaint the Commission's regulatory oversight over cable programming services tiers. Accordingly, we established a freeze until that date of revenues for cable services subject to regulation under the Cable Act of 1992.

3. Subsequently, the Commission reexamined the feasibility of implementing rate regulation by June 21, 1993 in view of the significant additional responsibilities imposed on the Commission by the Cable Act of 1992 and a severe funding shortfall faced by the Commission at that time. We extended the effective date of cable rate regulation from June 21, 1993 until October 1, 1993, and the freeze until November 15, 1993 in order to provide local franchising authorities and consumers a continued opportunity to exercise their rights under the Cable Act of 1992 and our regulations in light of the new effective date of cable rate regulation. We later determined that an earlier implementation of cable rate regulation was feasible because of a supplemental appropriation provided to the Commission and moved the effective date of rate regulation from October 1, 1993 to September 1, 1993. We did not alter the date for expiration of the freeze because we were concerned that local franchising authorities may have established implementation plans based on an effective date of October 1, 1993. Our regulations establishing rate regulation of cable service became effective September 1, 1993.

III. Discussion

4. Under the Cable Act of 1992 and our implementing regulatory framework, cable operators are generally free to raise rates for the basic service tier in the absence of local certification and for cable programming service tiers in the absence of subscriber complaints invoking the regulatory oversight of the Commission. As of November 3, 1993, the Commission has received 3425 applications for certification from local franchising authorities covering approximately 5050 communities served by cable, and no more than approximately 836 properly completed subscriber complaints. These figures represent only a small percentage of the nearly 33,000 communities that are potentially eligible to regulate the basic service tier, and an even smaller percentage of the country's 58 million cable subscribers.

5. In light of the relatively few applications for certification and subscriber complaints received to date, we are concerned that the expiration of the freeze on November 15, 1993 could undermine the statutory purpose that rates for regulated cable service be reasonable by permitting rates to rise before rate regulation has begun in earnest. We believe that the purposes of the statute will best be fulfilled if we establish an additional opportunity for local franchising authorities and subscribers to participate in assuring the reasonableness of cable service rates prior to expiration of the freeze. We believe that an extension of the freeze until February 15, 1994 will ensure that we have afforded local franchising authorities a sufficient period in which to seek Commission certification to regulate basic cable service rates, and in which cable subscribers may exercise their rights to invoke Commission oversight of cable programming services. Accordingly, we will reconsider, on our own motion, the decision in the *Deferral Order*, 58 FR 33560 (June 18, 1993), that the freeze should expire November 15, 1993, and extend the expiration date of the freeze until February 15, 1994. When the basic tier becomes subject to regulation, a cable operator may generally raise rates only after approval by local franchising authorities. Where local governments already have initiated rate regulation of the basic service tier, we are not concerned that rates for the tier could rise to unreasonable levels after November 15, 1993. Accordingly, after the effective date of this *Order*, the freeze will not apply to a basic service tier that has become subject to regulation by a local franchising authority or the Commission. In the *Rate Freeze Order*, 58 FR 17530 (April 5, 1993), we determined that it was necessary to freeze rates for the cable programming service tier in order to prevent cable operators from evading the freeze of the basic tier by moving programming from the basic to the cable programming service tier. In situations where the basic tier is already subject to regulation, it is not necessary to continue the freeze in effect for the cable programming service tier in order to prevent an evasion of rate regulation of the basic tier. Accordingly, where the basic tier has become subject to regulation, the freeze will expire on that date for both tiers. In such situations, we note that subscribers and local franchising authorities may file complaints to make the cable

programming service tier subject to regulation and establish refund liability for cable programming service rates as of the date of the complaint. Where only the cable programming service tier is subject to regulation, we do not believe that the cable operator's capacity to evade the freeze of the basic tier by shifting programming to the higher tier is significantly diminished. Accordingly, where only the cable programming service tier is subject to regulation, the freeze will continue in effect for both tiers.

6. At the same time, we recognize that by this *Order* the freeze will have been in place for over ten months. We emphasize that we will entertain petitions for relief where the operator can show that the freeze is causing severe economic hardship or threatens the viability of continued provision of cable service.

7. As indicated, our comprehensive regulatory framework governing cable service rates became effective September 1, 1993. Under that framework, operators are currently scheduled to respond on November 15, 1993 to initial notices of regulation of the basic service tier that occurred prior to October 15, 1993, and to complaints filed with the Commission prior to October 15, 1993 concerning rates for cable programming services tiers. This schedule will permit local authorities and the Commission to bring to consumers the benefits of rate regulation. In particular, local authorities and the Commission can begin reviewing promptly on November 15, 1993 FCC Forms 393 where operators have elected to use the benchmark approach for setting initial rates. Under our comprehensive regulatory framework, a benchmark and price cap approach serves as the primary method of setting rates for regulated cable services. We are currently reviewing on reconsideration whether further changes to the benchmark scheme are warranted. As we stated in our first reconsideration order, we will provide for appropriate transition mechanisms should any changes be adopted. Moreover, in the *Rate Order*, we established that cost-of-service showings would be reviewed on a case-by-case basis under established standards of cost-of-service regulation traditionally applied to public utilities. Although we are in the process of developing and adopting uniform cost-of-service standards, such standards are not an essential part of our rate regulation scheme. Application of traditional cost-of-service principles on a case-by-case basis will give cable operators ample opportunity to justify their rates based on costs and ensure that their constitutional rights are not violated. In this regard, we note that the U.S. Court of Appeals for the D.C. Circuit rejected a request by several operators that our rate rules be stayed until we adopted final cost-of-service rules. *Intermedia Partners* v. *FCC*, No. 93–1491 (D.C. Cir. August 31, 1993). Thus, under the current schedule and regulatory framework, local authorities and the Commission can begin reviewing as early as November 15, 1993 cost-of-service showings and assess in individual cases the costs that may be recovered in rates for regulated cable services. These local and federal regulatory actions will enable operators and consumers to receive assurance in the near future that rates are in compliance with our requirements where rates are within permitted levels, and to enjoy the benefits of rate adjustments and refunds where rates exceed permitted levels. Our current regulatory framework and implementation schedule, therefore, will permit local authorities and the Commission to began without further delay the regulatory processes that will assure that cable service rates are reasonable as required under the Cable Act of 1992. Moreover, implementation of the rate regulation provision of the 1992 Cable Act will inevitably be a learning process for the Commission, local authorities, and the industry that will require revision and refinement over time. Accordingly, we believe it imperative that the process be commenced so that we can gain experience with the process and so that the benefits of the Act will be received by subscribers.

8. We find good cause under the Administrative Procedure Act to make this freeze effective with less than 30 days advance publication in the **Federal Register**. As explained, an extension of the freeze from November 15, 1993 until February 15, 1994 is necessary in order to afford local franchising authorities a sufficient period in which to seek Commission certification to regulate basic cable service rates, and in which cable subscribers may exercise their rights to invoke Commission oversight of cable programming services. We will make this *Order* and implementing rule changes effective upon publication in the **Federal Register** in order to prevent an expiration of the freeze that would otherwise occur under 30 days advance publication in the **Federal Register**.

IV. Ordering Clauses

9. Accordingly, *It is Ordered*, pursuant to sections 4(i) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 543, that the freeze of cable service rates established in *Order*, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), *extended*, FCC 93–304, 58 FR 33560 (June 18, 1993), *Is Extended* UNTIL February 15, 1994.

10. *It is Further Ordered*, That section 76.1090 of the Commission's rules, 47 C.F.R. Section 76.1090, *Is Amended* as set forth below.

11. *It is Further Ordered*, That this *Order* Is Effective On November 15, 1993.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.1090 is amended by revising paragraph (a), and adding new paragraph (c) to read as follows:

§ 76.1090 Temporary Freeze of Cable Rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until February 15, 1994.

* * * * *

(c) The freeze imposed by paragraph (a) of this section will not apply where a basic tier service has become subject to regulation by a local franchising authority or the Commission.

[FR Doc. 93–28068 Filed 11–12–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 334 (Sub-No. 8) and (Sub-No. 8A)]

Amendment to Rules in Response to Joint Petition for Rulemaking on Railroad Car Hire Compensation; and Joint Petition for Exemption of Arbitration Rule From Application of 49 U.S.C. 10706 and Motion to Dismiss

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Amendment to rules.

SUMMARY: The Commission amends its rules, which effect a phased deprescription of railroad car hire rates. The amendment would make the transition to deprescription more gradual by providing that rail car investments made between January 1, 1991 and December 31, 1992 may continue to be reflected in prescribed rates until January 1, 2003.

EFFECTIVE DATES: The new rules are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Regulatory Flexibility Certification

The Commission certified in its decisions served November 10 and December 22, 1992, that its actions will not have a significant impact on a substantial number of small entities. This decision, which makes the transition to deprescription even more gradual, will not change that result. To the contrary, it will give small carriers additional time to adjust to the new regulatory regime. Pursuant to 5 U.S.C. 605(b), the Commission certifies that its action will not have a significant impact on a substantial number of small entities.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1033

Railroads.

For reasons set forth in the preamble, title 49, chapter X, part 1033 of the Code of Federal Regulations is amended as follows:

1. Part 1033 is revised to read as follows:

PART 1033—CAR SERVICE

Sec.

1033.1 Car hire rates.
1033.2 Car service orders.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10326, 11121, and 11122.

§ 1033.1 Car hire rates.

(a) Definitions applicable to this section:

(1) *Car.* A freight car bearing railroad reporting marks, other than an excluded boxcar as defined in § 1039.14(c)(2) of this chapter whenever it is owned or leased by any class III carrier and bears a class III carrier's reporting marks.

(2) *Car hire.* Compensation to be paid by a user to an owner for use of a car. Such compensation may include, but need not be limited to, hourly and mileage rates.

(3) *Fixed rate car.* Any car placed in service or rebuilt prior to January 1, 1993 or for which there was a written and binding contract to purchase, build, or rebuild prior to July 1, 1992, regardless of whether such car bore railroad reporting marks prior to January 1, 1993, provided, however, that until December 31, 1993, all cars shall be deemed to be fixed rate cars.

(4) *Market rate car.* Any car that is not a fixed rate car.

(5) *Owner.* A rail carrier entitled to receive car hire on cars bearing its reporting marks.

(6) *Prescribed rates.* The hourly and mileage rates in effect on December 31, 1990, as published in Association of American Railroads Circular No. OT–10 found in the information section of tariff ICC RER 6411–U known as the Official Railway Equipment Register. This information can be obtained at the Association of American Railroads or the Commission. Prescribed rates will be enhanced to reflect OT–37 surcharges and Rule 88 rebuilds for work undertaken and completed during 1991 and 1992, and for rebuilding work for which there was a written and binding contract prior to July 1, 1992.

(7) *User.* A rail carrier in possession of a car of which it is not the owner.

(b) *Fixed rate cars.* Car hire for fixed rate cars shall be determined as follows:

(1) Except as provided in paragraph (b)(3) of this section, for a 10-year period beginning January 1, 1993, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990. Prescribed car hire rates shall not be increased for any additions and betterments performed on such cars after December 31, 1990. Any OT–37 surcharge to prescribed rates for work performed prior to January 1, 1993 shall expire upon the earlier of:

(i) The car becoming a market rate car; or

(ii) The expiration date provided in Association of American Railroads Circular No. OT–37.

(2) Upon termination of the 10-year period specified in paragraph (b)(1) of this section, all fixed rate cars shall be deemed to be market rate cars and shall be governed by paragraph (c) of this section.

(3) (i) During each calendar year beginning January 1, 1994, a rail carrier may voluntarily elect to designate up to 10% of the cars in its fleet as of January 1, 1993 to be treated as market rate cars for the purposes of this section. The 10% limitation shall apply each calendar year and shall be noncumulative. Cars designated to be treated as market rate cars shall be governed by paragraph (c) of this section. Such election shall be effective only in accordance with the following provisions:

(A) An election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners if:

(*1*) The rail carrier making the election has legal title to the car; or

(*2*) The rail carrier making the election does not have legal title to the car but obtains written consent for such election from the party holding legal title; or

(*3*) The transaction pursuant to which the party holding legal title to the car has furnished the car to the rail carrier making the election was entered into after January 1, 1991.

(B) An election shall be irrevocable and binding only for the term of the transaction pursuant to which the car was furnished to the rail carrier making the election as to that rail carrier and all users and subsequent owners if:

(*1*) That rail carrier does not have legal title to the car and does not obtain written consent or such election from the party holding legal title;

(*2*) The transaction was entered into prior to January 1, 1991; and

(*3*) The transaction does not provide that the compensation to be paid to the party furnishing the car is to be based in whole or in part directly on the car hire earnings of the car; provided, however, that if the rail carrier making the election subsequently obtains legal title to the car, such election shall then be irrevocable and binding as to the rail

carrier and all users and subsequent owners.

(C) The party holding legal title to the car may revoke an election subject to the provisions of paragraph (b)(3)(i)(B) of this section only:

(*1*) At the time the transaction pursuant to which the car was furnished to the rail carrier making the election is first extended or renewed after January 1, 1991; or

(*2*) If such transaction is not extended or renewed, at the time such transaction terminates.

If such election is so revoked, a rail carrier may make a new election only with the written consent of the party holding legal title to the car, and such election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners.

(ii) Nothing in paragraph (b)(3)(i) of this section shall be construed to limit the rights of parties to any transaction to provide for the consent of any party to an election made pursuant to paragraph (b)(3)(i) of this section.

(c) *Market rate cars.* (1) Market rate cars shall not be subject to prescribed rates or to the provisions of 49 CFR 1039.14(c)(1) (i) and (ii) and (c)(4).

(2) (i) The Commission shall not prescribe car hire for market rate cars.

(ii) The Code of Car Hire Rules referenced in the Association of American Railroads Car Service and Car Hire Agreement provides that owners and users party to that agreement shall resolve car hire disputes thereunder. The Commission may review allegations of abuse of the car hire dispute resolution process established under those rules.

(iii) Car hire disputes involving an owner or user not a party to that agreement may be resolved by the Commission.

(d) *Car hire agreements.* Rail carriers are authorized to negotiate and enter into agreements governing car hire.

(e) *Effective date.* This part shall take effect on January 1, 1994.

§ 1033.2 Car service orders.

Emergency and temporary service orders are issued under this part but are not carried in the Code of Federal Regulations.

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Chairman McDonald, joined by Vice Chairman Simmons, dissented in part with a separate expression. Commissioners Philbin and Walden dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-27931 Filed 11-12-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; ID 110993A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 9, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) and later augmented from the reserve (58 FR 44136, August 19, 1993) to a total of 13,900 metric tons (mt). The directed fishery was closed on April 22, 1993 (58 FR 21951, April 26, 1993); the closure was rescinded on August 9, 1993 (58 FR 42031, August 6, 1993); and the fishery was again closed on August 19 (58 FR 44465, August 23, 1993). With consideration that the TAC for Pacific ocean perch in the AI had not been reached, NMFS rescinded the August 19 closure on October 22, 1993 (58 FR 54529).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 13,400 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t., November 9, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

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

Dated: November 9, 1993.

David S. Crestin,

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

[FR Doc. 93-28007 Filed 11-9-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–102–1]

Importation of Pork and Pork Products From Countries Where Swine Vesicular Disease Is Known to Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning importation of certain cured and dried pork and pork products from countries where swine vesicular disease is known to exist, to allow the bones to be removed in the country where the pork or pork products are processed. Current regulations require that bones be removed in the country where the swine are raised and slaughtered. This action would give processors an option as to where bones are removed, while continuing to prevent the introduction of swine vesicular disease into the United States.

DATES: Consideration will be given only to comments received on or before January 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

Regulations in 9 CFR part 94 regulate, among other things, the importation of certain animals, meat, and animal products into the United States. These regulations are designed to prevent the introduction into the United States of certain diseases of livestock and poultry. Section 94.12 restricts the importation of pork and pork products into the United States from countries where swine vesicular disease (SVD) is known to exist. In order to prevent the introduction of this disease into the United States, only pork and pork products that meet conditions detailed in the regulations are eligible for entry into the United States.

Under our current regulations, swine may be raised and slaughtered in an SVD-free country and the meat shipped to an SVD-infected country for curing and drying. However, if the resulting cured and dried pork or pork products are to be imported into the United States, all bones must be removed in the country of origin, that is, the country where the swine are raised and slaughtered. Under our current regulations, the bones may not be removed in the country where the pork or pork products are cured and dried. (See § 94.12(b)(1)(iv)(A).)

SVD is considered to exist in Germany. There are three facilities in Germany which process pork and pork products that originate in SVD-free countries for importation into the United States under the requirements of § 94.12(b)(1)(iv). Under our current regulations, all bones must be removed in the country of origin, where the swine are raised and slaughtered, not in Germany, where the pork and pork products are cured and dried.

APHIS has received a petition from the German government asking that we amend § 94.12(b)(1)(iv) to allow the importation of pork and pork products under that section if the bones have been removed in Germany, the country where the pork and pork products are cured and dried.

We have carefully considered this petition. The intent of our existing regulations is to ensure that SVD is not present in pork and pork products imported into the United States. The requirement in § 94.12(b)(1)(iv)(A) that bones be removed in the country where the swine are raised and slaughtered was designed to minimize the possibility that pork or pork products could be infected with SVD from virus in bone marrow. We have determined that, if animals are raised and slaughtered in a country which is free of SVD, and, if the resulting pork and pork products are cured and dried in a facility which has been approved by APHIS as currently required under § 94.12(b)(1)(iv)(A), there is no significant chance of infection, regardless of whether the bones are removed in the country where the swine are raised and slaughtered or in the country where the pork and pork products are cured and dried. Therefore, we are proposing to amend § 92.12(b)(1)(iv)(A) to allow the option of removing the bones in the country where the pork and pork products are cured and dried.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed 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 determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would 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.

At present, Germany is the only country where SVD is considered to exist that exports these cured and dried pork and pork products to the United States. During 1989, approximately 17,987 kilograms of cured and dried pork and pork products were exported from Germany to the United States. The value of these imports totaled $113,000.

Three facilities in Germany currently process cured and dried pork and pork products for the United States market.

The regulatory amendments proposed in this document would allow these processing facilities to purchase pork from SVD-free countries with the bones in, and remove the bones at the processing facilities in Germany. The proposed amendments would not have any impact on the domestic pork industry, which is valued in excess of $4 billion.

We have been unable to identify any domestic entities that would be affected by the proposed rule. We therefore estimate that the proposed rule would have a negligible impact on the domestic market for cured and dried pork and pork products.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended to read as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f; 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.12, paragraph (b)(1)(iv)(A) would be revised to read as follows:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) All bones have been completely removed, either in the country of origin or in the country where the pork or pork products are processed; and

* * * * *

Done in Washington, DC, this 8th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–28002 Filed 11–12–93; 8:45 am]

BILLING CODE 3410–24–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AA26]

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") seeks comments on a proposal to add general service fluorescent lamps, medium base compact fluorescent lamps and general service incandescent lamps to the list of products subject to provisions of the above referenced rule, commonly referred to as the Appliance Labeling Rule. This action is being taken pursuant to the Energy Policy Act of 1992 ("EPA 92"), which directed the Commission to prescribe, by April 24, 1994, rules requiring such products to be labeled with disclosures that will enable a purchaser to select the most energy efficient lamps that meet his or her requirements.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal. In addition, following the period for written comments, Commission staff plans to conduct a Public Workshop-Conference to afford interested parties an opportunity to explore and discuss issues raised during the comment period and to present oral data, views, and arguments on the proposed rules.

DATES: Written comments must be submitted on or before December 30, 1993. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions to this comment period.

Notification of interest in participating in the Public Workshop-Conference must be submitted on or before December 15, 1993. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., NW, Washington, DC, on January 19, 1994, from 9 a.m. until 5 p.m.

ADDRESSES: Written comments should be submitted to Office of the Secretary, Federal Trade Commission, room 159, Sixth and Pennsylvania Avenue, NW, Washington, DC 20580, telephone number 202–326–2506. Requests to participate in the Public Workshop-Conference should be submitted to Kent C. Howerton, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, telephone number 202–326–3013 [FAX number 202–326–3259]. Comments and requests to participate in the Public Workshop-Conference should be identified as "16 CFR Part 305—Comment—Lamp Products" and "16 CFR Part 305—Request to Participate in Public Workshop-Conference—Lamp Products," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format used). Written comments should be submitted, when feasible and not burdensome, in five copies. If requests to participate in the Public Workshop-Conference are made by facsimile transmission [FAX], please confirm transmission by telephone to 202–326–3013 to ensure receipt of request.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, telephone number 202–326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92,[1] enacted on October 24, 1992, amends in several respects the Energy Policy and Conservation Act of 1975 ("EPCA").[2] EPCA requires the Commission to prescribe energy labeling rules for certain major household appliances. 42 U.S.C. 6294 (1988). The EPA 92 amendments to EPCA direct the Commission, within 18 months of the statute's enactment, to prescribe rules requiring that packages of general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps[3] be labeled with "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.*[4]

Consistent with this statutory directive, the Commission is considering appropriate amendments to the Appliance Labeling Rule ("Rule"). The Commission previously has issued a rule, known as the Light Bulb Rule, governing the most common types of incandescent lamps (but excluding incandescent reflector lamps).[5] See Part II.E., below. The proposed regulations announced today will supplement, rather than supersede, that rule. The Light Bulb Rule, however, provides a starting point for the proposals in this Notice of Proposed Rulemaking ("Notice").[6]

II. Background

A. EPCA and the Existing Appliance Labeling Rule

EPCA is generally designed to promote improved energy efficiency of consumer products. 42 U.S.C.A. 6201 (West Supp. 1993). It establishes energy consumption standards for certain categories of major home appliances and directs the U.S. Department of Energy ("DOE") to devise similar standards for certain other categories of such products. 42 U.S.C.A. 6295 (West Supp. 1993). EPCA also directs the Commission to prescribe or in some cases, to consider prescribing, rules requiring appliances to be labeled with disclosures of estimated annual energy cost or another useful measure of energy usage. 42 U.S.C.A. 6294 (West Supp. 1993).

Pursuant to EPCA's directives, the Commission has adopted the Appliance Labeling Rule.[7] 16 CFR part 305. The Rule requires that certain major home appliances including furnaces, refrigerators and air conditioners be labeled with EnergyGuides. 16 CFR 305.11(a)–(c) (1993).[8] In addition, the Rule requires fluorescent lamp ballasts to be labeled or marked with the symbol "E" enclosed in a circle, to denote that the ballast meets a DOE energy efficiency standard.[9] 16 CFR 305.11(d) (1993).

Except for fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials for products covered by the Commission's Rule to contain disclosures of required energy consumption and efficiency information. 16 CFR 305.13(a), .14(a)–(b) (1993). Further, the Rule requires, for furnaces, disclosure of energy usage information on fact sheets, 16 CFR 305.11(b) (1993), and, for central air conditioners and heat pumps, similar disclosures on fact sheets or in industry directories, 16 CFR 305.11(c) (1993). For fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials to contain the same symbol that is required on labels. 16 CFR 305.13(c), .14(c) (1993).

EPCA generally authorizes the Commission to assess monetary civil penalties for violations of the Rule. 42 U.S.C. 6303(a), (d) (1988). Accordingly, the Rule provides that manufacturers or private labelers who knowingly distribute products covered by the Rule that are not properly labeled are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(1) (1993). Manufacturers, distributors, or retailers who knowingly remove or make illegible a required label similarly are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(2) (1993). Manufacturers or private labelers who fail to include required disclosures in their catalog advertising are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(5) (1993). Manufacturers or private labelers who fail to keep records or provide reports or product samples as specified by the Rule also are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(2), (4) (1993). EPCA also grants to the U.S. District Courts authority to issue injunctions against such violations. 42 U.S.C. 6304 (1988).

B. EPA 92's Provisions Concerning Lamp Products

The EPA 92 amendments to section 324(a)(2)(C)(i) of EPCA require that the Commission issue labeling rules for "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps," as those terms are defined in EPCA. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). The labeling rules must require conspicuous disclosure on the packaging of the lamp of "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.* The Commission must issue the labeling rules not later than April 24, 1994. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). The rules must apply to lamp products manufactured after the twelve month period beginning on the date of publication of the rule. *Id.* The Commission proposes to interpret EPCA to authorize the Commission also to require disclosures, if appropriate, in catalogs from which each of these lamp products can be ordered, 42 U.S.C. 6296(a) (1988), and in point-of-sale written materials, 42 U.S.C. 6294(c)(4) (1988). Similarly, the Commission

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[1] Pub. L. No. 102–486, 106 Stat. 2776, 2817–2832 (1992) (codified in scattered titles of U.S.C.).

[2] 42 U.S.C. 6291 *et seq.* EPCA has also been amended by the National Energy Conservation Policy Act of 1978, Pub. L. No. 95–619, 92 Stat. 3258 (1978); the National Appliance Energy Conservation Act of 1987 ("NAECA 87"), Pub. L. No. 100–12, 101 Stat. 103 (1987); and the National Appliance Energy Conservation Amendments of 1988 ("NAECA 88"), Pub. L. No. 100–357, 102 Stat. 671 (1988).

[3] General service incandescent lamps often are referred to as "light bulbs" or "electric lights."

[4] Pursuant to other amendments to EPCA by EPA 92, the Commission also conducted a rulemaking proceeding and amended the Rule to require the disclosure of water usage rates for certain plumbing products. Final Rule, 58 FR 54955 (1993).

[5] Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409 (1993); *see* 35 FR 11784 (July 23, 1970).

[6] The labeling rules proposed in this Notice would overlap the disclosures required by the Light Bulb Rule. When it concludes this proceeding, the Commission will consider the appropriate resolution of any inconsistencies between the two rules.

[7] 44 FR 66466 (1979). The Commission has amended the Rule on several occasions to add new products that must be labeled. 52 FR 46888 (1987) (adding a new product category of central air conditioners and heat pumps and two additional subcategories of furnaces, pulse combustion furnaces and condensing furnaces); 54 FR 28031 (1989) (adding a new product category of fluorescent lamp ballasts); and 58 FR 54955 (1993) (adding new product categories of showerheads, faucets, water closets and urinals).

[8] For example, labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must disclose the estimated annual operating cost (*e.g.*, "$240.00"). 16 CFR 305.11(a)(5)(i)(E) (1993). Labels for room air conditioners, central air conditioners, heat pumps, and fact sheets for furnaces, by contrast, must disclose the energy efficiency rating (*e.g.*, "10.5" for a central air conditioner or "96.5" for a furnace). 16 CFR 305.11(a)(5)(i)(E), 305.11(a)(5)(iii)(C), 305.11(b)(3)(v) (1993). The Commission is considering proposals to amend the current disclosure requirements for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters and room air conditioners in a separate proceeding. 53 FR 22106 (1988) and 58 FR 12818 (1993).

[9] A fluorescent lamp ballast is a device that is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operations. 16 CFR 305.3(j) (1993).

proposes to interpret the various EPCA provisions that provide the Commission with Rule enforcement mechanisms (including those authorizing imposition of civil penalties for Rule violations), 42 U.S.C. 6296, 6299, 6302–04 (1988) to apply to all three lamp categories that will be covered by the labeling rules under EPCA section 324(a)(2)(C)(i), 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993).[10]

C. Energy Used for Lighting

Lighting is the single largest source of electricity consumption in commercial buildings. About 41 percent of electricity, and 28 percent of total energy, consumed in the commercial sector is for lighting.[11] Fluorescent lamps consume about 55 percent of lighting electricity in the commercial sector.[12] In the residential sector, energy use for lighting is small though not trivial, representing about seven percent of residential energy use.[13] Incandescent lamps provide most lighting in residences.

Energy use in both commercial and residential buildings accounts for an increasing share of total U.S. energy consumption (including electricity and other forms of energy): 27 percent in 1950, 33 percent in 1970, and 36 percent in 1990. At present, buildings account for over 60 percent of all electricity used in the U.S.[14] Thus, increasing the energy efficiency of lighting in both commercial and residential buildings could contribute significantly to energy conservation efforts.

The opportunities for improved lighting efficiency (delivering the same or better quality of light with less energy) are considerable. Using technologies already on the market, electricity use for residential lighting could be cut by about one-third. Similarly, electricity use for commercial lighting could be reduced considerably, with estimates of 39 to 83 percent, using commercially available technologies. These energy savings come largely from the use of new, efficient lighting technologies.[15]

D. Description of Lamp Products

1. General Service Fluorescent Lamps

General service fluorescent lamps account for most lighting in commercial buildings. According to the National Electrical Manufacturers Association ("NEMA"), a trade association that includes lamp manufacturers, almost 90 percent of the general service fluorescent lamps sold in the U.S. are for those applications.

Fluorescent lamps are most commonly made with tubular bulbs varying in diameter from approximately 12 millimeters (0.5 inch, "T–4" bulb) to 54 millimeters (2.125 inch, "T–17" bulb), and in overall lengths from a nominal 100 to 2240 millimeters (four to 96 inches). The bulb historically has been designated by a letter indicating the shape, followed by a number indicating the maximum diameter in eighths of an inch. Thus, "T–17" means a tubular ("T") bulb 17/8 inches, or 2 1/8 inches (54 millimeters) in diameter.[16] While there are many variations of fluorescent lamps, most of those found in commercial buildings are one of three types: (1) 4-foot long cylindrical-shaped units, which typically consume 34 to 40 watts of electricity and produce about 3,000 lumens of light; (2) 8-foot long cylindrical-shaped units, which typically consume 75 to 100 watts and produce about 6,000 to 9,000 lumens; and (3) U-shaped cylindrical lamps, which typically consume 40 watts and produce about 3,000 lumens.[17]

Fluorescent lighting consists of two components, a ballast (which regulates current and voltage) and the lamp itself.[18] When a fluorescent lamp is turned on, a current is generated between two electrodes in the lamp.[19] The lamps contain mercury gas at low pressure, with a small amount of a rare gas or a combination of gases added to facilitate starting.[20] The inner walls of the bulb are coated with fluorescent powders commonly called phosphors. When the proper voltage is applied, an arc is produced by current flowing between the electrodes through the mercury vapor. This discharge generates some visible radiation, but mostly invisible ultraviolet ("UV") radiation. The UV radiation in turn excites the phosphors to emit light.[21]

The efficiency of this process is typically about 60 to 85 lumens per watt.[22] Fluorescent lamps typically have lives of 10,000 to 20,000 hours, or 10 to 20 times longer than incandescent lamps. However, fluorescent lamps cost more initially than incandescent lamps and produce a different quality or type of light, although recent improvements have narrowed the gap between the quality of light emitted by fluorescent and incandescent lamps.[23]

According to NEMA, there are approximately 16 companies that manufacture or supply (through importation from production facilities outside the U.S.) fluorescent lamps, including general service fluorescent lamps and compact fluorescent lamps. The total market in the U.S. for fluorescent lamps is approximately 550 million units (or lamps) annually. Of these, approximately 350 million units are four foot fluorescent lamps, 55 million units are eight foot slimline fluorescent lamps and 15 million units are eight foot high output type fluorescent lamps. These three categories constitute the types of fluorescent lamps included in EPCA's definition of "general service

[10] EPA 92 also amended EPCA section 325 to specify energy conservation standards for general service fluorescent lamps and incandescent reflector lamps. 42 U.S.C.A. 6295(i) (West Supp. 1993). DOE must issue specific testing procedures for these lamp products. 42 U.S.C. 6293(b)(6) (West Supp. 1993). In issuing the test procedures, DOE must take into consideration the requirements of the Illuminating Engineering Society of North America ("IES") and the American National Standards Institute ("ANSI") test procedures for the products. *Id.* The statute does not establish energy conservation standards or require DOE to issue test procedures for medium compact fluorescent lamps or incandescent nonreflector lamps. However, DOE has authority to issue test procedures for categories of products that are not specified in EPCA, 42 U.S.C. 6292(b), 6393(b)(1)(B) (1988), and to set minimum efficiency standards for those products, 42 U.S.C.A. 6295(l) (West Supp. 1993).

[11] U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency* (hereinafter referred to as "OTA Report"), OTA–E–518 (Washington, DC: U.S. Government Printing Office, May 1992), at 50. Commercial buildings used 12.9 quads of energy at a cost of $68 billion in 1989. About two-thirds of this energy was in the form of electricity. In addition to lighting, space heating and space cooling were the principal end uses. *Id.* at 21.

[12] *Id.*, at 54.

[13] *Id.*, at 50 – 51

[14] *Id.*, at 14.

[15] Id., at 50–51.

[16] IES Lighting Handbook, 1993 Reference Volume (hereinafter referred to as "IES Handbook"), at 197.

[17] OTA Report, at 54.

[18] Fluorescent lamp products require an integral or separate ballast, which regulates the voltage and current received by the fluorescent lamp. Ballasts consume energy and also affect the energy efficiency of the lamp through their voltage and current control. There are two major types of ballasts—magnetic and electronic. Use of electronic (solid-state) ballasts, which control voltage and current electronically, can increase the energy efficiency of the ballast and improve the operation of the lamp product through improved current control. Id. at 55.

[19] The Commission's Appliance Labeling Rule already applies to certain fluorescent lamp ballasts. See Part II.A, above.

[20] Standard fluorescent lamps use argon gas, energy saving types use a mixture of krypton and argon, and others use a combination of neon and argon, or neon, xenon and argon. IES Handbook, at 197.

[21] OTA Report, at 53; IES Handbook, at 197.

[22] Further, several technologies are available to increase the efficiency of standard fluorescent lamps. These technologies include filling the lamp with a higher fraction of krypton than a standard lamp, decreasing the diameter of lamps (which increases efficiency because of their greater surface-to-volume ratio), and using improved phosphors in the lamps. OTA Report, at 54.

[23] OTA Report, at 53.

fluorescent lamps." The balance of sales are of other lengths, specialized use types and compact fluorescent lamps.

NEMA estimates that approximately 20 percent of all fluorescent lamps are sold through sales channels available to residential customers (for example, hardware stores and home center stores) that also are used by small contractors and small commercial users. NEMA also estimates that not more than 12 percent of all fluorescent lamps are actually purchased by residential consumers, and not all of those are types that EPCA directs the Commission to include in labeling rules.

2. Compact Fluorescent Lamps

Medium screwbase compact fluorescent lamp products are potential replacements for general service incandescent lamps (which are discussed in Part II.D.3, below) because they can be installed easily by a consumer and can reduce energy and maintenance costs.[24] This rulemaking proceeding covers only medium base compact fluorescent lamps, as defined in the EPA 92 amendments to section 321 of EPCA. 42 U.S.C.A. 6291(30)(5)(S) (West Supp. 1993) The definition is limited to compact fluorescent lamps that are "integrally ballasted" or "self-ballasted" (that is, that contain a ballast as an inseparable part of the lamp product, not as a separate product),[25] with a medium screw base and a rated input voltage of 115 to 130 volts, and which are designed as replacements for general service incandescent lamps. *Id.*

Compact fluorescent lamps produce light in the same way as other fluorescent lamps. Low-pressure mercury vapor inside the lamp is energized and produces ultraviolet radiation. The ultraviolet radiation is then absorbed by a phosphor coating on the inner surface of the lamp, which converts the radiation to light. Compact fluorescent lamps are available in several shapes and sizes.[26]

Medium screwbase compact fluorescent lamps are available with light output ranging from 250 to 2200 initial lumens. Products with initial light output under 700 lumens (generally compact fluorescent lamps of less than 13 watts) have limited application for direct replacement of incandescent lamps. Manufacturers also sometimes describe compact fluorescent lamp products by their "wattage equivalence." By this they mean the wattage of a standard-life incandescent lamp of comparable initial rated light output.[27]

Compact fluorescent lamps achieve an efficiency of about 61 lumens per watt, which is about 3.8 times the efficiency of a comparable general service incandescent lamp.[28] Thus, a compact fluorescent lamp can provide the same light (in lumens) as a standard incandescent with just one-fourth of the energy (in watts).[29] In addition, the life of a compact fluorescent is typically about 10,000 hours, or about 13 times as long as a standard incandescent with an average operating life of 750 hours.[30]

The initial cost of compact fluorescent lamps is considerably higher than that of incandescent lamps. Manufacturers' suggested retail prices range from approximately $12 to $36 for compact fluorescent lamp products (of the type that would be covered by the proposed rules), although actual retail prices may be lower due to discounts[31] and rebates from utility companies. In comparison, non-reflector general service incandescent A-lamps[32] often cost from thirty cents to one dollar, and incandescent reflector lamps typically cost from $3 to $8. However, because of their higher efficiency and longer life, compact fluorescent lamp products usually are less expensive than incandescent lamps on a life-cycle cost basis.[33]

According to NEMA, approximately 25 to 30 million units of compact fluorescent lamps were sold during the last year in the U.S. Annual sales currently are increasing.

3. General Service Incandescent Lamps

Incandescent lamps are the source of most lighting in U.S. residences. Incandescent lamps range from very low wattage products producing low light (or lumen) output (such as nightlights) to high wattage ones with high lumen output (such as floodlights). The incandescent lamps most commonly used in homes typically achieve about 17 to 20 lumens per watt, and have a lifetimes of approximately 750 to 1,000 hours, although lamps with greater efficiency (that is, higher lumens per watt) and longer lifetimes are available. Incandescent lamp products are less efficient in converting electricity into light than are fluorescent lamp products because much of the electric energy input into incandescent lamps is converted to heat, instead of producing light.[34]

These incandescent filament lamps[35] are divided into three major groups: Large lamps, miniature lamps and photographic lamps. Although there is no sharp dividing line between the groups, the large lamp category generally refers to lamps with larger bulbs, medium or mogul bases, and for operation in circuits of 30 volts or higher. Only lamps in this large lamp category are included in this rulemaking proceeding. The proposed labeling rules, for example, will not apply to more specialized categories of lamps (such as miniature lamps or photographic lamps), to nightlights (which are very low wattage) or to small base chandelier lamps.[36]

General service incandescent lamps are large lamps made for general lighting on 120-volt circuits. They are made in sizes from 10 watts to 1500 watts and satisfy the majority of lighting applications. They are made in both clear and inside frosted bulbs, and with inside white coated finishes for bulbs below 200 watts.[37] The most common (non-reflector) general service

[24] Rensselaer Polytechnic Institute, Lighting Research Center, National Lighting Product Information Program, Specifier Reports: Screwbase Compact Fluorescent Lamp Products (hereinafter referred to as "Rensselaer Report"), Volume 1, Issue 6, April 1993, at 1.

[25] Three types of compact fluorescent lamps are available: dedicated, self-ballasted, and modular. Dedicated compact fluorescent lamp systems are similar to full-size fluorescent lighting systems in which a ballast is hard-wired to lamp holders within a luminaire (*i.e.*, the lighting fixture). Self-ballasted and modular compact fluorescent lamp products have medium screwbases, and can be used as replacements for incandescent lamp products. A self-ballasted compact fluorescent lamp contains both the lamp and ballast as an inseparable unit. A modular compact fluorescent lamp product consists of a screwbase ballast with a separate replaceable lamp. The ballast and lamp connect together using a socket-and-base design that ensures compatibility of lamps and ballasts. Rensselaer Report, at 2. Of the three types of compact fluorescent lamps, only the self-ballasted type would be covered by the proposed rules.

[26] *Id.* at 2.

[27] *Id.* at 4.

[28] The total light output of a modular compact fluorescent lamp varies depending on the particular ballast used. Because self-ballasted compact fluorescent lamps include their own ballasts, their light output ratings are based on the light output with the integral ballast. *Id.* at 6.

[29] Compact fluorescent lamps are normally tested for lamp light output ratings with the base facing upward. On the other hand, when compact fluorescent lamps are used as replacements for incandescent lamps, they normally are used with the base facing downward. This difference in position may result in a different light output. The temperature of the environment surrounding the compact fluorescent lamp also affects light output. When compact fluorescent lamps are used in enclosed luminaires with internal temperatures that are elevated above room temperature, the result may be reduced light output. The same is true when compact fluorescent lamps are operated outdoors at low temperatures. *Id.*, at 6.

[30] OTA Report, at 52. *See also,* Rensselaer Report, at 3.

[31] Rensselaer Report, at 5.

[32] *See* Part II.D.3, below.

[33] Rensselaer Report, at 5.

[34] OTA Report, at 53.

[35] Incandescent lamps use a filament (often tungsten) that produces light when an electric current passes through it. IES Handbook, at 179.

[36] *See* Part IV.F, below.

[37] IES Handbook, at 189.

incandescent lamp is a pear-shaped lamp with a medium-sized base, and is often referred to as an "A-lamp," "A-type," or "A-bulb" lamp.[38]

This category of lamps includes tungsten-halogen filament incandescent lamps (halogen lamps), which are also included in this rulemaking proceeding. Halogen lamps can be designed to produce more light and last longer than normal incandescent lamps of the same wattage.[39] Their initial purchase price may be more than standard incandescent lamps, but their reduced energy consumption and extended lamp life may result in their being no more, or even less, costly overall.[40]

Incandescent reflector lamps (also known as reflectorized incandescent lamps) have a reflecting coating directly applied to part of the bulb surface.[41] Incandescent reflector lamps allow the light output to be directed and focused. They are used both in residences and in commercial buildings. They may be used, for example, to provide lighting from recessed ceiling fixtures or as spotlights. Incandescent reflector lamps would be included as a type of general service incandescent lamps under the Commission's proposed labeling rules.[42]

According to NEMA, annual sales of general service incandescent A-lamps in the U.S. total about 1.6 billion units annually, approximately 85 percent of which are sold for use in residences. Annual sales of incandescent reflective lamps total about 100 million units annually, with approximately 50.2 percent of sales being made for residential use and 49.8 percent for commercial use.

E. Light Bulb Rule

The Commission issued the Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409, in 1970.[43] The Light Bulb Rule covers general service incandescent electric lamps, with some exceptions.[44] The Rule does not cover general service fluorescent lamps, medium base compact fluorescent lamps, or incandescent reflector lamps, for which the EPA 92 amendments require the Commission to issue labeling rules.

The Light Bulb Rule requires that package containers disclose clearly and conspicuously the enclosed bulb's average initial wattage, average initial lumens, and average laboratory life expressed in hours.[45] If lamps are sold without sleeves or packaging, or are sold in universal or interchangeable sleeves or packaging without the information listed above, then all these disclosures must appear clearly and conspicuously on the lamps themselves.[46]

The Light Bulb Rule prohibits specific claims for these lamp products unless certain conditions are met.[47] It requires that the disclosures of the bulb's average initial wattage, average initial lumens, and average laboratory life be made in accordance with requirements of a specific federal purchase specification, and that the disclosures be based upon "generally accepted and approved test methods and procedures."[48] For multiple filament ("three-way") lamps, it requires that wattage and lumen ratings be disclosed for operation at each level, and that life rating be based on the life of the first filament that fails. Because the federal purchase specification cited in the Light Bulb Rule does not cover multiple filament lamps, that Rule allows industry members to substantiate wattage, lumen, and life ratings on tests that are based upon generally accepted and approved test methods. It requires that the specific method used to determine the life rating be disclosed, for example, that the lamp is burned on all three positions equally or that it is based on the life of the major filament (medium light level) of the lamp.[49]

The Light Bulb Rule specifies placement and size of the disclosures on packages.[50] The disclosures must appear on at least two panels of the outer sleeve or container in which bulbs are displayed, and also on all panels of the inner and the outer sleeves which contain any reference to wattage lumens, life, or voltage. In addition, the lumen and life disclosures must appear in immediate conjunction with the wattage rating on each panel in bold or medium faced type that is at least two-fifths (2/5) the height of the wattage rating figures (on the same panel) or three-sixteenths of an inch (3/16") in height, whichever is larger. For multiple filament lamps (three-way bulbs), the lumen and life disclosures must conform to this criteria, except that the type size must be medium faced type that is at least two-fifths (2/5) the height of the wattage rating figures or one-eighth of an inch (1/8") in height, whichever is larger.

The Light Bulb Rule remains effective notwithstanding the lamp product rulemaking initiated by this Notice of Proposed Rulemaking. In making its final decision about labeling rules for lamp products under the EPA 92 amendments to EPCA, the Commission will consider the requirements of the current Light Bulb Rule along with the proposals described in Part III, below, and proposals suggested by interested parties during the rulemaking proceeding. The disclosures proposed in this Notice for the lamp labeling rules would overlap some of those required by the Light Bulb Rule. Accordingly, following the completion of this proceeding, the Commission will decide what, if any, further action it should take concerning the Light Bulb Rule.

III. Proposed Disclosures, Where Disclosures Should Be Made, and Format of Disclosures

A. Information needed by purchasers

In this proceeding the Commission must determine what specific information about general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps) is necessary to enable purchasers to select the most energy efficient lamps which meet their requirements. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). Based on this determination, the Commission must prescribe disclosures that are to appear on packaging. *Id.* In addition, the Commission must determine what disclosures, if any, must be made in point-of-sale materials and catalogs from which these products may be purchased. 42 U.S.C. 6294(c)(4), 6296(a), and 6298 (1988).

EPCA identifies two elements that the disclosures must satisfy. 42 U.S.C. 6294 (a)(2)(C)(1). The first element concerns information the purchaser needs to determine the energy efficiency of each lamp. The second element concerns information the purchaser needs to determine whether a given lamp will meet the purchaser's lighting requirements.

Based on informal discussions between the Commission's staff and

[38] *See Id.*, at 181–183, Fig. 6–8.

[39] *Id.*, at 190.

[40] Rensselaer Report, at 11.

[41] IES Handbook, at 190.

[42] *See* Part IV.F, below.

[43] 35 FR 11784 (July 23, 1970).

[44] The Light Bulb Rule specifically excludes coverage of reflector and other types of light bulbs. 16 CFR 409.1 n. 3 (1993).

[45] 16 CFR 409.1(a) (1993).

[46] 16 CFR 409.1(a)–(b) (1993).

[47] 16 CFR 409.1(c)–(d) (1993). For example, § 409.1(c) restricts representations that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output unless specific factors are taken into account and clearly and conspicuously disclosed. Section 409.1(d) prohibits representations that certain lamps will give more light, maintain brightness longer or furnish longer life without clearly and conspicuously disclosing light output in average initial lumens, laboratory life in average hours, and average initial wattage of the lamps with which the comparison is being made and the lamps being offered for sale.

[48] 16 CFR 409.1 n. 1 (1993).

[49] *Id.*

[50] 16 CFR 409.1 n. 4 (1993).

representatives of industry members and environmental interest groups, as well as the current requirements of the Light Bulb Rule, the Commission preliminarily has identified several types of information that could be important to purchasers in selecting the most energy efficient lamps that meet their needs. These include:[51]

(1) "Lumen rating" or "lumens." This defines the lamp's light output. This information is designed to permit the purchaser to determine whether a given lamp will provide sufficient light to meet the purchaser's requirements and to compare the relative light output of various lamp products. Consumers would generally refer to this as "brightness," although technically that term has a different meaning.

(2) "Wattage" or "watts." This designates the energy used by the lamp. Lamp fixtures frequently are marked to identify the maximum wattage lamp product that safely can be used in the fixture. Therefore, wattage information enables the purchaser to determine whether a given lamp can be used in a given fixture, as well as how much energy the lamp uses.

(3) Design "voltage" or design "volts" (if different than 120 volts). This designates the voltage at which the manufacturer has designed the lamp to operate. The voltage at which a lamp is operated affects both its lumen output and its expected average life, and voltage varies throughout the U.S. Since tests to determine lumen output are conducted at 120 volts, design voltage may be important to a purchaser (particularly a bulk purchaser) in an area where the electric voltage provided is different.

(4) "Lumens per watt." This is a measure of the efficacy or efficiency at which the lamp provides light output per measure of electrical energy input (and indirectly, per unit cost of electricity). This information is designed to enable the purchaser to evaluate the energy efficiency of the lamp, and to compare the efficiencies of competing lamps.

(5) "Life" or "lifetime." This defines the average length of time the lamp can be expected to last in operation. Combined with initial purchase price and energy cost, lifetime information can enable the purchaser to compute the cost of operating the lamp over extended time periods.

(6) The number of lamps in the package. This information enables the purchaser to determine the initial cost per unit.[52]

(7) "Estimated monetary cost of operation." This refers to estimates of how much it will cost to operate the lamp. It may be based on an estimated cost per unit of electricity (such as the representative average unit rate for electricity,[53] or another estimated uniform rate) and a defined period of operating time. Estimated monetary cost of operation can be measured per hour of use, or for a period of time such as 750 hours, one year (based on average or defined usage patterns, for example, 1200 hours per year), or the life of the lamp. This information could allow a purchaser to evaluate and compare competing lamps and to select the lamp with the lowest monetary cost to operate. However, it provides only a partial picture of the total cost of a particular lamp because it does not include the lamp's initial purchase price.

(8) "Initial purchase price." This refers to the price the purchaser originally pays for the lamp. This information, along with energy cost information, would enable the purchaser to compare the total lifetime cost of competing lamps. Initial purchase price varies from one sales outlet to another, and can be offset by rebates offered by local utility companies as incentives to purchase energy efficient lamps (such as compact fluorescent lamps).

(9) "Estimated total lifetime cost." This refers to an estimate that allows purchasers to compare total costs associated with competing lamps over the lamp's total life. It includes the initial purchase price and lifetime energy cost.

(10) "Estimated total operating cost." This refers to an estimate that allows purchasers to compare total costs associated with competing lamps. It includes a prorata share of the initial purchase price (based on the estimated life of the lamp) and the estimated energy cost per hour (based on a specific unit price of electricity, such as the representative average unit cost), or for a defined time period based such as 750 hours, or per year (based on average or defined usage patterns).

Options for incorporating information of this sort into disclosures are discussed below.

B. Proposed Disclosures

During informal meetings with the Commission's staff after EPA 92 was enacted, representatives of various industry members and environmental interest groups have suggested proposed labeling requirements for lamps. Two of the more specific proposals are described in Part III.B.1, below. Based on those two proposals and on the discussion in Parts II.C and D, and III.A, above, the Commission discusses its own proposals in Part III.B.2, below. The Commission requests both written comments and oral testimony during the Public Workshop-Conference described in Part IX.B, below, on these proposals, and on additional proposals that interested parties wish to suggest.

1. Suggestions by Interested Parties

a. *NEMA Proposal.* The National Electrical Manufacturers Association (NEMA), as noted above, is an industry trade group that includes manufacturers of lamp products. NEMA suggested that the Commission adopt a bifurcated set of disclosure requirements, one for general service fluorescent lamps and for incandescent reflector lamps, for which EPCA establishes energy conservation standards, and another for general service incandescent lamps (other than incandescent reflector lamps) and for medium base compact fluorescent lamps, for which no standards are established.

For general service fluorescent lamps and for incandescent reflector lamps, NEMA suggests disclosure only of the encircled capital letter "E," as required for fluorescent lamp ballasts.[54] This would designate that the product meets the established energy conservation standards. In support of this proposal, NEMA states that interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards set by EPA 92 become effective (April 24, 1994, for some lamp products, and October 24, 1995 for other lamp products) will have a range of output of only plus or minus four percent (± 4%).[55] It is unclear, however, why the

[51] For proposed definitions of some of these terms, based on definitions in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993), *see* Part IV.F, below. The listing of these factors is not meant to imply that disclosure of any or all of them would be necessary to meet the statutory requirements set forth in EPCA.

[52] In addition, the Commission's regulations under section 4 of the Fair Packaging and Labeling Act, 15 U.S.C. 1451 et seq., require that packages of consumer commodities, including lamp products, disclose the net quantity of contents within the package separately and accurately on the principal display panel. 16 CFR 500.2(c), .6, .7 (1993). See also 16 CFR 503.2(b) (1993).

[53] The representative average unit cost for electricity (and for other forms of energy) is specified in § 305.9 of the Appliance Labeling Rule. 16 CFR 305.9 (1993). The unit cost figure in the Appliance Labeling Rule is updated yearly, based on figures published by DOE.

[54] *See* Part II.A, above.

[55] NEMA did not provide comparable information for incandescent reflector lamps.

limited range of output for general service fluorescent lamps would obviate the need for any additional information at all, for example, lifetime or lumen output.

NEMA suggests that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the product itself, no smaller than the lamp designation information for wattage. If the Commission cannot require etching on the product, NEMA suggests that the carton containing one or more lamps be marked with the encircled "E," in color contrasting ink and no smaller than the manufacturer's name or logo.

For general service incandescent lamps (other than incandescent reflector lamps) and medium base compact fluorescent lamps, NEMA suggests that "light output" (meaning lumens), watts, life, design volts, and bulb quantity contents be disclosed on at least one panel of the outer sleeve of the package. One or more of these items could also be disclosed on the remaining panels. Under this proposal, lamp life, design volts, and bulb quantity contents would be at least 40 percent of the size of the wattage number, or 8 point type, whichever is greater. Whenever wattage is displayed on a single panel, however, NEMA suggests that the light output would also be displayed, with numbers no less than 50 percent in size of the wattage number. For general service incandescent lamps (other than incandescent reflector lamps), the term "lumens" in small print no less than 8 point type would follow beside or below the numerical value for light output. For medium base compact fluorescent lamps, the term "lumens (base-up)" would be used instead of "lumens."[56]

NEMA also suggests that the labeling rules require an "energy efficiency index" (consisting of the "lumens per watt" and the "yearly energy cost" of operating the lamp) on packages of general service incandescent lamps (other than incandescent reflector lamps) and of medium base compact fluorescent lamps. The label would be a square, at least one inch by one inch, divided in the middle by a horizontal line. The energy efficiency index would appear in the top portion of the square, and the yearly energy cost in the bottom. The letters and numbers would be printed in black (or whatever dark color is used in creating the Universal Product Code symbol). The efficiency index would be rounded to the nearest whole number, and all values would be based on the lamp operating on 120 volts during testing (regardless of the lamp's rated or design wattage). The efficiency index would include the disclosure: "Lumens per watt." The yearly energy cost would include the disclosure: "At 4 hours per day at $.10 per kilowatt-hour." The words "at 120 volts" would be added to each disclosure if the design voltage is other than 120 volts.

Illustration 1, below, contains samples (enlarged) of the energy efficiency labels NEMA recommends for: (1) A 100 watt, soft white, general service incandescent lamp; (2) a 100 watt long life inside frost general service incandescent lamp; and (3) a 26 watt compact fluorescent lamp.

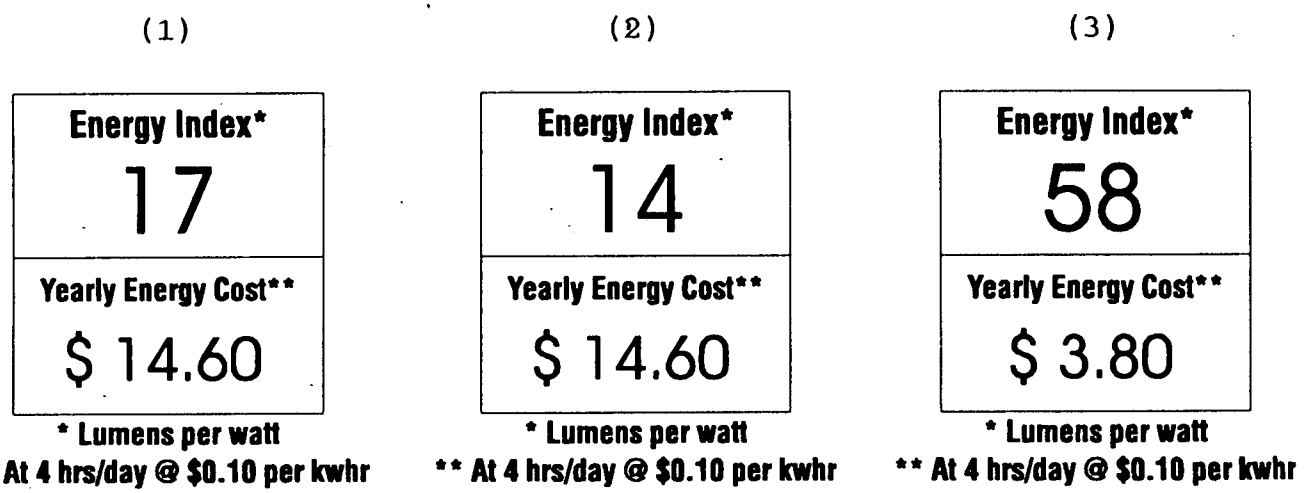

Illustration 1

[56] *See* note 29, above

NEMA further suggests that, if the manufacturer elects to place the energy efficiency label on a panel other than the primary display panel of the package, it should be required to provide an additional "energy flag" on the primary display panel. The energy flag would include only the "energy index" value. The flag would be a right triangle one inch in height and resting on a perpendicular side one and one-half inches in length. The designation "Energy Index" would be printed with the energy index value inside the flag, and a reference to "See package back" would be printed immediately below the flag. The "energy flag" suggested by NEMA is shown in Illustration 2, below.

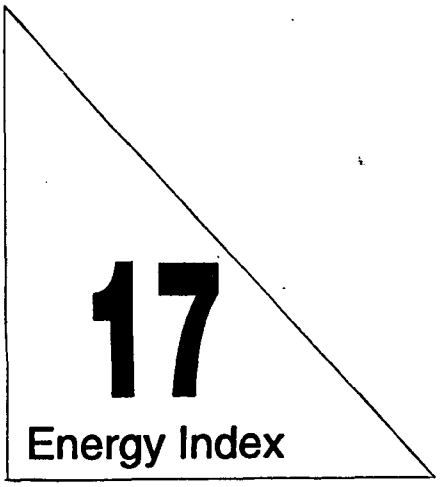

Illustration 2

In addition to these requirements, NEMA suggests that the Commission require that manufacturers of all lamp products subject to the labeling rules include on the outer (packing) cases in which the lamps are shipped a label or pre-printed message stating: "Product herein tested and labeled in compliance with the Energy Policy Act of 1992" or, alternatively, with an approved symbol. NEMA suggests that the advisory statement be integrated with or adjacent to the usual case contents label, be printed in letters of identical contrast to the other letters on the contents label, and be no smaller than 3/16 inches in height.

b. *ACEEE Proposal.* The American Council for an Energy-Efficient Economy ("ACEEE"), is a non-profit, research and advocacy organization that seeks to promote energy efficiency. ACEEE also gave the Commission's staff specific labeling suggestions for the purpose of initiating discussion. It stated that purchase patterns vary for residential and commercial purchasers, and that different labeling approaches probably would be warranted. It pointed out that commercial purchasers generally have a greater technical understanding about lamp products, whereas residential purchasers generally know very little about lighting and need information that is non-technical and easily understood. It also noted that residential purchases generally are made through grocery, hardware, and other retail outlets, where products in boxes or other packaging are selected by the purchaser off the shelf in small quantities. In contrast, commercial purchasers generally order medium to large quantities of lamps from lighting distributors, using information in catalogs and sales brochures as well as information provided orally by sales personnel. These commercial purchases often are shipped in case quantities, and printed packages for individual lamps are rare.

ACEEE suggested two types of information that should appear on labels for residential purchasers: Annual operating cost and relative light output. It suggested that annual operating cost would include both the purchase costs (manufacturer's suggested list price prorated for an assumed annual hours of operation) and annual electricity costs (for average operating hours and electricity costs).[57] To illustrate, it provided the following example: Assuming 1,000 hours per year of operation and $.08 kilowatt per hour unit electricity cost, then a 15 watt compact fluorescent lamp (with a $20 list price and 10,000 hour rated life) will have an annual operating cost of $3.20 ([$20/{10,000 hour life/1,000 hours per year} + [15 watts X 1,000 hours per year/1,000 Wh/kWh X $.08 per kilowatt hour]). In comparison, a standard 60 watt general service incandescent A-lamp (with a one dollar list price and 1,000 hour rated life) would have an annual operating cost of $5.80. ACEEE suggested that use of an annual operating cost metric such as this one would allow purchasers to compare products with different lives and costs.

ACEEE suggested that relative light output should be measured by comparing the lumen output of a product to a reference lamp, with a reference lamp defined for each common type and wattage of lamp. For example, the group suggested that the reference lamp for a 15 watt compact fluorescent lamp probably would be a 60 watt standard incandescent A-lamp. The relative light output of the compact fluorescent lamp might be 88 percent, based on average light output.[58]

ACEEE also stated that a lumens per watt disclosure probably should not be used for residential purchasers. ACEEE maintains that such a disclosure could encourage residential purchasers to buy higher wattage lamps that have higher lumen per watt ratings, when a lower wattage lamp with a lower lumen per watt rating might provide sufficient light for their needs and cost less to operate at the lower wattage. For commercial purchasers, on the other hand, ACEEE suggested that use of a lumens per watt rating probably would be acceptable because display space in catalogs is likely to be very limited and commercial purchasers are more sophisticated.

ACEEE supported disclosure of relevant information on lamp packages and other point-of-sale materials that provide information on particular products, such as fact sheets and special displays for residential sales. For commercial sales, it suggested requiring the information in catalogs and other sales materials that provide information on specific products.

Finally, ACEEE recommended that the Commission specify the label content and size (but did not make specific suggestions). However, it suggested that the Commission allow manufacturers flexibility to develop their own customized designs, consistent with these specifications.

2. Additional Disclosures Under Consideration

a. *Basic disclosures.* Based on the discussion in Part III.A, above, and the proposals suggested by interested parties described in Part III.B.1, above, the Commission proposes requiring, for all general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps), that package labels (including bulk packaging cases of lamp products not otherwise packaged individually or in smaller units for resale) and catalogs from which the lamps may be ordered conspicuously disclose the following information: (1) lumens (whether identified by that term, or another such

[57] ACEEE also suggested that ballast losses should be included in the calculations for fluorescent lamps. Those losses are more appropriately addressed in connection with the test procedures to be required, however, than in connection with the labeling requirements. See Part IV.B. below.

[58] As a preliminary matter, it appears that issues concerning the use of reference lamps in measuring relative light output would be more appropriately addressed in conjunction with specification of test procedures. See Part IV.B., below.

as "brightness" or "light output"); (2) watts; (3) design volts (if different than 120 volts); (4) average life (in hours); (5) number of items in the package, and (6) an efficiency disclosure, further discussed below.[59] In an effort to make the disclosures of lumens, watts and average lifetime more meaningful to consumers, the Commission will consider the usefulness and burden posed by use of a narrative format such as: Provides_____lumens using_____watts for_____hours. For multiple filament ("three-way") general service incandescent lamps, the Commission proposes requiring that lumens, watts, design volts, and an efficiency disclosure be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Finally, the Commission proposes that the following statement ("Explanatory Statement No. 1") appear: "More efficient lamps may have a higher purchase price, but may cost you less overall."

b. *Efficiency disclosures.* In addition to the disclosures in Part III.B.2.a, above, the Commission anticipates requiring disclosure of an efficiency measure. Two alternatives are under primary consideration: a lumens per watt disclosure, or a disclosure of the estimated energy cost of the lamp based on a specified use period.

i. Lumens per watt disclosure.

A lumens per watt disclosure (that is, the "energy index" suggested by NEMA) has the advantage of simplicity. It also, however, suffers from the disadvantage identified by ACEEE. That is, because higher wattage bulbs often produce disproportionately more lumens, they often will have a better energy index although they use more energy. Thus, this disclosure could lead to lumen over-purchasing. This disadvantage possibly could be countered if the Commission required a disclosure such as:

Select the light output you require before comparing the energy index of different bulbs.

ii. Estimated monetary cost of energy disclosure.

Alternatively, the Commission could require a disclosure of the estimated monetary cost of the energy used by the lamp, based on use for a specified usage period. Such a disclosure would be based on the representative average unit cost of electricity, as specified in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9 (1993), or on an assumed unit cost of electricity.

The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy cost of a lamp product. At the same time, the Commission will consider carefully whether such disclosures, particularly when prorated over a period of time that is less than the life of a very energy efficient bulb, reveal sufficiently the extent to which a higher initial bulb cost can be compensated for by lower operating costs over the bulb's life.

If a monetary cost of operation disclosure is adopted, the most likely usage period for which disclosures would be calculated is 750 hours, that is, approximately the life of general service incandescent lamps with the shortest lifetimes). There are a variety of other options. One would be to set a longer period (e.g., 1000 hours). But, where this period exceeds the average life of the lamp, the cost of replacement of the lamp might come into play. Another possibility would be to use a shorter period, such as one hour, 10 hours, or 100 hours. These periods, however, may be too small to illustrate sufficiently energy cost differences among competing lamps. A usage period based on average or estimated usage patterns (e.g., one year) could be used, but there are no established patterns and estimated use will vary depending upon the location of the lamp. Accordingly, these alternatives could unduly complicate the buyer's purchase decision. For multiple filament general service incandescent lamps, the Commission would anticipate requiring disclosure of the estimated energy cost of using the lamp at each operating level for the entire usage period.

If a monetary cost of operation disclosure is adopted, the Commission must determine what electrical cost figure to use. The representative average unit cost of electricity, as specified in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9 (1993), changes as often as annually, and thus could result in consumer confusion if bulbs manufactured in different years were available for sale at the same time. In order to alleviate such confusion, it may be appropriate to require that an explanation of the manner in which the estimated energy cost was determined be disclosed in immediate proximity to the monetary cost estimate disclosure. For that purpose, the Commission is considering the appropriateness of requiring the following explanation ("Explanatory Statement No. 2") on both package labels and in catalogs: "The energy cost for 750 hours was computed based on the [year] representative average unit cost of electricity of $ [amount]." This disclosure would allow purchasers to compare the energy costs of competing products with different lifetimes based on a time line that is within the lifetime of all the competing products and is large enough to illustrate clearly the differences among energy costs and, therefore, of energy efficiencies.

In the alternative, the Commission could require that monetary cost of operation estimates be based upon an assumed unit cost of electricity, such as 10 cents per hour. This figure would be constant, and thus not fully accurate for accounting purposes at all times, but would facilitate bulb-to-bulb comparisons.

Some purchasers may be interested in computing lamp costs in a more comprehensive manner that includes consideration of the initial purchase price and replacement cost. Accordingly, the Commission will also examine methods by which information could be provided to purchasers to enable them to determine the "estimated total operating cost" of the lamp for a standard time period, as described in Part III.A, above.

In an effort to facilitate a consumer's interest in making such a computation, the Commission has considered requiring that the following statement ("Explanatory Statement No. 3") appear on the package label:[60]

Important: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for 750 hours of use is: ([Figure A] X the purchase price for one light) + [Figure B]. Compare this cost to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens.

If such a disclosure is appropriate, similar disclosures could be required for catalogs, on each separate case or carton of lamps sold where the lamps are not packaged individually, and at point of sale. Under this proposal, the manufacturer would determine and preprint Figure A and Figure B in this disclosure.[61] Figure A would be

[59] For definitions of these terms, see Part III.A, above, and Part IV.F, below.

[60] For these and any other disclosures ultimately adopted, the Commission proposes that manufacturers and other sellers be permitted to substitute the word "light" or "light bulb" for "lamp" if the label, catalog, or point-of-sale written material uses those words in referring to lamp products.

[61] For multiple filament general service incandescent lamps, the disclosure would be:

Important: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for use on the low setting (50 watts) for 750 hours of use is: ([Figure

Continued

determined by dividing 750 hours by the life in hours of one lamp to determine the proportion of the light's life that will be consumed in 750 hours of use. By multiplying Figure A by the purchase price for one light,[62] the purchaser could determine the purchase price of the light per 750 hours of use. Figure B is the estimated energy cost to operate one lamp, or light bulb, for 750 hours of use computed based on the unit cost of electricity adopted in this rulemaking, i.e., either the representative average unit cost or an alternative rate. By adding Figure B to the purchase price of the lamp per 750 hours of use, the purchaser could determine the estimated total operating cost of the lamp for 750 hours of use and could compare this cost to the estimated total operating costs the purchaser similarly calculated for other lamp products that provide the same or similar lumens. Examples to illustrate the comparison are contained in the footnotes.[63]

The Commission will consider carefully the extent to which consumers actually would use a disclosure such as "Explanatory Statement No. 3" in making a purchase decision. Consumers wishing to utilize this computation would need to make the calculation for each of the bulbs they were considering purchasing. As a practical matter, it appears that consumers may disregard, or consider too complex, a disclosure which requires them to make computations of this sort may not be useful to consumers in their efforts to choose an energy efficient bulb.

c. *Where disclosures should be made.* Section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993), mandates that the Commission require disclosures by manufacturers "conspicuously on the packaging of the lamp," but does not specifically define the meaning of the term "packaging." Section 326(a) of EPCA, 42 U.S.C. 6296(a) (1988), generally requires that each manufacturer, distributor, retailer, or private labeler of a product covered by the lamp labeling rules who advertises such product in a catalog from which it may be purchased disclose in the catalog all information required to be displayed on the package label, unless the Commission exempts sellers from these requirements or requires different disclosures in catalogs. Section 324(c)(4) of EPCA, 42 U.S.C. 6294(c)(4) (1988), authorizes the Commission to require that any printed matter displayed or distributed at the point of sale include any information the Commission requires to be disclosed on labels. Finally, section 328 of EPCA, 42 U.S.C. 6298 (1988) authorizes the Commission to issue such rules as it deems necessary to carry out the provisions of EPCA.

Residential purchasers normally buy lamp products through retail outlets, such as hardware, home center, and grocery stores. Residential purchasers, therefore, normally have the opportunity to examine lamp product packaging at the point of sale prior to purchase. For packaged products, the proposed disclosures on package labels would provide residential purchasers with the information they need prior to purchase to select the most energy efficient lamps that meet their needs.

Some lamp products, however, are not sold in individual packages. According to industry representatives, for example, general service fluorescent lamps frequently are shipped only in bulk containers, without individual lamp sleeves or packaging, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers.

In addition, some sellers also may promote the sale of lamp products to residential purchasers and commercial purchasers through catalogs from which the products can be ordered. These purchasers will not see the disclosures on the product's packaging until the product is delivered, and may rely primarily (or solely) on information in the catalogs from which the lamps are ordered. For these purchasers, the catalog serves the same informational function as a package does for a retail purchaser.

The Commission proposes, for all types of lamp products covered by this rulemaking proceeding, that the basic information described in Part III.B.2.a, above, as well as the energy efficiency information discussed in Part III.B.2.b., above, be disclosed both on package labels and in catalogs from which lamp products may be purchased. As a preliminary matter, it appears that the purposes of EPCA will best be served by such a requirement.

For products that are distributed for sale to residential purchasers without individual packaging or without packaging other than the bulk shipping case, the Commission proposes two options for consideration. Option One would require that the manufacturer disclose the information proposed in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above, on an adhesive, hang tag, or similar type of label, attached to each unpackaged product. Option Two would require the manufacturer to include with each bulk shipping case statements disclosing the information for the enclosed products described in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above. Option Two would also require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product.

d. *Format of required disclosures.* In determining what disclosure requirements it should include in these proposed labeling rules, the

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A] X the purchase price for one light) + [Figure B]. For use on the medium setting (100 watts) for 750 hours it is ([Figure A] X the purchase price for one light) + [Figure B] . For use on the high setting (150 watts) for 750 hours it is ([Figure A] X the purchase price for one light) + [Figure B] . Compare these costs to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens.

[62] Where more than one lamp is in the package, the purchaser will need to divide the purchase price by the number of units in the package to determine the purchase price per lamp. The proposed explanatory statement does not include a direction about this because it would further complicate the statement, and it is assumed that purchasers will understand that if a package contains four lamps, the purchase price must be divided by four before starting the calculation.

[63] The following are examples to illustrate the comparison. In both examples, the electricity cost used is $0.0825 per kWh (the 1993 representative average unit cost of electricity).

1. Example One is a 60 watt inside frosted general service incandescent lamp (an A-bulb), purchased in a package of four bulbs for $1.00 ($0.25 each). It has an average lumens rating of 850 and an average life of 1,000 hours.

Figure A=750/1,000=0.75 lamps per 750 hours' use.

Figure B=((750 hours × 60 watts)÷1,000) × $0.0825=$3.71 (cost of electricity for 750 hours).

Using the formula above: [0.75 (lamps per 750 hours of use) × $0.25 (cost per lamp)]+$3.71 (cost of electricity for 750 hours)=$3.90 estimated total operating cost for 750 hours. As described above, under this proposal the manufacturer would determine and preprint Figure A and Figure B in this disclosure, so the purchaser would not have to calculate those figures.

2. Example Two is a 17 watt medium base compact fluorescent lamp, purchased for $16.99. It has an average lumens rating of 950 and an average life of 10,000 hours.

Figure A=750/10,000=0.075 lamps per 750 hours' use.

Figure B=((750 hours × 17 watts)=1,000) × $0.0825.=$1.05 (cost of electricity for 750 hours).

Using the formula above: [0.075 (lamps per 750 hours of use) X $16.99] + $1.05 (cost of electricity for 750 hours) = $2.32 estimated total operating cost for 750 hours. As described above, under this proposal the manufacturer would determine and preprint Figure A and Figure B in this disclosure, so the purchaser would not have to calculate those figures.

Note, in both Example One and Example Two, the product of hours times watts in the calculation of Figure B is divided by 1,000 to determine the number of kilowatt hours ("kWh") used to operate the lamp for 750 hours. It is necessary to convert the product to kWh because the representative average unit cost of electricity is defined in terms of cost per kWh.

Commission is concerned that it not require disclosure of so much information that the purchaser will not use the information in making purchase decisions. In addition, the Commission is concerned about requiring that necessary disclosures be made conspicuously so that the purchaser will most likely notice and use the information in making purchase decisions. If the purchaser does not notice or use the information, the labeling rules would not serve the purpose of EPA 92 and EPCA to promote energy conservation.

In considering standards for required disclosures, the Commission could require that disclosures be made through use of a flexible standard that requires "clear and conspicuous" disclosures. Under this "performance" standard, complying firms would be free to design disclosures as they wish in response to market considerations, as long as the disclosures were clear and conspicuous. Alternatively, the Commission could require that the required disclosures comply with a design format specified by the Commission. For example, such a standard might specify the size and location of the respective disclosures on the package labels.

However, to be effective, the Commission believes as a general principle that disclosure requirements should be designed to direct the purchaser's attention to the information that is most important. Information should be organized in a way that it can be easily understood and acted upon.[64] Colors, type size, symbols, and the use of graphics such as boxes and arrows can help consumers locate and read the information that they need.[65] Consistency in the format and type of information disclosed on a label can help purchasers read and understand the label, because they can relate the information to their prior experience with similar labels.[66]

With these basic principles in mind, the Commission does not at this time propose specific formats for the size or location of specific disclosures that might be required as a result of this rulemaking proceeding. The Commission will consider these issues during the proceeding.

Nevertheless, the Commission does believe that information most critical to selection of energy efficient lamps should be made in the most prominent and conspicuous manner. Accordingly, the Commission will consider requiring that those items which it ultimately deems to be most important to purchasers be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.[67]

For sales made through catalogs, the Commission proposes requiring that the information proposed in Part III.B.2.a, above, be conspicuously disclosed each time each different lamp product is listed for sale in the catalog. The Commission proposes requiring that whatever efficiency disclosures are adopted be disclosed in the catalog in the manner described in Part III.B.2.b, above. The Commission will consider specific type size and other format requirements during the rulemaking proceeding.

For lamp products sold without packaging, the Commission proposes requiring that the information proposed in Part III.B.2.a, above (except for the number of items in each package), and an efficiency disclosure as proposed in Part III.B.2.b, above, be disclosed conspicuously on an adhesive, hang tag, or similar type of label attached to the product, as described in Part III.B.2.c, above. As an alternative, the Commission proposes requiring the manufacturer to include with each bulk shipping case statements disclosing the information for the enclosed products described in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above. This alternative would require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product. The Commission will consider specific type size and other format requirements during the rulemaking proceeding.

C. Questions for Comment

The Commission solicits comments on all facets of the disclosures it proposes in Part III.B.2, above, on the proposals made by others, as discussed in Part III.B.1, above, and on alternatives, including comments identifying the costs and other burdens the proposed disclosures would impose. The Commission is particularly interested in receiving comments concerning the issues described below.[68]

1. Disclosures Based on Type of Lamp

Are each of the disclosures proposed by the Commission in Part III.B.2, above, necessary for all types of lamp products to be covered by the proposed labeling rules? If not, what particular disclosures are necessary or appropriate for each type of lamp product?

For example, lumens per watt measures the efficiency of a particular lamp product in converting electric output into lumen output. Energy efficiency information alone, however, may not provide purchasers with the information they need to select the most energy efficient lamps that meet their needs. For general service incandescent lamps, the lumens per watt rating may increase with increased wattage of the lamp. Disclosure of the lumens per watt energy efficiency rating alone, therefore, might promote the purchase of higher wattage general service incandescent lamps (which consume more electricity) than necessary to provide the required light. In addition, the efficiency rating of incandescent reflector lamps may be less than that of other general service incandescent lamps of the same wattage and lumen output. However, incandescent reflector lamps focus the lamps' lumen output, so a lesser-wattage, lower lumen output incandescent reflector lamp may provide the necessary focused light at a lower energy cost. For these reasons, disclosure of lumens per watt, without additional information about its meaning and use, could encourage, or mislead, purchasers to buy higher wattage lamps than they need. Is there a manner in which this can be avoided? Does it suggest that a lumens per watt disclosure should not be made for some or all products?

Other disclosures proposed in Part III.B, above, may not be necessary or appropriate for certain types of lamp products. For example, disclosure of design volts (if different than 120 volts) may be necessary for some types of lamp products, but not for others. What items of proposed information are most

[64] See, e.g., Wesley A. Magat & W. Kip Viscusi, *Informational Approaches to Regulation* 186 (1992); James R. Bettman, John W. Payne & Richard Staelin, *Cognitive Considerations in Designing Effective Labels for Presenting Risk Information*, 5 Journal of Public Policy & Marketing 15 (1986).

[65] See Bettman, et al., note 64, above, at 15.

[66] *Id.* at 11.

[67] For example, the front panel of package labels, or alternatively an adhesive, hang tag, or other type of label on lamp products sold without packaging, could display lumens, an efficiency disclosure, and average life, within a graphic box, whereas wattage information (if it is deemed less important) could be featured on the front panel either in or outside the graphic box. Explanatory Statement No. 2 (which discloses the basis of the estimated monetary cost of operation), if adopted, and the number of bulbs in the package, might also be included on the front panel, although outside the graphic box. Information about design volts or any other required disclosures might appear on the front, back, or a side panel in accordance with marketing considerations.

[68] In addition to raising questions for comment about the proposed disclosure requirements here, the Commission raises additional questions for comment in Part IV, below, concerning other proposed requirements, such as substantiation of required disclosures.

important with regard to each different type or category of lamp product?

For lamp products covered by minimum efficiency standards (specifically, general service fluorescent lamps and incandescent reflector lamps), NEMA suggests that the Commission require only disclosure of the encircled capital letter "E."[69] It is not clear, however, that this symbol would provide either commercial or residential purchasers with necessary information because it indicates only that the product meets minimum efficiency standards. Mere disclosure that a product meets minimum standards may not provide purchasers with information to enable them to choose the most efficient lamps. For example, even a limited range of plus or minus four percent (± 4%) for general service fluorescent lamps that meet the minimum efficiency standards is an overall range of eight percent (8%) between the most and least efficient. Further, lamp manufacturers may now have or could develop technologies to improve the efficiencies of the products, and such technological improvement may be facilitated by specific efficiency or energy usage disclosures. The Commission has observed that products that must bear EnergyGuides disclosing energy ratings have shown improvements in energy efficiency. In addition, without an explanation of the meaning of the "E" symbol in immediate proximity to the symbol, some purchasers might not understand its significance or meaning. Last, disclosure of the "E" symbol alone would not provide purchasers with additional necessary information, such as lumens or lifetime. Given these considerations, is the proposed "E" symbol disclosure sufficient to meet the goals of EPCA?

2. Disclosures Based on Type of Purchaser

Residential and commercial purchasers may need different information about lamp products to enable them "to select the most energy efficient lamps which meet their requirements." Do residential and commercial purchasers need different information, and if so, what specific information does each type of purchaser need? The Commission is particularly interested in any research findings that indicate which items of information on existing lamp packages labels, or in catalogs or point-of-sale written materials, are most important in purchase decisions by residential and commercial purchasers. In addition, residential and commercial purchasers may need to have information provided in different sources, for example on package labels at the point of sale or in catalogs from which the products are ordered. What is the manner in which both residential and commercial purchasers normally purchase these lamps, and upon what sources of the information do they rely in making purchase decisions?

3. Disclosure of Estimated Monetary Cost of Operation

The Commission solicits comments on whether, and according to what assumptions, it should require disclosure of the estimated monetary cost of operation for lamp products, as proposed in Part III.B.2.b, above.

For example, disclosure of estimated monetary cost of operation, in addition to information such as lumen output and estimated life, could give purchasers information they need to enable them to select lamp products that will meet their lighting needs and cost the least to operate, as discussed in Part III.B.2.b, above. Should the Commission require disclosure of estimated monetary cost of operation?

If the Commission requires disclosure of estimated monetary cost of operation, on what electricity unit cost and on what usage period (*e.g.*, for 750 hours of use, or for a period such as one-year's estimated use) should the disclosure be based? For example, should the representative average unit cost of electricity that DOE publishes each year, and that the Commission adopts each year in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9, be used in the calculation, and if so, should the Commission require labels to be revised when DOE revises the unit cost annually? Alternatively, should a fixed unit cost, such as ten cents per kilowatt hour ("kWh"), or another figure, be used? If the disclosure was based on an estimated period of time, such as yearly, how many hours should constitute the estimated annual use? One proposal, for example, is based on an estimated annual use of approximately four hours per day operating time (1,460 hours per year). What data exists for selecting that or any other particular estimated or average usage pattern? In addition, even if 1,460 hours was an appropriate estimate of use per year, many general service incandescent lamps have estimated life hours less than that total amount (*e.g.*, 750 hours). Accordingly, without a disclosure that more than one lamp would be required for the estimated year's use, would purchasers understand that the estimated energy cost disclosed requires use of more than one lamp?

For multiple filament general service incandescent lamps, should the Commission require disclosure of the estimated energy cost of using the lamp for the entire usage period at each operating level? If not, on what usage period at each level should the disclosures be based? What additional disclosures, if any, should the Commission require to explain how the estimated energy cost figure, or figures, was determined?

4. Disclosure of Estimated Total Operating Cost

"Explanatory Statement No. 3" discussed in Part III.B.2.b.ii., above, would be intended to enable consumers to calculate total operating cost, which includes initial purchase cost plus estimated monetary cost of operating the lamp for a specific period of time. Although such a calculation could enable a consumer to select the most energy efficient lamp that met his or her requirements, it appears that consumers may not be likely to use such a disclosure in making purchase decisions because of the complexity of the calculation required. Accordingly, should the Commission require disclosure of estimated total operating cost information? As an alternative to Explanatory Statement No. 3, should the Commission require labeling or other disclosures that instruct purchasers how they can calculate the estimated total operating cost based on the actual initial purchase price? The Commission would be interested in suggestions for any alternative disclosures that would enable consumers to compare the total operating cost of various lamps.

If a commenter believes that Explanatory Statement No. 3 is appropriate, the Commission is interested in information regarding the likelihood that the disclosure would be utilized by consumers and regarding the specifics of the disclosure. What evidence suggests that consumers would utilize this disclosure in making purchase decisions? The initial purchase price may not be information that the manufacturer could easily or accurately include in such a disclosure on a product label, given that prices vary between sellers and may be effected by discounts and rebates. Accordingly, how should the estimated initial purchase price be determined? On what estimated unit cost of electricity should the disclosure be based, on what usage period should it be based, and what, if any, additional disclosures should be required to inform the purchaser about the assumptions on

[69] *See* Part III.B.1.a, above.

which the disclosure is based? For multiple filament general service incandescent lamps, should the Commission require disclosure of the estimated total operating cost for the entire usage period at each operating level? If not, on what usage period at each level should the disclosures be based? What additional disclosures, if any, should the Commission require to explain how the estimated total operating cost figure, or figures, was determined for multiple filament lamps?

5. Where Disclosures Should Be Made

The Commission seeks to design the disclosure requirements so that necessary information about the different lamp products is provided effectively and efficiently to both residential and commercial purchasers. Some lamp products may not normally be sold in individual packages, or in packages other than bulk shipping cases. Should the Commission require that manufacturers attach to each unpackaged product an adhesive, hang tag, or similar label, even if the label must be very large to include all of the required disclosures in a conspicuous manner? Would requiring disclosures on labels in these circumstances impose unnecessary costs and other burdens? In addition, because commercial purchasers may make their purchase decisions primarily based on information in catalogs, do they need these disclosures on individual lamp product packages?

In order to design the disclosure requirements in the most effective and least costly manner, the Commission solicits comments about whether it should require disclosures on package labels or on other types of labels, in catalogs, or in point-of-sale written materials to best provide residential and commercial purchasers with the information they need to select the most energy efficient lamps that meet their needs. For example, should the Commission require that specific information be disclosed on package labels for residential purchasers, but only in catalogs for commercial purchasers? Should the Commission require that catalogs from which residential purchasers can order lamps also include specific disclosures?

To develop a more complete understanding of current industry practices, the Commission requests comments describing the types of packaging (including the number of lamps per package) in which specific types of lamps currently are distributed for sale both to residential and to commercial purchasers. What alternative types of labels could be used on currently unpackaged lamp products? For products that normally are not individually packaged (such as general service fluorescent lamps), should the Commission require that individual lamps contain disclosures on adhesive labels, hang tag labels, or some other kind of label? For example, would it be feasible for manufacturers to etch part or all of the required information on the lamp product itself? Or, should the Commission instead require that, for unpackaged lamp products, retailers make specific disclosures in point-of-sale written materials?

Do retailers currently post any information about unpackaged lamp products at the point of sale? If so, what does that information contain, and how and where is the information posted? What other types of information, if any, is posted by retail sellers at the point of sale for either packaged or unpackaged lamps? What difficulties would retail sellers have if the Commission required that they post specific information provided by lamp manufacturers for unpackaged lamp products they sell?

6. Format of Required Disclosures

The Commission requests comments on any factors that may affect the ability of consumers to read, understand, and act upon information proposed to be disclosed on lamp packaging. The Commission also requests comments about where on labels or in catalogs specific information should appear, on the type size in which the information should be disclosed, and on the manner in which information could most effectively be presented (for example, through use of boxed disclosures, graphics, or symbols). With regard to usefulness, how well do consumers understand that lumens are an indication of a lamp's brightness? Would consumers be better informed if lumens were defined on the package label as "brightness (lumens)"? Given the need to design an effective label, which disclosures, in order of priority, are most important? Should proposed package label disclosures of lumens, estimated energy cost, and average life, be featured more prominently than watts, and, if so, how could this be accomplished? If particular disclosures are more important than others, why? Do these priorities differ for various types of lamps covered by this rulemaking or for different types of purchasers?

7. Costs and Other Burdens of Proposed Disclosures

The Commission solicits comments concerning the specific costs and other burdens for manufacturers and other sellers of lamp products, beyond those already incurred in the ordinary course of business, that would be imposed by each of the Commission's proposals, as described in Part III.B.2, above, and by the proposals suggested by other parties, as described in Part III.B.1, above, as well as for any alternatives suggested by the commenter. How could the Commission design the disclosure requirements, including placement and format of the disclosures, for labeling, catalogs and point-of-sale written materials to minimize costs and burdens, while ensuring that purchasers are provided with the information necessary for them to select the most energy efficient lamps that meet their requirements?

IV. Proposed Requirements for Manufacturers and Other Sellers of Lamp Products

The discussion in this part of the Notice summarizes the requirements that the Commission proposes to require in the lamp labeling rules for manufacturers and other sellers of general service fluorescent lamps, medium-base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps). In some instances the Commission will have to amend specific sections of the Appliance Labeling Rule to impose these requirements. In other instances, the requirements would automatically apply to the lamp products the Commission adds to the Rule, unless the Commission specifically excludes them from those requirements. To facilitate comments, the discussion below sets forth the requirements the Commission proposes to apply to manufacturers and other sellers of these lamp products, whether or not the Commission will have to amend specific provisions of the Rule to do so. In addition, § 305.4 of the current Rule, 16 CFR 305.4 (1993), specifies prohibited acts and the penalties for various violations of the Rule. Although the prohibitions and penalties specified in § 305.4 are not discussed below, the Commission proposes to apply them automatically to lamp products that the Commission includes in the Rule. The Commission solicits comments on all proposals discussed below, including alternatives to the proposals.

A. Disclosures Required in Labels, Catalogs, and Point-of-Sale Written Materials

The disclosure proposals are the core of this proceeding and of the labeling rules that section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp.

1993), directs the Commission to prescribe. Part III.B.2, above, discusses in detail disclosures the Commission proposes to require for lamp products on labels, catalogs, and point-of-sale written materials, and Part III.B.1, above, discusses proposals made by interested parties. Part III.C, above, raises specific questions for comment concerning the various disclosure proposals.

B. Substantiation and Sampling Requirements

The Commission proposes to require that manufacturers follow specific procedures to substantiate all disclosures they must make on labels, catalogs and point-of-sale written materials, and that they comply with specific sampling procedures in conducting the required substantiation testing. The substantiation and sampling procedure requirements are connected. The substantiation requirement is directed at ensuring that the disclosures are accurate and based on uniform standards. The sampling procedure requirement is directed at ensuring that the samples tested are representative of the product being produced.

The Commission solicits comments identifying existing testing and sampling procedures (including the specific versions of those procedures) that manufacturers could use to substantiate each of the disclosures proposed in Part III.B, above. For example, both the International Electrical Society ("IES") and the American National Standards Institute ("ANSI") have test procedures to measure most, if not all, the items the Commission proposes to require. Which IES and ANSI procedures could be used to substantiate each of the proposed disclosures? Are there any additional private or government test procedures or standards that could be used to substantiate each of the proposed disclosures? Are there any private or government sampling procedures that could be used in connection with those test procedures? The Commission requests commenters to identify all procedures or standards they suggest by number, title and version, as well as the part of the standard that can be used to measure each specific item the Commission proposes to require be disclosed.

Section 323(b)(6) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293(b)(6) (West Supp. 1993), requires DOE to issue test procedures for general service fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable IES or ANSI standards. When DOE issues testing and sampling procedures for those lamp products, or for any additional lamp products, the Commission will consider whether to adopt the DOE procedures as the required substantiation under the labeling rules.

C. Recordkeeping and Submission of Data Requirements

The Commission proposes to require that manufacturers of all lamp products covered by the labeling rules maintain records to substantiate each of the items the Commission determines should be disclosed, and to require them to submit those records to the Commission within 30 days of a request. These proposed requirements are necessary to enable the Commission to determine whether required disclosures are substantiated and accurate.

D. Reporting Requirements

Section 326(b)(4) of EPCA, 42 U.S.C.A. 6296(b) (West Supp. 1993), requires manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293 (West Supp. 1993), to supply the Commission annually with relevant information respecting energy consumption. DOE has not yet issued test procedures for any of these lamp products. The Commission, however, proposes requiring that lamp manufacturers submit annual reports on or before May 1 each year. This requirement would not become effective until after DOE issues test procedures for specific lamp products. The Commission would publish a notice at a later date, after DOE has issued test procedures, announcing when the initial reports would be due.

The Commission proposes requiring that each report contain the following information: (1) Name and address of manufacturer; (2) All trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) energy consumption data measured according to the DOE test procedure. This information is currently required for other categories of products covered by the Appliance Labeling Rule. The Commission has accepted trade association directories and similar submissions in lieu of individual annual reports for other product categories. To minimize the burdens imposed by this proposed reporting requirement, the Commission proposes accepting similar submissions by lamp manufacturers to comply with these reporting requirements.

E. Required Testing by Designated Laboratories

The Commission proposes requiring that manufacturers, upon request by the Commission, submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. Under this proposal, any charge levied by the laboratory for testing, however, would be paid for by the Commission. Section 305.16 of the Appliance Labeling Rule, 16 CFR 305.16 (1993), based on section 326(b)(3) of EPCA, 42 U.S.C. 6296(b)(3) (1988), currently applies this requirement to other products regulated Rule. This proposed requirement is necessary to enable the Commission to determine whether required disclosures are accurate.

F. Other Matters

Section 305.1 of the current Rule, 16 CFR 305.1 (1993), summarizes the coverage of the Rule. The Commission proposes amending § 305.1 to include a description of the disclosures proposed for labels, catalogs and point-of-sale written materials, as discussed in Part III.B, above.

Section 305.2 of the current Rule, 16 CFR 305.2 (1993), contains definitions of specific terms used in EPCA and the Rule. The Commission proposes amending this section to include definitions for the following terms relating to lamp products:[70]

(1) The term *average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(2) The term *base* means the portion of the lamp which connects with the socket as described in ANSI C81.61–1990.

(3) The term *bulb shape* means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1–1980 (R1984).

(4) The term *color rendering index* or *CRI* means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(5) The term *correlated color temperature* means the absolute temperature of a blackbody whose

[70] These terms are based on definitions of these terms in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993).

chromaticity most nearly resembles that of the light source.

(6) The term *IES* means the Illuminating Engineering Society of North America.

(7) The term *lamp efficacy* means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(8) The term *lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(9) The term *lamp wattage* means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(10) The terms *life* and *lifetime* mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(11) The term *lumen output* means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

Section 305.2 (n) and (o) of the current Rule, 16 CFR 305.2 (1993), includes definitions of the terms *consumer appliance product* and *covered product*, respectively. The Commission proposes amending the definitions of those terms as follows:

(1) *Consumer appliance product* and *consumer product* mean any *consumer product*, as defined in section 321(1) of the Act (42 U.S.C. 6291(1)).

(2) *Covered product* means any consumer appliance product or consumer product defined in § 305.3 of the rule.

Section 305.3 of the current Rule, 16 CFR 305.3 (1993), describes the categories of products covered by EPCA and the Rule. The Commission proposes to amend this section to add descriptions of general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (and related terms):[71]

(1) Except as provided in item (5), below, the term *fluorescent lamp* means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light, including only the following: (i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more; (ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more; (iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements; (iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

(2) The term *general service fluorescent lamp* means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications: (i) Fluorescent lamps designed to promote plant growth; (ii) Fluorescent lamps specifically designed for cold temperature installations; (iii) Colored fluorescent lamps; (iv) Impact-resistant fluorescent lamps; (v) Reflectorized or aperture lamps; (vi) Fluorescent lamps designed for use in reprographic equipment; (vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (viii) Lamps with a color rendering index of 82 or greater.

(3) Except as provided in item (5), below, the term *incandescent lamp* means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following: (i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp; (ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or (II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts; (iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(4) The term *general service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for: (i) Traffic signal, or street lighting service; (ii) airway, airport, aircraft, or other aviation service; (iii) marine or marine signal service; (iv) photo, projection, sound reproduction, or film viewer service; (v) stage, studio, or television service; (vi) mill, saw mill, or other industrial process service; (vii) mine service; (viii) headlight, locomotive, street railway, or other transportation service; (ix) heating service; (x) code beacon, marine signal, lighthouse, reprographic, or other communication service; (xi) medical or dental service; (xii) microscope, map, microfilm, or other specialized equipment service; (xiii) swimming pool or other underwater service; (xiv) decorative or showcase service; (xv) producing colored light; (xvi) shatter resistance which has an external protective coating; or (xvii) appliance service.

(5) The terms *fluorescent lamp* and *incandescent lamp* do not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(6) The term *incandescent reflector lamp* means a lamp described in item 3(ii), above.

(7) The term *tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(8) The term *medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

[71] These descriptions are based on the definitions of the terms in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(3) (West Supp. 1993).

V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping or reporting requirements), to obtain approval from the Office of Management and Budget ("OMB"). 44 U.S.C. 3502. The Commission proposes requiring that manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, 42 U.S.C. 6293, submit annual reports to the Commission. The Commission proposes requiring that the reports include relevant data about energy consumption of the lamps in accordance with the DOE test procedures. The Commission also proposes requiring that manufacturers of all lamp products to be covered by the lamp labeling rules maintain records that substantiate the required disclosures they must make on labels, catalogs, and point-of-sale written materials.

These requirements are "collections of information" as defined by 5 CFR 1320.7(c) (1993), the OMB regulations implementing PRA. They have therefore been submitted to OMB for review under the PRA. These provisions, described more fully in Parts IV.C and IV.D, above, implement the requirements of EPA 92 that manufacturers retain test records and submit energy usage data to the Commission annually.

The Commission currently has clearance for 1,000 burden hours under the Appliance Labeling Rule. OMB Control No. 3084–0068. The Commission is requesting that OMB approve the requirements for recordkeeping and reporting that the Commission proposes to require for lamp products and extend the current clearance. The supporting statement accompanying that request recommends that the current burden estimate of 1,000 hours be continued. Staff estimates that no more than 700 hours have been expended for existing collections. Approximately 50 manufacturers would be affected by the proposed amendments to the Rule and the Commission's staff estimates that it would take each company fewer than five hours to comply with the requirements, for a maximum of 250 hours. Thus, the total number of hours is well within the existing clearance of 1,000 hours (700 + 250 = 950) and the Commission proposes to retain the existing burden clearance. The Commission, however, is also seeking public comment on the paperwork burden that the proposed amendments may impose to ensure that no additional burden has been overlooked.

VI. Regulatory Flexibility Act

This Notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C.A. 603–604 (West Supp. 1993), because the Commission believes that the amendments, if promulgated, would not have "a significant economic impact on a substantial number of small entities," 5 U.S.C.A. 605 (West Supp. 1993). The proposed amendments require these companies to: (1) Disclose specific information in labels, catalogs and point-of-sale written materials; (2) submit annual reports to the Commission for some products; and (3) substantiate the required disclosures and maintain records of that substantiating data. The Commission believes that the impact of these requirements on all entities within the affected industry would be *de minimis*. Further, any economic costs imposed on small entities are primarily statutorily imposed, and the proposed regulations, will impose few, if any independent additional costs. The Commission estimates that fewer than 50 U.S. companies manufacture lamp products that the Commission proposes to cover in the labeling rules. According to industry representatives, all but three of those manufacturers are believed to be "small entities" as that term is defined in RFA, 5 U.S.C.A. 601 (West Supp. 1993), and in the regulations of the Small Business Administration, 13 CFR part 121 (1993). While the proposed rules will apply to these "small entities," the impact of the proposed rules on them would be minimal.

In light of the above, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C.A. 605 (West Supp. 1993), that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Regulatory Review

The Commission has implemented a program for regulatory review of all the Commission's current and proposed rules and guides. One of the purposes of the review is to minimize the economic impact of new regulatory actions. As part of that review, the Commission requests comments on the impact of the proposed requirements for manufacturers and other sellers of lamp products. The Commission is not now requesting comments about the costs and benefits of the requirements of the Appliance Labeling Rule for products other than the lamp products that are the subject of this rulemaking proceeding.

To maximize the benefits and minimize the costs imposed by the proposed rule, the Commission solicits comments on the following questions:

(1) What would be the economic impact and regulatory impact of the proposed requirements?

(2) What paperwork requirements would the proposed requirements impose?

(3) What are the costs and benefits of the proposed rules?

(4) What is the regulatory and economic impact of the proposed rules?

(5) What burdens would be placed on entities required to comply with these requirements?

(6) What possible regulatory alternatives are there that would reduce the economic impact of the proposed requirements, yet fully implement the regulatory mandate of the EPA 92 amendments to EPCA?

VIII. Metric Conversion Act

Section 205b of the Metric Conversion Act, 15 U.S.C. 205b, states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires federal agencies to use the metric system of measurement in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

It is the Commission's opinion that the units of measurement the Commission proposes to require in the labeling rules for lamp products comply with the requirements of the Metric Conversion Act. First, lumens, watts and volts are metric units.[72] Thus, if the Commission requires disclosure of this information in the final labeling rules, the disclosure requirements will comply with the Metric Conversion Act.

Second, the metric terms (lumens, watts and volts) that the Commission

[72] *See* "The International System of Units (SI)," National Institute of Standards and Technology ("NIST") Special Publication 330, U.S. Department of Commerce, Aug. 1991; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, Sept. 1991; and "Preferred Metric Units for General Use by the Federal Government," Federal Standard 376B (Preprint Copy), General Services Administration, Jan. 27, 1993.

proposes to require be disclosed for lamp products should already be familiar to consumers. Since 1970, the Commission's Light Bulb Rule, 16 CFR part 409 (1993), among other things, has required the clear and conspicuous disclosure on the lamps or on their packages of the light output in lumens, the power consumption in watts, and the design voltage in volts.[73] Thus, for more than twenty years consumers have been exposed to these metric units of measurement each time they purchased incandescent lamps.

For these reasons, the Commission is of the view that the use of the metric terms lumens, watts and volts would not be "impractical" as that term is used in the Metric Conversion Act. Based on information currently available to it, the Commission believes that the use of these metric units of measurement for energy efficiency disclosures in the proposed labeling rules for lamp products comply with the requirements of the Metric Conversion Act. However, to ensure that the Commission is aware of all the relevant facts before making a final determination, the Commission seeks comments from the public on this issue concerning the terms lumens, watts and volts, and all other disclosures the Commission has proposed in Part III, above, and on any additional suggestions proposed by interested parties during the rulemaking proceeding.

IX. Information for Interested Persons

A. Invitation To Comment

Interested persons, including those who wish to participate in the Public Workshop-Conference referred to in Part IX.B, below,[74] are requested to submit written comments on any issue of fact, law or policy that may have bearing upon the proposed rules. Comments are due by December 30, 1993, ("comment due date"). Although the Commission welcomes comments on any aspect of the proposed rules, the Commission is particularly interested in comments on questions and issues raised in this Notice concerning the proposed disclosures, whether they should be required to be disclosed on package labels, in catalogs from which lamp products may be ordered, and in point-of-sale written materials, and the manner in which disclosures should be made. All written comments should state clearly the question or issue, or the specific proposed requirement, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed rules or any individual proposal should, if possible, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better serve the statutory standard for the proposed rules, as described in Part III.A, above. Comments should be supported by a full discussion of all the relevant facts and/or be based on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting final rules, the Commission will consider all written comments timely submitted to the Secretary of the Commission and those made on the record at the Public Workshop-Conference. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580.

B. Public Workshop-Conference

The Commission's staff will conduct a Public Workshop-Conference to afford Commission staff and interested parties an opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. Persons interested in participating in the Public Workshop Conference must notify the Commission staff by December 15, 1993 (the "Public Workshop notification due date") as directed under the heading **ADDRESSES**, above. The Public-Workshop-Conference will focus primarily on the information that is "necessary to enable purchasers to select the most energy efficient lamps which meet their requirements" (as discussed in Parts III.A and III.B, above), where these disclosures should be made (as discussed in Part III.B, above), and on the manner and layout for making those disclosures (as discussed in Parts III.B and III.C, above). Participants will also be afforded an opportunity to address additional issues that are raised by the rulemaking proceeding.

The conference is not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. The Commission will consider the views and suggestions made during the conference, in addition to any written comments, in formulating its final decisions on the proposed labeling rules.

If the number of parties who request to participate in the Public Workshop-Conference is so large that it would inhibit effective discussion among the participants, then Commission staff will select as the participants a limited number of parties to represent the interests of those who submit written comments. The selections will be made on the basis of the following criteria:

1. The party submits a written comment by the comment due date.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest by the Public Workshop notification date.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the rulemaking proceeding.
5. The party has expertise in issues raised in the proposed rules.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

Commenters may, if they wish, designate a specific party to represent their shared group interests in the Public Workshop-Conference.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

[73] *See* Parts I and II.E, above.

[74] As explained in Part IX.B, below, interested parties must file written comments to participate in the Public Workshop-Conference.

If any person cannot complete the presentation of his or her statements in the allotted time, that person will be allowed, within twenty-four (24) hours thereafter, to file a written statement covering those relevant matters that he or she did not present orally. Except for written statements submitted under these circumstances, written submissions will not be accepted after the comment due date.

A neutral, third-party facilitator will be retained for the Public Workshop-Conference. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, NW., Washington, DC, on January 19, 1994. Prior to the conference, the participants will be provided with copies of the written comments received in response to this Notice. The discussion during the Public Workshop-Conference will be transcribed and the transcription will be placed on the public record.

C. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission. Such motions or petitions will be transmitted to a Presiding Officer. The Presiding Officer will be responsible for the orderly conduct of the proceeding and shall have all powers necessary to that end, including the authority to rule on all motions or petitions.

Applications for review of rulings by a Presiding Officer will not be entertained by the Commission prior to its review of the entire record in the rulemaking proceeding, unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

D. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's rules of practice, 16 CFR 1.18(c) (1993), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Appliance Labeling Rule (Lamp Products)

(File No. R611004)

Although I concur in the Commission's determination to publish a Notice of Proposed Rulemaking in accordance with the statutory directive, I am concerned about the totality of the burden resulting from some of the proposals outlined in the Notice. I am hopeful that public comment will include suggestions on how the Commission can achieve the important goals of the statute, without requiring unnecessarily burdensome disclosures that may be too complex to be entirely useful to consumers.

[FR Doc. 93-27860 Filed 11-12-93; 8:45 am]

BILLING CODE 6750-01-P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105, 1121 and 1152

[Ex Parte No. 511]

Petition for Rulemaking; Protection of Surveying Benchmarks in Railroad Abandonments

AGENCY: Interstate Commerce Commission.

ACTION: Petition for rulemaking; extension of comment due date.

SUMMARY: By decision served October 1, 1993 (58 FR 51800, October 5, 1993), the Commission requested comments by November 19, 1993, on a rulemaking petition to consider the protection of surveying benchmarks, monumentation, and mapping information that may be affected by Commission action in railroad abandonment proceedings.

By letter filed October 28, 1993, American Congress on Surveying and Mapping (Petitioner) requests a 30-day extension to December 20, 1993, to file comments. Petitioner states additional time is needed to: (1) Meet and exchange information with various State congresses and associations on surveying and mapping to present a comprehensive picture of the problems underlying the petition; and (2) enable counsel to propose regulations or other action that would help alleviate those problems. The request is reasonable and will be granted.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 511 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ronald M. Smullian, (202) 927-5292 or Richard B. Felder (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

Decided: November 10, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-27974 Filed 11-12-93; 8:45 am]

BILLING CODE 7035-01-P

Notices

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

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

Farmers Home Administration

Availability of Housing Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of housing funds for Fiscal Year 1994 (FY 94). This action is taken due to legislation which requires that FmHA publish in the **Federal Register** notice of the availability of any housing assistance. The intended effect is to comply with Public Law 101–235 and make the public aware of housing funds available through FmHA.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos.:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants

Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." The following guidance has been provided to FmHA State offices on FY 94 appropriations and access to funds. Administrative guidance, such as forms, computer inputs and codes, etc., have been removed for the readers convenience. The guidance references the Rural Housing Targeting Set Aside (RHTSA) contained in exhibit C to subpart L of part 1940 of this chapter. The FY 94 list of designated counties under RHTSA is not available at this time. A separate Notice will be published in the **Federal Register** when this list is available. We expect to publish this Notice by January 1, 1994. Until such Notice is published, funds available under RHTSA in FY 94 are not available, except in colonias as defined in exhibit C. The guidance provided to our State Offices is separated between assistance available in our Multi and Single Family Housing Programs as follows:

Multi-Family Housing (MFH)

I. General

A. This provides MFH allocations available to individual States for Fiscal Year 1994 (FY 94). Allocation computations have been performed in accordance with §§ 1940.575, 1940.576, and 1940.578 of subpart L of part 1940 of this chapter. The transition formula is not used.

B. State Directors are encouraged to notify nonprofit and public housing agencies of the availability of MFH loan and grant funds.

C. MFH loan and grant levels for FY 94 are as follows:

Section 514 Farm Labor Housing (FLH) loans	$16,300,000
Section 515 Rural Rental Housing (RRH) loans	540,107,000
Section 516 FLH grants (Unobligated prior year balances and/or cancellations of prior years will be added to the amount shown)	11,000,000
Supplemental appropriations FYs 1993 and 1994 Sections 516 FLH Grants and Rental Assistance (RA)	32,500,000
Section 521 RA:	
RRH new construction	116,500,000
FLH new construction	4,000,000
Section 533 Housing Preservation Grants (HPG)	23,000,000
Section 542 Rural Rental Housing Voucher Program (RHVP)	25,000,000

D. MFH loan types not allocated to States are:

1. *Section 514 FLH Loans.* These loans are funded in accordance with § 1940.579 (a) of subpart L of part 1940 of this chapter. Five percent of FY 94 FLH appropriation has been set aside under the Rural Housing Targeting Set Aside (RHTSA) for those counties designated as underserved in accordance with exhibit C of subpart L of part 1940 of this chapter. Loans within the State Director's approval authority may be obligated on a first-come-first-served basis. Proposals that include FLH grant requests or for loan amounts in excess of the State Director's approval authority are to be submitted to the Director, Multi-Family Housing Processing Division (MFHPD).

2. *Section 516 FLH Grants.* These grants are funded in accordance with § 1940.579(b) of subpart L of part 1940 of this chapter.

FY 94 appropriation	$11,000,000
Reserve for migrant farmworkers and the rural homeless	2,000,000
Available for FLH grants and technical assistance (TA) contracts	9,000,000

3. *Section 515 FLH Grants for Migrant Farmworkers and the Rural Homeless.* Funds are administratively reserved until June 30, 1994, for applicants for proposed housing under existing regulations to serve the dual population of migrant farmworkers and the homeless.

State Directors and District Directors are encouraged to promote the concept of dual purpose housing in partnership with State or local nonprofit community service agencies in agricultural market areas for migrant farmworkers and homeless individuals and their families. Project demand must be based primarily on the need for migrant farmworker housing and feasibility can be based on 90 percent grant and 100 percent RA. Proposals and discussions for this dual use housing should consider very basic yet durable structures that can be either built new or purchased and rehabilitated. All proposals should be considered and further information may be obtained by contacting the MFHPD, Special Authorities Branch (SAB).

4. *Section 516 Grants for Technical Assistance (TA) Contracts.* The funding availability for TA Contracts is based on the grant appropriation. TA is available for the development of labor housing exclusively for farmworkers and may also be used in those unique agricultural markets where there is a homeless population. More information may be obtained by contacting the MFHPD, SAB. The Agency has solicited for contract proposals for FY 94 TA contracts to begin January 1994.

5. *Rental Assistance for FLH—New Construction.* This RA is held in a National Office reserve for use with concurrent loan and grant applications in accordance with Paragraph II B 6 b (ii) B of the MFH section of this notice.

6. *Section 516 FLH Grants Under Supplemental Appropriation for Disaster Assistance.* a. A supplemental appropriation of Section 516 FLH grant funds is available to assist nonprofit and public bodies with cost of providing permanent replacement of temporary migrant housing and trailers along with RA under "Rural Housing For Domestic Farm Labor." To be eligible, the housing must address migrant and year-round farmworker needs in the Florida area that was impacted by a Presidentially declared natural disaster.

b. All funds will be retained in the National Office reserve and States may obligate against that reserve upon authorization from the National Office; RA and FLH loan funds will be made available from the MFHPD, SAB.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in subpart L of part 1940 of this chapter. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the National level, some States will not have access to their full distribution for the remainder of the quarter.

A. Section 515 RRH Funds

1. Amount available for allocation

Total available	$540,107,000
Less 17 percent reserve	91,818,000
Less base allocation	11,859,000
Less administrative allocation	5,500,000
Basic formula amount	430,930,000

2. *Base Allocation.* The base allocation is an amount above the computed formula amount sufficient for each State to fund three 24-unit projects, based upon Fiscal Year 1993 (FY 93) loan activity. Regions that receive administrative allocations do not receive base allocations.

3. *Administrative Allocation.* The regions of the Western Pacific Areas and Virgin Islands are allocated $2,750,000 each which is the equivalent of three 24-unit projects, based upon FY 93 loan activity.

4. *Nonprofit Set-Aside (NPSA).* Nine percent of each States' FY 94 allocation has been set aside in the National Office for certain nonprofit applicants. These funds have been deducted from the State distributions. See exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

5. *RHTSA.* Five percent of FY 94 RRH appropriation has been set aside for those counties designated as underserved. These funds will come from the National Office reserve. See exhibit C of subpart L of part 1940 of this chapter for further information on RHTSA.

6. *Reserves.* a. *State Office Reserve:* In States which allocate funds to Districts, § 1940.552(j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be available only for patch-outs, subsequent loans for repairs, transfers and cost overruns, leveraging under RHTSA and NPSA, hardships or emergency situations. The State Director will maintain records on how State Office reserves were utilized, including a justification for each disbursement.

b. *National Office Reserve.* The reserve is 17 percent of the total funds available and is broken down as follows:

(i) *General Reserve.* $22,813,000 in general reserve funds have been set aside. Since access to general reserve funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Form AD–622s, "Notice of Preapplication Review Action," up to 150 percent of their net allocation. After June 1, 1994, further guidance will be published administratively as to the availability of funds and how State Directors may access any remaining general reserve funds. Until June 1, 1994, State Directors can request these funds for the following purposes:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to consider the request.

(B) *Patch-outs.* A patch-out, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its net allocation.

(C) *Subsequent loans for repairs to an existing borrower where a transfer is not involved.* The request must include a discussion of why project reserves are insufficient to pay for the repairs, eligibility of the applicant, and steps taken to mitigate the need for a subsequent loan for repairs in the future.

(d) *Subsequent loans for repairs when a transfer is involved.* To receive general reserve funds for this purpose, the transfer must be to resolve a servicing problem, in the Government's best financial interest, and the transferee not composed of any members (borrower entity and/or general partner(s)) of the transferor. The request must include a discussion of these requirements including reasons why project reserves are insufficient to pay for the repairs and steps taken to mitigate the need for a subsequent loan for repairs in the future. Funds for this purpose must be leveraged with State allocated funds on a one-to-one basis. For example, on a transfer with a subsequent loan request of $500,000, up to $250,000 may be requested from the National Office reserve. A State may receive not more than an aggregate of $2 million for this purpose. Funds for transfers with a subsequent loan that do not meet the conditions of this subparagraph will be considered for funding from the State's allocation and in accordance with the applicable program regulations.

(ii) *Designated Reserves.* (A) *RHTSA.* An amount of $27,005,000 has been set aside for those counties designated as underserved. These funds will be subject to year-end pooling requirements.

(B) *State RA.* An amount of $5 million of the RRH funds have been set aside for States in which an active State sponsored RA program is available. The State RA program must be comparable to FmHA RA. To participate in this reserve, the State Director should submit a written request with specific information about the State RA program; i.e., memorandum of understanding, documentation from the provider, etc., to the Director, MFHPD, no later than January 21, 1994. Funds will be distributed to participating States based on a pro rata share of State RA units being provided. These funds are subject to year-end pooling requirements.

(C) *Equity loans.* An amount of $30,000,000 has been set aside for the equity loan prepayment incentive features described in subpart E to part 1965 of this chapter. The funds will be made available by quarter as follows:

(1) First quarter—up to 40 percent of the funds allocated may be used.

(2) Second quarter—up to 70 percent of the funds available may be used.

(3) Third and fourth quarters—the balance of the available funds may be used. All equity loan requests must be forwarded by the State Director to the National Office for authorization using FmHA Guide Letter 1965–E–1, (available in any FmHA office) and in accordance with the provisions of subpart E of part 1965 of this chapter. Any requests that exceed the quarterly allocation will be prioritized for future funding based on the date of receipt of FmHA Guide Letter 1965–E–1 (available in any FmHA office) in the National Office from the State Director.

(4) Equity loan funds are subject to year-end pooling requirements. The amount and percentages of equity funds available may be changed administratively by FmHA based upon use and/or need for funds.

(D) *Housing demonstration program.* Subject to the Secretary's authorization, an amount of $7,000,000 will be set aside for the Rural Rental Housing Diversity Demonstration Program (RRHDDP). A comparable amount of RA will also be set aside. Further guidance will be published in the Federal Register on application processing procedures and program implementation.

7. *Pooling of Funds.* a. *State Office Pooling.* In States which allocate funds to Districts, States are not authorized to pool unobligated funds prior to May 1, 1994.

b. *National Office Pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all RRH funds is scheduled for close of business (COB), August 15, 1994.

8. *Availability of the Allocation.* States are authorized to approve, during the first quarter of FY 94, up to 40 percent of their RRH allocation indicated in this notice and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In States that do not have sufficient funds to obligate at least one project during the first or second quarters, the State Director may request authorization from the Director, MFHPD, to exceed the designated percentages. Patch-outs may be authorized from next quarter allocations. A patch-out may not exceed 30 percent of the total loan obligation. In States with net allocations greater than $4 million, the State Director may authorize Form AD–622s not to exceed 150 percent of the net annual allocation available to the State. In States with net allocations less than $4 million, the State Director may authorize Form AD–622s not to exceed 200 percent of the net annual allocation available to the State.

9. *Suballocation by the State Director.* Funds may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

B. Rental Assistance (RA)

1. *Valuation of New Construction RA.* A total of $116,500,000 is available for RRH new construction RA and $4,000,000 for FLH new construction RA. These equate to an estimated 10,759 units for the RRH and FLH loan programs. To determine the number of RA units available nationwide, a national weighted average of $11,200 was utilized for new construction RA. All RA units held in the reserves are estimated, based on the national average.

2. *Estimated units available for allocation.*

Estimated total units available	10,759
FLH	357
RRH	10,402
Less NPSA	900
Less RRH reserve (RHTSA and General)	1,352
Less RRH base allocation	216
Less RRH administrative allocation	100
Basic RRH formula amount	7,834

3. *Base Allocation.* The base allocation is an amount above the computed formula sufficient for each State to receive 50 units of RA to assist at least three RRH projects with an average amount of RA.

4. *Administrative Allocation.* The regions of the Western Pacific Areas and the Virgin Islands are each allocated 50 units of RA to assist at least three RRH projects with an average amount of RA.

5. *NPSA.* Approximately 900 units of new construction RA have been set aside in the National Office for certain nonprofit applicants. See exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

6. *Reserves.* The National Office reserve has been reduced to allocate more RA to States.

a. *State Office Reserve.* In States which allocate funds and RA to Districts, § 1940.552(j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be limited only to patch-outs and leveraging under the RHTSA, NPSA, hardships or emergency situations. The State Director will maintain records on how the State Office reserves are utilized, including a justification for each disbursement.

b. *National Office Reserve.* A reserve of approximately 1,352 units is being held for RRH, which includes 800 units for the RHTSA. The 357 units of RA for FLH are also held in a separate reserve. The reserve is broken down as follows:

(i) *General RRH Reserve.* A total of approximately 362 units of RA have been reserved. Except for patch-outs, hardships or emergency situations, or additional units needed to assist a State in utilizing its full allocation of funds, RA units may not be requested until June 1, 1994. Further guidance on how to access reserve RA will be published administratively prior to June 1, 1994.

(ii) *Designated Reserves.* (A) *RHTSA.* A total of approximately 800 units of RA have been reserved under a targeting set aside program for those counties designated as underserved. Further guidance on accessing this reserve will be provided at a later date.

(B) *FLH.* The 357 RA units for FLH new construction are being retained in a separate FLH reserve. Written requests for the FLH reserve may be made by State Directors in conjunction with FLH loan and grant requests, on a case-by-case basis, to the Director, MFHPD.

7. *Pooling of RA.* a. *State Office Pooling.* The States which allocate RA to Districts are not authorized to pool unobligated RA prior to May 1, 1994.

b. *National Office Pooling.* Unused RA units will be placed in the National Office reserve and will be made available administratively. Year-end pooling of RA for RRH is scheduled for COB, August 15, 1994.

8. *Availability of the Allocation.* States are authorized to approve, during the first quarter, up to 40 percent of their RA allocation indicated in this notice and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In States that do not have sufficient RA for at least one project during the first and second quarters, the State Directory may request authorization from the Director, MFHPD, to exceed the designated percentages. Patch-outs may be authorized from next quarter allotments. Patch-outs may not exceed 30 percent of the total RA obligation. The market should determine the need for the number of RA units assigned to a project, keeping in mind that at least 95 percent of the new construction RA assigned to a complex must be made available to serve very-low income tenants, as established in § 1944.215(i)(3) of subpart E of part 1944 of this chapter. In States with net allocations greater than $4 million, the State Director may authorize Form AD–622s not to exceed 150 percent of the

net annual allocation available to the State. In States with net allocations less than $4 million, the State Director may authorize Form AD–622s not to exceed 200 percent of the net annual allocation available to the State.

9. *Suballocation by the State Director.* RA units may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

10. *Approval and Obligation of RA.* Loans will only be obligated when sufficient RA to ensure market feasibility can be obligated at the same time. RA for loans obligated in a prior fiscal year will not be authorized.

C. Section 533 Housing Preservation Grants (HPG)

1. *Amount for allocation.*

Total available	$23,000,000
Less reserve	2,300,000
Less base allocation	5,300,000
Less administrative allocation	0
Basic formula amount	15,400,000

2. *Base allocation.* The base allocation is equal to the anticipated size of an average 1-year HPG proposal ($100,000) times the number of States and regions. The regions of the Western Pacific Areas and Virginia Islands received base allocations for FY 94.

3. *Administrative Allocations.* Not used.

4. *Reserve.* Allocated funds must be used prior to requesting reserve funds. Further guidance on accessing the National reserve will be published at a later date.

5. *Rounding of Initial Allocations.* HPG initial allocations have been rounded to the nearest $10.

6. *Pooling of Funds.* Funds in excess of the dollar amount of applications on hand will be returned to the National Office reserve for redistribution.

7. *Availability of the Allocation.* HPG is a competitive grant program. Opening and closing dates for submission of preapplications will be announced in the **Federal Register**. At this time, it is estimated that the 90-day preapplication period should begin on/or about January 1, 1994, subsequent to publication of revised HPG regulations permitting rental housing rehabilitation proposals and changing the selection criteria. (This date may be revised as well as the pooling date, depending on the publication of the announcement). Subsequent to review and ranking of preapplications and submission of final applications, States are authorized to obligate HPG requests in amounts not to exceed those reflected in this notice.

III. Exception Authority.

The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this notice which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect intent of the authorizing statute and/or RRH program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the MFHPD. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage for set-asides and/or the reserve, or restrict participation in set-asides and/or reserves.

IV. [Reserved]

V. [Reserved]

Single Family Housing (SFH)

I. General

A. This provides SFH allocations available to individual States for Fiscal Year 1994 (FY 94). Allocation computations have been made in accordance with §§ 1940.563 through 1940.568 of subpart L of part 1940 of this chapter. Each State director will make certain that this subpart is implemented within his/her jurisdiction.

B. SFH loan and grant levels authorized for FY 94 are as follows:

Section 502 Direct Rural Housing (RH) Loans:	
Very Low-income Subsidized Loans	$720,000,000
Low-income Subsidized Loans	1,030,000,000
Nonsubsidized Loans (See paragraphs I C 5 and I C 6 of the SFH section of this notice)	50,000,000
Section 502 Guaranteed RH Loans:	
Nonsubsidized Guarantees	750,000,000
Subsidized Guarantees	0
Section 504 Housing Repair Loans	35,000,000
Section 504 Housing Repair Grants*	25,000,000
Section 509 Compensation for Construction Defects*	500,000
Section 523 Self-Help Site Loans	622,000
Section 523 Self-Help Technical Assistance Grants*	12,750,000
Section 524 RH Site Loans	600,000
Supplemental Disaster Appropriations FY 93–June 30, 1994:	
Section 504 Loans	15,000,000
Section 504 Grants	15,000,000

* Unobligated/canceled funds from prior fiscal year(s) will be added to the amount shown.

C. SFH loan and grant types not allocated to States are available on a first-come-first-served basis as follows:

1. *Section 523 Self-Help Technical Assistance Grants.* Before obligating funds, State Directors must request them in writing and transmit by facsimile to National Office.

2. *Section 523 Self-Help Site Loans.* Before obligating loan funds for any project, the State Director must request funding authority from the National Office.

3. *Section 524 RH Site Loans.* Prior to loan approval, the State Director must request funding authority from the National Office.

4. *Section 509 Compensation for Construction Defects.* Prior to approval, the State Director must request and receive written funding authority from the National Office.

5. *Section 502 Nonsubsidized Funds (loan making).* a. An initial amount of $25 million has been set aside from the National Office section 502 reserve for nonsubsidized loans for loan making other than servicing actions. These funds can be increased or decreased at the discretion of the National Office, based on need and the projected availability of unobligated funds. Each State will be given an initial distribution of $400,000 and additional funds can be requested by contacting the National Office. State Directors must make this request in writing and transmit by facsimile to the National Office.

b. These funds are only for very low- and low-income applicants who are otherwise eligible for assistance, but based on the amount of the loan requested, the interest credit assistance formula results in no interest credit. These funds are to be used for loans on new or existing construction not currently financed or owned by Farmers Home Administration (FmHA).

6. *Section 502 Nonsubsidized Funds (loan servicing).* a. An initial amount of $25 million has been set aside from the National Office section 502 reserve for nonsubsidized loans for servicing actions. These funds can be increased or decreased at the discretion of the National Office, based on need and the

projected availability of unobligated funds. Request for additional increments of $50,000 or less will be considered at any given time. Each State will be given an initial distribution of $400,000 and the State Director must request in writing and transmit by facsimile to the National Office.

b. These funds will be used only for subsequent loans on properties currently financed with FmHA loan funds. Loans to above moderate-income families or persons are not authorized. Loans to very low-, low-, and moderate-income applicants/borrowers who do not qualify for interest credit assistance are authorized only for the following purposes:

(i) Subsequent loans for repair and rehabilitation.

(ii) The subsequent loan part only (i.e., repair or rehabilitation or the payment of equity) in connection with transfers by assumption or credit sales.

D. *Deferred Mortgage Payment Demonstration.* 1. The Agency has the authority to use up to $50,664,000 of Section 502 funds or credit sales in FY 94 in conjunction with the Deferred Mortgage Payment Demonstration (DMPD) program. Each State will be given an initial authority to use $600,000 for loan purposes under the DMPD program. Additional authority for the DMPD program may be requested based on need and subject to availability by contacting the National Office. To use the DMPD program authority, the State must have unobligated very low-income fund balances or obtain additional very low-income funds from the National Office. All funds are subject to the pooling requirements of this subpart, but the Administrator may pool funds at any time it is necessary.

2. Deferred mortgage loans will be obligated as directed by the State. Before rejecting a very low-income applicant, the County Supervisor must document indicating that deferred mortgage loan assistance has been considered. New loans obligated will go against the State's very low-income allocation. The State Director must add the very low-income obligations and the deferred mortgage obligations together to determine the full amount of very low-income usage.

3. [Reserved]

E. Supplemental Disaster Appropriations for FY 93–June 30, 1994

1. A supplemental appropriation of Section 504 loan and grant funds is available to assist homeowners that suffer uncompensated losses due to a Presidentially declared major natural disaster occurring in calendar year 1993. These funds are available through June 30, 1994. To be eligible, the homeowner must otherwise qualify for the program, and have an uncompensated loss due to a Presidentially declared disaster.

2. All funds will be retained in the National Office reserve.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in this subpart. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the National Office level, some States will not have access to their full distribution for the remainder of the quarter.

A. Section 502 Nonsubsidized Guaranteed RH Loans

1. Amount Available for Allocation

Total Available	$750,000,000
Less National Office Reserve	112,500,000
Less Base Allocation	0
Less Administrative Allocation	1,000,000
Basic Formula Amount	636,500,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.563(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office).

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* The base allocation is an amount, if any, above the computed formula allocation necessary for each State to receive a total allocation sufficient to run a viable program (at least $1 million).

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the State Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. The Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business on August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 45 percent through the first quarter, 75 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director will retain these funds at the State Office level. Funds will not be suballocated to District or County Offices. Each State Director may set aside up to 50 percent of the State's allocation for specific lender requests. Funds which are set aside will be made available to lenders as follows:

a. The lender must make a request to the State Director for a block of funds.

b. The lender must demonstrate the ability to correctly process the requested volume of loan funds before July 1, 1994.

c. If the lender is not showing satisfactory progress in use of its set aside funds, the State Director may recapture these funds prior to July 1, 1994, by giving the lender 30-days advance notice.

d. Funds will be set aside on a first-come-first-served basis. No lender may receive more than 50 percent of the total funds eligible for set aside in the State.

B. Section 502 Direct RH Loans

1. Amount Available for Allocation

Total Available	$1,800,000,000
Less General Reserve	49,000,000
Less Designated Reserves	195,900,000
Less Administrative Allocation	6,394,000
Basic Formula Amount	1,548,706,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.565(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office).

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.*

a. *State Office Reserve.* State Directors will maintain sufficient funds in the State Office reserve only to fund loan types described in § 1944.26(b)(2)(i) and (ii) of subpart A of part 1944 of this chapter. The State Director will maintain records on how State Office reserves were utilized, including a justification for each hardship case disbursement. Each State Director must

establish management controls to make certain that loans are processed only to the point of approval unless allocated funds are available or prior approval has been received for sufficient National Office reserve funds to obligate the loans.

b. *National Office Reserve.*

(i) *General Reserve.* Use of these reserve funds will be limited to providing funds to States to handle unforeseen circumstances which cannot be funded with the State's available allocation. Reserve requests should be submitted via facsimile by State Directors to the National Office, on a case-by-case basis. Subject to the availability of funds at the National level, an advance from the formula allocation for the next quarter may also be requested. Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the **Federal Register.**

(ii) *Designated Reserves.*

(A) *Section 502 Nonsubsidized Funds (loan making).* See paragraph I C 5 of the SFH section of this notice.

(B) *Section 502 Nonsubsidized Funds (loan servicing).* See paragraph I C 6 of the SFH section of this notice.

(C) *Rural Housing Targeting Set-Aside (RHTSA).* Of the FY 94 Section 502 appropriation, $90 million (5 percent) has been set aside for RHTSA.

(D) *Demonstration Housing Program.* Section 502 RH funds in the amount of $13.9 amount of million has been set aside for the demonstration housing program and will be designated on a project-by-project basis. Designated funds will be allotted 60 percent of low-income and 40 percent for very low-income. All funds are subject to the pooling requirements of Subpart L of Part 1940 of this chapter.

(E) *Matching Funds for States with Approved Mutual Self-Help Housing Grants.* The amount of $42 million of FY 94 section 502 appropriation has been set aside for matching funds on the basis of the National Office contributing 80 percent from the National Office reserve to the individual State's 20 percent of allocated section 502 RH funds used to assist participating self-help families. Funds are to be requested for the participating families at the time of loan approval. Requests for these funds should be submitted in writing by State Directors to the National Office. Not less than 40 percent of these funds (States or reserved) must be very low-income section 502.

7. *Pooling of Funds.*

a. *State Office Pooling.* If the pooling is conducted within a State, it must not take place more than 15 calendar days prior to the end of the first, second, and/or third quarter. If fourth quarter pooling is conducted within a State, it must not take place more than 15 calendar days prior to the National Office year-end pooling date. These pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be used in the District/County Offices receiving the funds allocated.

b. *National Office Pooling.* Funds will be pooled and redistributed. The Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated very low- and low-income funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* The Housing Act of 1949, as amended, provides that not less than 40 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director must suballocate to each District Office using the methodology and formulas required by this subpart. The District Director will make funds available on a first-come-first-served basis to all County Offices in the District. Funds will not be suballocated to County Offices without the prior written approval of the Administrator. No County Office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Repair Loans

1. *Amount Available for Allocations.*

Total Available	$35,000,000
Less General Reserve	2,450,000
Less Designated RHTSA Reserve	1,750,000
Less Administrative Allocation	2,329,000
Basic Formula Amount	28,471,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.566(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the State Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. If funding utilization is slow, the Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

D. Section 504 Housing Repair Grants

1. Amount Available for Allocations

Total Available	$25,000,000
Less General Reserve	1,750,000
Less Designated RHTSA Reserve	1,250,000
Less Administrative Allocation	600,000
Basic Formula Amount	21,400,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.567 (b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the Stat Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. If funding utilization is slow, the Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business on August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 30 percent through the first quarter, 65 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

III. *Exception Authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this Notice which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or SFH program or result in an undue hardship applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the SFHPD. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from set asides and/or the reserve, or restrict participation in set asides and/or reserves.

The following spreadsheets allocate FY 94 MFH and SFH loan and grant funds to individual States:

MULTI-FAMILY HOUSING SECTION 515, RURAL RENTAL HOUSING ALLOCATIONS (THOUSANDS)

[Fiscal Year 1994]

State	Formula factor	Formula alloc.	Base/ admin.	Total FY 94	Less non-profit set aside	Net RRH alloc.	RA Units		
							Formula alloc.	Base/ admin	Total FY 94
Alabama	0.2957	$12,884	0	$12,884	$1,160	$11,724	234	0	234
Alaska	0.00587	2,558	192	2,750	248	2,502	46	4	50
Arizona	0.01780	7,756	0	7,756	698	7,058	141	0	141
Arkansas	0.02310	10,065	0	10,065	906	9,159	183	0	183
California	0.04653	20,274	0	20,274	1,825	18,449	369	0	369
Colorado	0.00840	3,660	0	3,660	329	3,331	67	0	67
Delaware	0.00190	828	1,922	2,750	248	2,502	15	35	50
Maryland	0.00880	3,834	0	3,834	345	3,489	70	0	70
Florida	0.02890	12,592	0	12,592	1,133	11,459	229	0	229
Georgia	0.03867	16,849	0	16,849	1,516	15,333	306	0	306
Hawaii	0.00617	2,688	62	2,750	248	2,502	49	1	50
W. Pacific Areas	0.00000	0	2,750	2,750	248	2,502	0	50	50
Idaho	0.00743	3,237	0	3,237	291	2,946	59	0	59
Illinois	0.02250	9,803	0	9,803	882	8,921	178	0	178
Indiana	0.02157	9,398	0	9,398	846	8,552	171	0	171
Iowa	0.01340	5,839	0	5,839	526	5,313	106	0	106
Kansas	0.01130	4,924	0	4,924	443	4,481	90	0	90
Kentucky	0.03483	15,176	0	15,176	1,366	13,810	276	0	276
Louisiana	0.03170	13,812	0	13,812	1,243	12,569	251	0	251
Maine	0.00913	3,978	0	3,978	358	3,620	72	0	72
Massachusetts	0.00793	3,455	0	3,455	311	3,144	63	0	63
Connecticut	0.00453	1,974	776	2,750	248	2,502	36	14	50
Rhode Island	0.00100	436	2,314	2,750	248	2,502	8	42	50
Michigan	0.02977	12,971	0	12,971	1,167	11,804	236	0	236
Minnesota	0.01673	7,289	0	7,289	656	6,633	133	0	133
Mississippi	0.03180	13,856	0	13,856	1,247	12,609	252	0	252
Missouri	0.02460	10,718	0	10,718	965	9,753	195	0	195
Montana	0.00620	2,701	49	2,750	248	2,502	49	1	50
Nebraska	0.00713	3,107	0	3,107	280	2,827	56	0	56
Nevada	0.00263	1,146	1,604	2,750	248	2,502	21	29	50
New Jersey	0.00657	2,863	0	2,863	258	2,605	52	0	52
New Mexico	0.01437	6,261	0	6,261	563	5,698	114	0	114
New York	0.02753	11,995	0	11,995	1,080	10,915	218	0	218
North Carolina	0.04497	19,594	0	19,594	1,763	17,831	356	0	356
North Dakota	0.00413	1,799	951	2,750	248	2,502	33	17	50
Ohio	0.03450	15,032	0	15,032	1,353	13,679	273	0	273
Oklahoma	0.01917	8,353	0	8,353	752	7,601	152	0	152
Oregon	0.01423	6,200	0	6,200	558	5,642	113	0	113
Pennsylvania	0.03687	16,065	0	16,065	1,446	14,619	292	0	292
Puerto Rico	0.04923	21,450	0	21,450	1,931	19,519	390	0	390
South Carolina	0.02690	11,721	0	11,721	1,055	10,666	213	0	213
South Dakota	0.00597	2,601	149	2,750	248	2,502	47	3	50
Tennessee	0.02973	12,954	0	12,954	1,166	11,788	235	0	235
Texas	0.07640	33,288	0	33,288	2,996	30,292	605	0	605
Utah	0.00430	1,874	876	2,750	248	2,502	34	16	50
Vermont	0.00403	1,756	994	2,750	248	2,502	32	18	50

MULTI-FAMILY HOUSING SECTION 515, RURAL RENTAL HOUSING ALLOCATIONS (THOUSANDS)—Continued

[Fiscal Year 1994]

State	Formula factor	Formula alloc.	Base/ admin.	Total FY 94	Less non-profit set aside	Net RRH alloc.	RA Units		
							Formula alloc.	Base/ admin	Total FY 94
New Hampshire	0.00503	2,192	558	2,750	248	2,502	40	10	50
Virgin Islands	0.00000	0	2,750	2,750	248	2,502	0	50	50
Virginia	0.02660	11,590	0	11,590	1,043	10,547	211	0	211
Washington	0.01743	7,594	0	7,594	683	6,911	138	0	138
West Virginia	0.01937	8,440	0	8,440	760	7,680	153	0	153
Wisconsin	0.01873	8,161	0	8,161	734	7,427	148	0	148
Wyoming	0.00307	1,338	1,412	2,750	248	2,502	24	26	50
State Totals	0.10000000	430,930	17,359	448,289	407,354	407,934	7,834	316	8,150
N/O Reserves	0.0			91,818					2,252
FLH RA Units	0.0								357
Totals	0.0			540,107					10,759

MULTI-FAMILY HOUSING SECTION 533, HPG INITIAL ALLOCATIONS—FISCAL YEAR 1994

State	Base allocation	Basic formula factor	Basic formula amount	Total amount	FY 94 initial allocation
Alabama	100,000	0.02957	$455,378	$555,378	$555,380
Alaska	100,000	0.00587	90,398	190,398	190,400
Arizona	100,000	0.01780	274,120	374,120	374,120
Arkansas	100,000	0.02310	355,740	455,740	455,740
California	100,000	0.04653	716,562	816,562	816,560
Colorado	100,000	0.00840	129,360	229,360	229,360
Delaware	100,000	0.00190	29,260	129,260	129,260
Maryland	100,000	0.00880	135,520	235,520	235,520
Florida	100,000	0.02890	445,060	545,060	545,060
Georgia	100,000	0.03867	595,518	695,518	695,520
Hawaii	100,000	0.00617	95,018	195,018	195,020
W. Pac. Terr.	100,000	0.00820	126,280	226,280	226,280
Idaho	100,000	0.00743	114,422	214,422	214,420
Illinois	100,000	0.02250	346,500	446,500	446,500
Indiana	100,000	0.02157	332,178	432,178	432,180
Iowa	100,000	0.01340	206,360	306,360	306,360
Kansas	100,000	0.01130	174,020	274,020	274,020
Kentucky	100,000	0.03483	536,382	636,382	636,380
Louisiana	100,000	0.03170	488,180	588,180	588,180
Maine	100,000	0.00913	140,602	240,602	240,600
Massachusetts	100,000	0.00793	122,122	222,122	222,120
Connecticut	100,000	0.00453	69,762	169,762	169,760
Rhode Island	100,000	0.00105	16,170	116,170	116,180
Michigan	100,000	0.02977	458,458	558,458	558,460
Minnesota	100,000	0.01673	257,642	357,642	357,640
Mississippi	100,000	0.03180	489,720	589,720	589,720
Missouri	100,000	0.02460	378,840	478,840	478,840
Montana	100,000	0.00620	95,480	195,480	195,480
Nebraska	100,000	0.00713	109,802	209,802	209,800
New Jersey	100,000	0.00657	101,178	201,178	201,180
New Mexico	100,000	0.01437	221,298	321,298	321,300
Nevada	100,000	0.00263	40,502	140,502	140,500
New York	100,000	0.02753	423,962	523,962	523,960
North Carolina	100,000	0.04497	692,538	792,538	792,540
North Dakota	100,000	0.00413	63,602	163,602	163,600
Ohio	100,000	0.03450	531,300	631,300	631,300
Oklahoma	100,000	0.01917	295,218	395,218	395,220
Oregon	100,000	0.01423	219,142	319,142	319,140
Pennsylvania	100,000	0.03687	567,798	667,798	667,800
Puerto Rico	100,000	0.04923	758,142	858,142	858,140
South Carolina	100,000	0.02690	414,260	514,260	514,260
South Dakota	100,000	0.00597	91,938	191,938	191,940
Tennessee	100,000	0.02973	457,842	557,842	557,840
Texas	100,000	0.07640	1,176,560	1,276,560	1,276,560
Utah	100,000	0.00430	66,220	166,220	166,220
Vermont	100,000	0.00403	62,062	162,062	162,060
New Hampshire	100,000	0.00503	77,462	177,462	177,460
Virgin Islands	100,000	0.00273	42,042	142,042	142,040
Virginia	100,000	0.02660	409,640	509,640	509,640

MULTI-FAMILY HOUSING SECTION 533, HPG INITIAL ALLOCATIONS—FISCAL YEAR 1994—Continued

State	Base allocation	Basic formula factor	Basic formula amount	Total amount	FY 94 initial allocation
Washington	100,000	0.01743	268,422	368,422	368,420
West Virginia	100,000	0.01937	298,298	398,298	398,300
Wisconsin	100,000	0.01873	288,442	388,442	388,440
Wyoming	100,000	0.00307	47,278	147,278	147,280
State Totals	5,300,000		15,400,000		20.700,000
N.O. Reserves					2,300,000
Total Allocation	23,000,000				23,000,000

MULTI-FAMILY HOUSING SECTION 521, RENTAL ASSISTANCE 5 YEAR UNIT VALUES

[Fiscal Year 1994]

State	Family value renewal	Elderly value renewal	Labor housing renewal	New const. weighted RA value
Alabama	12,280	11,521	12,280	11,400
Alaska	15,410	15,410	15,410	17,378
Arizona	15,763	13,885	15,763	14,474
Arkansas	12,925	12,414	12,925	10,485
California	13,070	11,360	13,070	11,131
Colorado	13,246	13,028	13,246	10,986
Delaware	15,306	15,306	15,306	14,748
Maryland	15,248	14,214	15,248	14,681
Florida	9,313	11,432	9,313	10,177
Georgia	10,802	6,703	10,802	8,333
Hawaii	15,276	17,496	15,276	12,996
Western Pacific Areas	14,474	16,396	14,474	10,898
Idaho	13,878	9,249	13,878	10,581
Illinois	12,793	10,067	12,793	10,168
Indiana	10,394	8,549	10,394	8,941
Iowa	12,398	6,574	12,398	9,334
Kansas	12,671	6,164	12,671	8,328
Kentucky	12,660	10,129	12,660	11,057
Louisiana	13,649	11,127	13,649	12,169
Maine	17,313	16,176	17,313	18,807
Massachusetts	21,789	16,878	21,789	16,392
Connecticut	11,933	14,605	11,933	13,576
Rhode Island	16,391	16,391	16,391	15,805
Michigan	11,953	11,676	11,953	8,024
Minnesota	11,546	10,073	11,546	9,799
Mississippi	12,138	11,126	12,138	11,284
Missouri	9,429	7,502	9,429	7,862
Montana	11,026	5,629	11,026	9,746
Nebraska	10,574	10,001	10,574	8,129
Nevada	13,194	14,826	12,518	13,243
New Jersey	26,865	18,200	26,865	20,028
New Mexico	15,370	11,972	15,370	13,287
New York	13,909	14,865	13,909	12,909
North Carolina	13,416	15,968	13,416	12,879
North Dakota	10,770	6,598	10,779	8,920
Ohio	11,752	8,621	11,752	9,740
Oklahoma	12,290	10,115	12,290	9,864
Oregon	13,156	8,594	13,156	10,673
Pennsylvania	14,173	10,705	14,173	11,237
Puerto Rico	18,437	18,437	18,437	15,487
South Carolina	13,444	11,209	13,444	11,994
South Dakota	11,002	7,560	11,002	12,042
Tennessee	11,967	11,967	11,967	9,782
Texas	12,764	9,068	12,764	10,229
Utah	14,543	7,679	14,543	12,819
Vermont	14,626	15,281	14,626	15,878
New Hampshire	15,745	17,152	15,745	15,174
Virgin Islands	29,832	26,487	29,832	22,197
Virginia	12,722	10,994	12,722	10,583
Washington	12,465	10,216	12,465	9,666
West Virginia	13,723	10,167	13,723	9,617
Wisconsin	11,991	7,575	11,991	9,004
Wyoming	11,303	9,055	11,303	10,599

MULTI-FAMILY HOUSING SECTION 521, RENTAL ASSISTANCE 5 YEAR UNIT VALUES—Continued

[Fiscal Year 1994]

State	Family value renewal	Elderly value renewal	Labor housing renewal	New const. weighted RA value
National average				11,200

* Weighted national average

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 502 GUARANTEED LOANS

[Nonsubsidized]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0253847	16,157	N/A	16,157
Alaska	0.0061561	3,918	N/A	3,918
Arizona	0.0155290	9,884	N/A	9,884
Arkansas	0.0213661	13,600	N/A	13,600
California	0.0524861	33,407	N/A	33,407
Colorado	0.0100701	6,410	N/A	6,410
Delaware	0.0024043	1,530	N/A	1,530
Maryland	0.0104750	6,667	N/A	6,667
Florida	0.0308357	19,627	N/A	19,627
Georgia	0.0385293	24,524	N/A	24,524
Hawaii	0.0083323	5,303	N/A	5,303
W. Pacific Areas	N/A	N/A	1,000	1,000
Idaho	0.0077774	4,950	N/A	4,950
Illinois	0.0256395	16,320	N/A	16,320
Indiana	0.0236023	15,023	N/A	15,023
Iowa	0.0151422	9,638	N/A	9,638
Kansas	0.0123032	7,831	N/A	7,831
Kentucky	0.0286790	18,254	N/A	18,254
Louisiana	0.0256223	16,309	N/A	16,309
Maine	0.0113916	7,251	N/A	7,251
Massachusetts	0.0117468	7,477	N/A	7,477
Connecticut	0.0065708	4,182	N/A	4,182
Rhode Island	0.0017216	1,096	N/A	1,096
Michigan	0.0337181	21,462	N/A	21,462
Minnesota	0.0184738	11,759	N/A	11,759
Mississippi	0.0259670	16,528	N/A	16,528
Missouri	0.0253687	16,147	N/A	16,147
Montana	0.0067138	4,273	N/A	4,273
Nebraska	0.0083216	5,297	N/A	5,297
Nevada	0.0029735	1,893	N/A	1,893
New Jersey	0.0091825	5,845	N/A	5,845
New Mexico	0.0117200	7,460	N/A	7,460
New York	0.0369739	23,534	N/A	23,534
North Carolina	0.0471742	30,026	N/A	30,026
North Dakota	0.0040847	2,600	N/A	2,600
Ohio	0.0378081	24,065	N/A	24,065
Oklahoma	0.0175713	11,184	N/A	11,184
Oregon	0.0166212	10,579	N/A	10,579
Pennsylvania	0.0438367	27,902	N/A	27,902
Puerto Rico	0.0250931	15,972	N/A	15,972
South Carolina	0.0249510	15,881	N/A	15,881
South Dakota	0.0065435	4,165	N/A	4,165
Tennessee	0.0276859	17,622	N/A	17,622
Texas	0.0665018	42,327	N/A	42,327
Utah	0.0039861	2,537	N/A	2,537
Vermont	0.0057475	3,658	N/A	3,658
New Hampshire	0.0075234	4,789	N/A	4,789
Virgin Islands	0.0027236	1,734	N/A	1,734
Virginia	0.0278404	17,720	N/A	17,720
Washington	0.0200905	12,788	N/A	12,788
West Virginia	0.0172518	10,981	N/A	10,981
Wisconsin	0.0222867	14,186	N/A	14,186
Wyoming	0.0035006	2,228	N/A	2,228
State totals	1.0000000	636,500	1,000	637,500
General reserve				112,500
Designated reserves				0
Total				750,000

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 502 DIRECT RURAL HOUSING LOANS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0267275	41,393	N/A	41,393
Alaska	0.0055160	8,543	N/A	8,543
Arizona	0.0145422	22,522	N/A	22,522
Arkansas	0.0208104	32,229	N/A	32,229
California	0.0454819	70,438	N/A	70,438
Colorado	0.0091766	14,212	N/A	14,212
Delaware	0.0024571	3,805	N/A	3,805
Maryland	0.0115334	17,862	N/A	17,862
Florida	0.0312406	48,383	N/A	48,383
Georgia	0.0374586	58,012	N/A	58,012
Hawaii	0.0067195	10,407	N/A	10,407
W. Pacific areas	N/A	N/A	6,394	6,394
Idaho	0.0076722	11,882	N/A	11,882
Illinois	0.0266774	41,315	N/A	41,315
Indiana	0.0270785	41,937	N/A	41,937
Iowa	0.0163474	25,317	N/A	25,317
Kansas	0.0127369	19,726	N/A	19,726
Kentucky	0.0288838	44,732	N/A	44,732
Louisiana	0.0246715	38,209	N/A	38,209
Maine	0.0108314	16,775	N/A	16,775
Massachusetts	0.0109818	17,008	N/A	17,008
Connecticut	0.0066693	10,329	N/A	10,329
Rhode Island	0.0015545	2,407	N/A	2,407
Michigan	0.0353525	54,751	N/A	54,751
Minnesota	0.0199077	30,831	N/A	30,831
Mississippi	0.0250226	38,753	N/A	38,753
Missouri	0.0252733	39,141	N/A	39,141
Montana	0.0063685	9,863	N/A	9,863
Nebraska	0.0086752	13,435	N/A	13,435
Nevada	0.0028583	4,427	N/A	4,427
New Jersey	0.0097784	15,144	N/A	15,144
New Mexico	0.0110320	17,085	N/A	17,085
New York	0.0359041	55,605	N/A	55,605
North Carolina	0.0484405	75,020	N/A	75,020
North Dakota	0.0045131	6,989	N/A	6,989
Ohio	0.0390131	60,420	N/A	60,420
Oklahoma	0.0174005	26,948	N/A	26,948
Oregon	0.0154949	23,997	N/A	23,997
Pennsylvania	0.0467857	72,457	N/A	72,457
Puerto Rico	0.0239695	37,122	N/A	37,122
South Carolina	0.0258249	39,995	N/A	39,995
South Dakota	0.0062682	9,708	N/A	9,708
Tennessee	0.0291846	45,198	N/A	45,198
Texas	0.0660415	102,278	N/A	102,278
Utah	0.0040618	6,291	N/A	6,291
Vermont	0.0052653	8,154	N/A	8,154
New Hampshire	0.0072711	11,261	N/A	11,261
Virgin Islands	0.0020058	3,106	N/A	3,106
Virginia	0.0289841	44,888	N/A	44,888
Washington	0.0187042	28,967	N/A	28,967
West Virginia	0.0175008	27,104	N/A	27,104
Wisconsin	0.0237188	36,733	N/A	36,733
Wyoming	0.0036105	5,592	N/A	5,592
State totals	1.0000000	1,548,706	6,394	1,555,100
General reserve	.....	.....	.....	49,000
Designated Reserves	.....	.....	.....	195,900
Total	.....	.....	.....	1,800,000

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 504 RURAL HOUSING LOANS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0291457	830	N/A	830
Alaska	0.0080402	229	N/A	229
Arizona	0.0201005	572	N/A	572
Arkansas	0.0226131	644	N/A	644

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 504 RURAL HOUSING LOANS—Continued

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
California	0.0532663	1,517	N/A	1,517
Colorado	0.0085427	243	N/A	243
Delaware	0.0020101	57	N/A	57
Maryland	0.0095477	272	N/A	272
Florida	0.0296482	844	N/A	844
Georgia	0.0396985	1,130	N/A	1,130
Hawaii	0.0100503	286	N/A	286
W. Pacific areas	N/A	N/A	2,329	2,329
Idaho	0.0075377	215	N/A	215
Illinois	0.0226131	644	N/A	644
Indiana	0.0221106	630	N/A	630
Iowa	0.0130653	372	N/A	372
Kansas	0.0115578	329	N/A	329
Kentucky	0.0321608	916	N/A	916
Louisiana	0.0296482	844	N/A	844
Maine	0.0100503	286	N/A	286
Massachusetts	0.0080402	229	N/A	229
Connecticut	0.0040201	114	N/A	114
Rhode Island	0.0010050	29	N/A	29
Michigan	0.0291457	830	N/A	830
Minnesota	0.0175879	501	N/A	501
Mississippi	0.0301508	858	N/A	858
Missouri	0.0241206	687	N/A	687
Montana	0.0060302	172	N/A	172
Nebraska	0.0070352	200	N/A	200
Nevada	0.0030151	86	N/A	86
New Jersey	0.0070352	200	N/A	200
New Mexico	0.0150754	429	N/A	429
New York	0.0286432	816	N/A	816
North Carolina	0.0477387	1,359	N/A	1,359
North Dakota	0.0040201	114	N/A	114
Ohio	0.0331658	944	N/A	944
Oklahoma	0.0175879	501	N/A	501
Oregon	0.0150754	429	N/A	429
Pennsylvania	0.0371859	1,059	N/A	1,059
Puerto Rico	0.0341709	973	N/A	973
South Carolina	0.0281407	801	N/A	801
South Dakota	0.0060302	172	N/A	172
Tennessee	0.0296482	844	N/A	844
Texas	0.0783920	2,232	N/A	2,232
Utah	0.0040201	114	N/A	114
Vermont	0.0045226	129	N/A	129
New Hampshire	0.0055276	157	N/A	157
Virgin Islands	0.0030151	86	N/A	86
Virginia	0.0296482	844	N/A	844
Washington	0.0185930	529	N/A	529
West Virginia	0.0180905	515	N/A	515
Wisconsin	0.0195980	558	N/A	558
Wyoming	0.0035176	100	N/A	100
State totals	1.0000000	28,471	2,329	30,800
General reserve	.....	.....	.....	2,450
Designated reserves	.....	.....	.....	1,750
Total	.....	.....	.....	35,000

Fiscal Year 1994 ALLOCATION IN THOUSANDS SECTION 504 RURAL HOUSING GRANTS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0281124	602	N/A	602
Alaska	0.0056894	122	N/A	122
Arizona	0.0170683	365	N/A	365
Arkansas	0.0224230	480	N/A	480
California	0.0481928	1,031	N/A	1,031
Colorada	0.0083668	179	N/A	179
Delaware	0.0023427	50	N/A	50
Maryland	0.0100402	215	N/A	215

Fiscal Year 1994 ALLOCATION IN THOUSANDS SECTION 504 RURAL HOUSING GRANTS—Continued

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Florida	0.0341365	731	N/A	731
Georgia	0.0368139	788	N/A	788
Hawaii	0.0076975	165	N/A	165
W. Pacific areas	N/A	N/A	600	600
Idaho	0.0073628	158	N/A	158
Illinois	0.0264391	566	N/A	566
Indiana	0.0244311	523	N/A	523
Iowa	0.0163989	351	N/A	351
Kansas	0.0133869	286	N/A	286
Kentucky	0.0297858	637	N/A	637
Louisiana	0.0261044	559	N/A	559
Maine	0.0103748	222	N/A	222
Massachusetts	0.0097055	208	N/A	208
Connecticut	0.0053548	115	N/A	115
Rhode Island	0.0013387	29	N/A	29
Michigan	0.0317938	680	N/A	680
Minnesota	0.0197456	423	N/A	423
Mississippi	0.0271084	580	N/A	580
Missouri	0.0257697	551	N/A	551
Montana	0.0060241	129	N/A	129
Nebraska	0.0087015	186	N/A	186
Nevada	0.0026774	57	N/A	57
New Jersey	0.0083668	179	N/A	179
New Mexico	0.0123829	265	N/A	265
New York	0.0324632	695	N/A	695
North Carolina	0.0471888	1,010	N/A	1,010
North Dakota	0.0046854	100	N/A	100
Ohio	0.0361446	773	N/A	773
Oklahoma	0.0184070	394	N/A	394
Oregon	0.0157296	337	N/A	337
Pennsylvania	0.0438420	938	N/A	938
Puerto Rico	0.0264391	566	N/A	566
South Carolina	0.0261044	559	N/A	559
South Dakota	0.0063588	136	N/A	136
Tennessee	0.0294511	630	N/A	630
Texas	0.0716198	1,530	N/A	1,530
Utah	0.0036814	79	N/A	79
Vermont	0.0046854	100	N/A	100
New Hampshire	0.0060241	129	N/A	129
Virgin Islands	0.0023427	50	N/A	50
Virginia	0.0284471	609	N/A	609
Washington	0.0184070	394	N/A	394
West Virgina	0.0180723	387	N/A	387
Wisconsin	0.0224230	480	N/A	480
Wyoming	0.0033467	72	N/A	72
State totals	1.0000000	21,400	600	22,000
General reserve	.....	.....	.....	1,750
Designated reserves	.....	.....	1,250	
.....	Total	.....	.....	25,000

Dated: November 8, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–28004 Filed 11–12–93; 8:45 am]

BILLING CODE 3410-07-M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of performance review board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published and becomes effective in approximately one year. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published at 57 FR 48598 on October 27, 1992.

Name	Title
Lisa Farrell	Special Advisor.
Ivo Spalatin	Senior Policy Advisor.
Edward Lacey	Deputy Assistant Director, Intelligence, Verification and Information Support Bureau.
O. James Sheaks	Chief, Verification & Compliance Division, Intelligence, Verification and Information Support Bureau.
Alfred Lieberman	Chief, Operations Analysis and Information Management Office, Intelligence, Verification and Information Support Bureau.
Norman Wulf	Deputy Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Robert Rochlin	Chief Scientist, Nonproliferation and Regional Arms Control Bureau.
Michael Rosenthal	Chief, International Nuclear Affairs Division, Nonproliferation and Regional Arms Control Bureau.
David Clinard	Deputy Assistant Director, Multilateral Affairs Bureau.
Donald Mahley	Associate Assistant Director, Multilateral Affairs Bureau.
William Staples	Chief, Scientific & Technological Policy Division, Multilateral Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Eurasian Affairs Bureau.
Stanley Riveles	Chief, Strategic Negotiations & Implementation Division, Strategic and Eurasian Affairs Bureau.
Karin Look	Chief, Strategic Transition Division, Strategic and Eurasian Affairs Bureau.
David Wollan	Chief, Theater and Strategic Defenses Division, Strategic and Eurasian Affairs Bureau.
Robert Summers	Chief, Defense Conversion Division, Strategic and Eurasian Affairs Bureau.
Cathleen Lawrence	Director of Administration, Office of Administration.
Thomas Graham, Jr.	General Counsel.
Mary Elizabeth Hoinkes	Deputy General Counsel.
Norman Clyne	Special Assistant to the General Counsel.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 93-27928 Filed 11-12-93; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Mississippi Advisory Committee to the Commission will meet on December 6, 1993, from 6 p.m. until 8 p.m. at the Edison Walthall Hotel, 225 East Capitol Street, Jackson, Mississippi 39201. The purpose of the meeting is to discuss and plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-27896 Filed 11-12-93; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will convene on December 7-8, 1993 at the Bureau of the Census, Federal Building 3, Suitland, Maryland.

The Committee advises the Director, Bureau of the Census, on the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the December 7 meeting that will begin at 9 a.m. and adjourn at 5 p.m. is: 1) Call to order and introduction; 2) overview; 3) General Accounting Office report "Status of 1992 Agriculture and Economic Censuses and Future Challenges"; 4) agriculture census farm definition; 5) national agriculture statistics scope of agricultural coverage; 6) data requirements for "small farms; 7) data on structure and operators; 8) sampling for national and subnational household, economic, farm practices, and other data in the 1997 census; and 9) review of first day.

The agenda for the December 8 meeting that will begin at 9 a.m. and adjourn at 4:15 p.m. is: (1) Follow-up sample surveys for the 1997 census program; (2) data collection methodology for 1997; (3) coverage evaluation for the 1997 census of agriculture; (4) public questions and comments; (5) review and development of recommendations; and (6) nomination and election of chairperson for 1995.

This meeting is open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. George Pierce, Agriculture Division, Bureau of the Census, room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone (301) 763–8556–TDD (301) 763–4056.

Dated: November 8, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–28005 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

(A–549–801)

Antifriction Bearings From Thailand; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 8, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department's) redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand (56 FR 31765, July 11, 1991). Specifically, the Court rejected the Department's methodology in the redetermination for calculating the amount of the indirect tax adjustment that was to be added to United States price (USP). The Court entered final judgement on this issue. The results covered the period November 9, 1988 through April 30, 1990.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1993, the Court in *The Torrington Co.* v. *United States,* Slip Op. 93–96 (June 8, 1993), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand (56 FR 31765, July 11, 1991) to the Department. The Court ordered the Department to add the full amount of indirect taxes paid on each sale in the home market to foreign market value (FMV) without adjustment. On July 22, 1993, the Department submitted to the Court its redetermination on remand. On October 8, 1993, the Court ruled upon the Department's redetermination in *Torrington.* In its decision, the rejected the Department's redetermination methodology for calculating the amount of the indirect tax adjustment to be added to USP.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) *(Timken),* the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *Torrington* on October 8, 1993, which rejected the Department's redetermination methodology for calculating the amount of the indirect tax adjustment to be added to USP, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results in the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand to reflect the change in the indirect tax adjustment calculation methodology which was ordered by the Court.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28008 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; Notice of Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 8, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department) final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (58 FR 39729, July 26, 1993). *RHP Bearings et. al.* versus *United States,* (Slip Op. 93–196, October 8, 1993) *(RHP).* Specifically, the Court rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. The Court entered final judgment on this issue. The results covered the period May 1, 1991 through April 30, 1992.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1993, the Court in *RHP Bearings et. al., versus United States,* (Slip Op. 93–196, October 8, 1993) ruled upon an issue contained in the Department's final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (58 FR 39729, July 26, 1993). Specifically, the Court reviewed the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. In its decision, the Court rejected this determination and ordered the Department to add such direct selling expenses to foreign market value. The Court also entered final judgement on this issue.

In its decision in *Timken Co.* versus *United States,* 893 F.2d 337 (Fed. Cir. 1990) *(Timken),* the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *RHP* on October 8, 1993, which rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results of

antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom to reflect the Court's order that the Department must add direct selling expenses incurred in the United States to foreign market value.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-28009 Filed 11-12-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 110893B]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee and its Surf Clam and Ocean Quahog Industry Advisory Committee will meet on November 22, 1993, at the Ramada Inn, 76 Industrial Highway, Essington PA; telephone: (215) 521-9600. The meeting will begin at 10:00 a.m.

The purpose of the meeting is to review Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: November 9, 1993.

David S. Crestin

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

[FR Doc. 93-28006 Filed 11-12-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 110493C]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Hawaii Pelagics Advisory Panel (Panel) on November 16, 1993, at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, Honolulu, HI. The meeting will begin at 1 p.m.

The Hawaii longline limited entry program proposed under Amendment #7 to the Pelagics Fishery Management Plan would require that the fleet-wide harvesting capacity not exceed that which was allowed during the April 1991-April 1994 moratorium.

The Panel will discuss and possibly make recommendations regarding alternative methods to:

(1) Measure the maximum harvesting capacity of the longline fleet during the 1991-1994 moratorium; and

(2) Regulate the harvesting capacity of longline vessels eligible for participation under the proposed limited entry program.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: November 5, 1993.

David S. Crestin,

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

[FR Doc. 93-27913 Filed 11-12-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 110493D]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's Hawaii Pelagics Plan Team (Team) will hold a meeting on November 22, 1993, from 8 a.m. until noon, at the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, Hawaii.

The Hawaii longline limited entry program proposed under Amendment #7 to the Pelagics Fishery Management Plan would require that the fleet-wide harvesting capacity not exceed that which was allowed during the April 1991-April 1994 moratorium.

The Team will discuss and possibly make recommendations regarding alternative methods to:

(1) Measure the maximum harvesting capacity of the longline fleet during the 1991-1994 moratorium; and

(2) Regulate the harvesting capacity of longline vessels eligible for participation under the proposed limited entry program.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: November 5, 1993.

David S. Crestin,

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

[FR Doc. 93-27914 Filed 11-12-93; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 17 and 24, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 48637 and 49981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pad, Writing Paper
7530–01–273–3755
7530–01–207–4353
7530–01–207–4354
7530–01–207–4355
7530–01–207–4356

Services

Grounds Maintenance, Onizuka Park, Edwards Air Force Base, California.
Janitorial/Custodial, Weather Bureau Building, 2400 M Street, NW., Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28010 Filed 11–12–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the military resale commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodities and service to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the military resale commodities and service.

3. The action will result in authorizing small entities to furnish the military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following military resale commodities and service to the Procurement List for production by the nonprofit agencies listed:

Military Resale Commodities

Cutlery, Place Settings, Heavy Duty
M.R. 532
Cutlery, Knives, Heavy Duty
M.R. 533
Cutlery, Forks, Heavy Duty
M.R. 534
Cutlery, Spoons, Heavy Duty
M.R. 535
Nonprofit Agency: Royal Maid Association for the Blind Hazlehurst, Mississippi

Service

Janitorial/Grounds Maintenance, Soo Area Buildings, Soo Locks, Sault Ste. Marie, Michigan,
Nonprofit Agency: Soo Sheltered Workshop for the Handicapped, Inc., Sault Ste. Marie, Michigan.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28011 Filed 11–12–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisors to the National Security Education Board

AGENCY: Office of the Under Secretary (Policy).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of advisors to the National Security Education Board (NSEB). The purpose of the meeting is to review and make recommendations to the NSEB concerning the requirements established by the National Security Education Act of 1991 (as amended) Public Law 102–183.

DATES: December 6, 1993.

ADDRESSES: Academy for Educational Development, 1255 23rd Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ravalgi, Assistant Director for the National Security Education Board, National Security Education Program, P.O. Box 47103, Washington, DC 20050–7103; (703) 696–1991.

SUPPLEMENTARY INFORMATION: The business meeting will be open to the public.

Dated: November 8, 1993.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27926 Filed 11–12–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem

Bulletin Number 173. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 173 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000-04-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	105	83	188	11-01-93
BETHEL	82	69	151	10-01-93
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	66	77	143	12-01-92
CRAIG	67	35	102	07-01-91
DILLINGHAM	85	64	149	11-01-93
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
ELMENDORF AFB				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
EMMONAK	62	61	123	10-01-93
FAIRBANKS				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
FT. WAINWRIGHT				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
HOMER				
05-01--09-30	71	60	131	05-01-93
10-01--04-30	53	62	115	12-01-92
JUNEAU				
05-01 -10-01	88	74	162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	$ 94	$ 68	$162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
04-21--10-31	60	58	118	06-01-93
11-01--04-20	48	57	105	11-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
UMIAT	$ 97	$ 63	$160	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-93
09-02--04-30	82	70	152	12-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	21	20	41	10-01-93
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	68	55	123	01-01-93
SAIPAN	100	69	169	01-01-93
TINIAN	50	55	105	01-01-93
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93

BILLING CODE 5000-04-C

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	$ 65	$ 52	$117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

Footnotes

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are using, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD Personnel	$13
Non-DOD Personnel	30

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-27927 Filed 11-12-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Intent To Prepare An Environmental Impact Statement for Base Realignment At Marine Corps Air Station Cherry Point, Craven County, NC

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Marine Corps Air Station (MCAS) Cherry Point, Craven County, North Carolina. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993.

The proposed action involves the relocation of approximately 200 F/A-18 aircraft with dedicated personnel from the Naval Air Station Cecil Field, Jacksonville, Florida, to MCAS Cherry Point. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will most likely include construction of family housing at off-base locations within commuting distance of MCAS Cherry Point. Relocation of the F/A-18s to MCAS Cherry Point may require increased use of air training routes and ranges in Eastern North Carolina. An existing outlying airfield may need to be renovated or a new outlying airfield may need to be developed to provide for the increased training needs. Approximately 4,000 additional personnel plus their dependents will relocate to MCAS Cherry Point as a result of this action.

Alternatives addressed in the EIS will focus on means of meeting MCAS Cherry Point realignment requirements, including alternative construction site locations and alternative training scenarios. Alternative sites have been identified for construction of new hangars, shops, and other support facilities to serve the F/A-18 aircraft at MCAS Cherry Point. A Housing Market Study and Housing Site Selection Study have been initiated to determine potential locations for off-base housing sites. The feasibility of utilizing existing outlying airfields, other government controlled property, or non-government controlled sites will be evaluated to identify alternative locations for aircraft training near MCAS Cherry Point. An airspace analysis is being conducted to identify alternative scenarios for aircraft training. Cumulative impacts associated with the realignment of all personnel and activities to the Cherry Point region will be considered. Major environmental issues that will be addressed in the EIS include noise, air quality, air space use, traffic, utilities, and community facilities.

The Department of the Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold three public scoping meetings in Eastern North Carolina as part of the preparation of the Draft EIS. Scoping meetings will be held as follows:

December 7, 1993, at the New Bern High School, 4200 Academic Drive, New Bern, North Carolina, starting at 7 p.m.

December 8, 1993, at the Duke University Marine Labs, 111 Pivers Island Road, Beaufort, North Carolina, starting at 7 p.m.

December 9, 1993, at Jones County Civic Center, Highway 58 South, Trenton, North Carolina, starting at 7 p.m.

These meetings will be advertised in selected local newspapers.

A brief presentation will precede request for public comment. Navy and Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511-2699 (Attn: Mr. Jim Haluska, Code 2032JH), telephone (804) 445-2307. All comments must be received no later than December 23, 1993.

Dated: November 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-27977 Filed 11-12-93; 8:45 am]

BILLING CODE 3810-AE-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1862-009]

City of Tacoma, Washington; Extension of Time

November 9, 1993.

Take notice that the deadline for the filing of comments, recommendations, terms and conditions, or prescriptions for all issues is extended to and including February 7, 1994. This notice extends the time as published in the **Federal Register** on October 28, 1993 at 58 FR 57994.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27980 Filed 11-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 11432-000, et al.]

Hydroelectric Applications [Hydro Matrix Partnership, Ltd., *et al.*]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11432–000.
c. *Date Filed:* August 26, 1993.
d. *Applicant:* Hydro Matrix Partnership, Ltd.
e. *Name of Project:* Falls Lake.
f. *Location:* On the Neuse River in Wake County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* James B. Price, 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.
i. *FERC Contact:* Charles T. Raabe, (202) 219–2811.
j. *Comment Date:* December 27, 1993.
k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Falls Lake Dam and Reservoir and would consist of: (1) A new powerhouse containing two 2,500-kW generating units; (3) a 400-foot-long transmission line; (4) a 13.8-kV switchyard; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 26GWh and that the cost of the studies under the permit would be $100,000. Power would be sold to Carolina Power and Light Co.

1. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* P–11437–000.
c. *Date Filed:* September 23, 1993.
d. *Applicant:* Hydro Matrix Partnership, Ltd.
e. *Name of Project:* Jordan Dam Project.
f. *Location:* On the Haw River, Chatham County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* James B. Price, Hydro Matrix Partnership, Ltd., 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.
i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.
j. *Comment Date:* December 27, 1993.
k. *Description of Project:* The proposed project would utilize the existing 1,150-foot-long, 118-foot-high B. Everett Jordan Dam, a rock-filled structure owned by the U.S. Army Corps of Engineers and consists of: (1) A proposed intake structure; (2) a proposed 1150-foot-long penstock within the existing outlet tunnel; (3) a proposed powerhouse containing two generating units having a total installed capacity of 5000-kW; (4) a proposed 535-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities.
l. *Purpose of Project:* All project energy produced would be sold to a local utility.
m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.
n. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Hydro Matrix Partnership, Ltd. 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

3 a. *Type of Applications:* Subsequent Licenses.
b. *Project Nos.:* 2396–001, 2397–001, 2399–001, 2400–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Projects:* Pierce Mills Project, Gage Project, Arnold Falls Project, Passumpsic Project.
f. *Location:* On the Passumpsic River in Caledonia County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Michael Dees (202) 219–2807.
j. *Deadline Date:* See standard paragraph D10. (December 27, 1993).
k. *Status of Environmental Analysis:* These applications have been accepted for filing and are ready for environmental analysis at this time—see attached standard paragraph D10.
1. *Description of Projects:*

Pierce Mills Project

The project as licensed consists of the following: a dam structure, a powerhouse, an intake structure with a penstock, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 250 kilowatts (kW), a hydraulic capacity range of 90 to 200 cubic feet per second (cfs), and an average annual generation of about 1,610 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 330-foot-long bypass reach. This amount of water is equivalent to a flow of 7.5 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of a spillway section, 93 feet long by 18 feet high, with a crest elevation of 603.5 feet mean sea level (msl), topped with 1.5-foot-high flashboards;

(2) An intake structure, totaling 37 feet long, consisting of (a) a retaining wall, 17 feet long, with a crest elevation of 610.5 feet msl; and (b) a nonoverflow section, with a 10-foot-high by 10-foot-wide bulkhead gate, leading to a 6-foot-diameter, 246-foot-long steel penstock;

(3) A powerhouse, 22 feet long by 22 feet wide, equipped with a vertical Francis hydroelectric generating unit, with (a) a rated capacity of 250 kilowatts (kW); (b) a hydraulic capacity range of 90 to 200 cubic feet per second (cfs); (c) an average annual generation of 1,610 megawatt-hours (MWH); and (d) a gross head of 18.3 feet;

(4) An impoundment having (a) a surface area of 24.7 acres (AC); (b) a useable storage capacity of 24.7 acre-feet (AF); and (c) a normal headwater elevation of 605.0 feet msl and tailwater elevation of 586.7 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

Gage Project

The existing Gage Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kW), a hydraulic capacity range of 170 to 700 cubic feet per second (cfs), and an average annual generation of about 2,766 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 1.7 miles of river reach downstream of the project, the applicant also proposed to maintain 3-inch-high of water passing just over the spillway section, rather than the entire dam length. This amount of water is equivalent to a flow of 17 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of three spillway sections: (a) The North section, 176 feet long by maximum height of 13 feet, with a crest elevation of 534.2 feet mean sea level (msl), topped with 6.0-foot-high hinged-flashboards; (b) the concrete-capped Center section, constructed on a rock-ledge island, about 30 feet long, with a crest elevation of 542.1 feet msl; and (c) the South section, 43 feet long by 18 feet high, with a crest elevation of 538.9 feet msl, topped with 1.0-foot-high wooden flashboards;

(2) An intake structure consisting of (a) a 51-foot-wide headgate structure with four headgates; and (b) a 90-foot-

long by 44-foot-wide by 16-foot-deep power canal;

(3) A powerhouse, equipped with two vertical S. Morgan Smith hydroelectric generating units: (a) one is rated at 300 kilowatts (kW) and one rated at 400 kW, totaling a plant rated capacity of 700 kW; (b) a hydraulic capacity range of 170 to 700 cubic feet per second (cfs); (c) an average annual generation of 2,766 megawatt-hours (MWH); and (d) a gross head of 15 feet;

(4) An impoundment having (a) a surface area of 15.2 acres (AC); (b) a useable storage capacity of 13.8 acre-feet (AF); and (c) a normal headwater elevation of 539.9 feet msl and tailwater elevation of 524.9 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

Arnold Falls Project

The existing Arnold Falls Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 350 kilowatts (kW), a hydraulic capacity range of 150 to 262 cubic feet per second (cfs), and an average annual generation of about 1,580 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 300-foot-long bypass reach. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A timber crib dam consisting of two spillway sections: (a) The North dam section, 189 feet long by 18 feet high, with a crest elevation of 572.72 feet mean sea level (msl) topped with 1.5-foot-high flashboards; and (b) the South dam section, 66 feet long by 15 feet high, with a crest elevation of 572.80 msl, topped with 1.5-foot-high flashboards;

(2) A powerhouse, 18 feet long by 21 feet wide, equipped with a vertical S. Morgan Smith hydroelectric generating unit, with (a) a rated capacity of 350 kilowatts (kW); (b) a hydraulic capacity range of 150 to 262 cubic feet per second (cfs); (c) an average annual generation of 1,580 megawatt-hours (MWH); and (d) a gross head of 18 feet;

(3) An impoundment having (a) a surface area of 7.2 acres (AC); (b) a useable storage capacity of 10.8 acre-feet (AF); and (c) a normal headwater elevation of 574.3 feet msl and tailwater elevation of 556.12 feet msl;

(4) A 12.5-kilovolt (kV), transmission line; and

(5) Appurtenant facilities.

Passumpsic Project

The existing Passumpsic Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kW), a hydraulic capacity range of 195 to 460 cubic feet per second (cfr), and an average annual generation of about 3, 868 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 0.8-acre of bypass reach downstream of the project, the applicant also proposed to maintain 0.5- to 1-inch-high of water passing over the spillway section. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of two spillway sections: (a) The North section, 126 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet mean sea level (msl), topped with 1.0-foot-high flashboards; and (b) the South section, 122 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet msl, topped with 1.0-foot-high-flashboards;

(2) An intake structure consisting of (a) a 27-foot-wide headgate structure with two headgates, each measuring about 12 feet wide by 8 feet high; and (b) an 87-foot-long by 19- to22-foot-wide power canal with an ice/waste sluice gate and a 24-foot-long overflow spillway located on the canal's outboard wall;

(3) A powerhouse, equipped with one vertical Francis hydroelectric generating unit with (a) a rated capacity at 700 kilowatts (kW); (b) a hydraulic capacity range of 195 to 460 feet per second (cfs); (c) an average annual generation of 3,868 megawatt-hours (MWH); and (d) a gross head of 24 feet;

(4) An impoundment having (a) a surface area of 18.3 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); adn (c) a normal headwater elevation of 520.98 feet msl and tailwater elevation of 496.98 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Projects:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Location of Application:* Copies of the applications, as amended and supplemented, are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

4 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2489–001.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Cavendish Project.

f. *Location:* On the Black River in Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.

i. *FERC Contact:* Mr. Charles T. Raabe (tag) (202) 219–2811.

j. *Deadline Date:* See paragraph D10. (December 27, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The existing Cavandish Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel and a penstock, an impoundment, a transmission line, and appurtenant facilities.

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain within the bypass reach a year-round leakage flow of 3–5 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of two spillway sections: (a) the North section, 90 feet long by 25 feet high, with a crest elevation of 878.13 feet mean sea level (msl), topped with 6.0-foot-high flashboards; and (b) the South section, 21 feet long by 6 feet high, with a crest elevation of 881. 63 feet msl, topped with 2.5-foot-high flashboards;

(2) An intake structure consisting of (a) a 180-foot-long-power tunnel; and (b) 6-foot-diameter steel penstock;

(3) A powerhouse, 64 feet long by 34 feet wide, equipped with three

horizontal Francis hydroelectric generating units: (a) two of which are rated 520 kilowatts (kW), each, and one rated at 400 kW; (b) a hydraulic capacity range of 19 to 226 cubic feet per second (cfs); (c) an average annual generation of 6,108 megawatt-hours (MWh); and (d) a gross head of 119.53 feet;

(4) An impoundment having (a) a surface area of 10 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); and (c) a normal headwater elevation of 884.13 feet msl and tailwater elevation of 764.6 feet msl;

(5) A transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

5. a. *Type of Application:* New Major License.

b. *Project No.:* 2283–005.

c. *Date Filed:* December 10, 1991.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Gulf Island—Deer Rips Project.

f. *Location:* On the Androscoggin River, Androscoggin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 6 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* See Paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The Gulf Island—Deer Rips Project (Project) consists of three discrete generating facilities, Beginning with the most upstream: The Gulf Island powerhouse, the Deer Rips powerhouse, and the Androscoggin No. 3 powerhouse. For the existing condition, the Project has a total nameplace generator capacity of 32.6 megawatts (MW) and an average annual generation of about 189,703 megawatt-hours (MWH). For the proposed condition, the Project would have a total nameplate generator capacity of 35.6 MW and an average annual generation of about 195,853 MWH.

The existing Gulf Island—Deer Rips Project's principle features consists of two dam structures, two impoundments, three powerhouses, and appurtenant facilities. In detail, the existing and proposed project is described as follows:

Gulf Island Development

(1) A concrete gravity and earthfill dam, totaling about 2,488 feet long, with a maximum height of 92 feet, consisting of (a) a 370-foot-long spillway section, topped with about 7-foot-high flashboards, having a crest elevation of 255.0 feet (USGS); (b) a 340-foot-long gate section, have (i) two stony gates, each measuring 16 feet high by 8.5 feet wide, (ii) seven Taintor gates, each measuring 15 feet high by 30 feet wide, (iii) a stanchion section, 13 feet high by 49.5 feet wide, and (iv) a 16-foot-wide sluice gate; (c) a 149-foot-long intake section, integral with the powerhouse, having trashracks with 7/16-inch steel bars at 4–9/16 inches openings; (d) a 349-foot-long bulkhead; and (e) 1,280-foot-long earth embankments;

(2) A concrete, steel, and brick powerhouse, about 90 feet high by 32 feet wide by 146 feet long, equipped with three vertical Francis units having (a) an existing total rated capacity of 22,200 kilowatts (kW), maximum hydraulic capacity of 6,450 cubic feet per second (cfs), and an average annual generation of 131,098 MWh; (b) a proposed total rate capacity of 25,200 kW, maximum hydraulic capacity of 6,610 cfs, and an average annual generation of 137,248 MWh; and (c) a rated head of 56 feet;

(3) An impoundment, about 14.7 miles long, having (a) a surface area of about 2,862 acres (AC); (b) a gross storage capacity of 55,100 acre-feet (AF); (c) a useable storage capacity of 10,300 AF; and (d) a normal pool headwater elevation of 262.0 feet (USGS) and tailwater elevation of 206.0 ft (USGS); and

(4) Appurtenant facilities.

Deer Rips—Androscoggin No. Development

(1) A concrete gravity dam, totaling about 933 feet long, with a maximum height of 50 feet considering of (a) a 738-foot-long spillway section, topped with about 4-foot-high flashboards, having a crest elevation of 201.7 feet (USGS); (b) a 94-foot-long headworks section, located on the west bank, for the Deer Rips powerhouse, having eight wooden gates, each measuring 14 feet high by 7 feet wide, leading to a canal, 650 feet long by 75 feet wide by 22 average deep; (c) a forebay, located on the east bank, 45 feet long by 38 feet wide, having 3 and 5 feet high flashboards, leading to a 45-foot-long headworks section for the Androscoggin No. 3 powerhouse, having two steel gates, each measuring 14 feet by 17.5 feet wide;

(2) The Deer Rips concrete, steel, and brick powerhouse, about 70 feet high by 47 feet wide by 136 feet long, with a 32-foot-wide by 57-foot-long addition, equipped with five horizontal twin-runner Francis units and two vertical Francis units having (a) a total rated capacity of 6,817 kW; (b) a total hydraulic capacity of 3,345 cfs; (c) an average annual generation of 31,628 MWh; (d) a rated head of 32 feet; (e) six trashracks with 3/8-inch steel bars at 2–1/4 inch openings and one trashrack with 1/4-inch steel bars at 2–1/2 inch openings; and (f) an excavated tailrace about 250 feet long by 150 feet wide;

(3) the Androscoggin No. 3 concrete, steel, and brick powerhouse, about 70 feet high by 44 feet wide by 52 feet long, equipped with one vertical fixed-blade units having (a) a rated capacity of 3,600 kW; (b) a total hydraulic capacity of 1,775 cfs; (c) an average annual generation of 26,997 MWH; (d) a rated head of 32 feet; (e) one trashrack with 3/8-inch steel bars at 3–1/2 inch openings; and (f) an excavated trailrace about 400 feet long by 60 feet wide;

(4) An impoundment, about 1.3 miles long, having (a) a surface area of about 130 AC; (b) a gross storage capacity of 1,200 AF; (c) a negligible useable storage capacity; and (d) a normal pool headwater elevation of 205.7 feet (USGS) and tailwater elevation of 173.7 ft (USGS); and

(5) Apprutenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4, D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Main Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

6 a. *Type of Application:* Minor License.
b. *Project No.:* 11264–000.
c. *Date filed:* March 6, 1992.
d. *Applicant:* Turbine Industries, Inc.
e. *Name of Project:* Coolemee Dam Hydro Project.
f. *Location:* On the South Fork of the Yadkin River, Rowan County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. George S. Cook, Turbine Industries, Inc., 5312 Groometown Road, Greensboro, North Carolina 27407, (919) 294–9995.
i. *FERC Contact:* Mary Golato (202) 219–2804.
j. *Deadline for Interventions and Protests, and also for Comments, Recommendations, Terms & Conditions, and Prescriptions:* December 23, 1993.
k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D4.
l. *Description of Project:* The proposed project facilities would consist of: (1) an existing dam 500 feet long and 12 feet high; (2) an existing reservoir with a surface area of 20 acres at a spillway crest elevation of 658 feet mean sea level and a gross storage capacity of 56 acre-feet; (3) two existing penstocks 8 feet in diameter and 84 and 150 feet long, respectively; (4) an existing powerhouse containing two turbine-generator units having a total capacity of 1,400 kilowatts; (5) a proposed 150-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the cost of the project is $250,000. The average annual generation will be approximately 6.2 gigawatthours. The dam is owned by Turbine Industries, Inc.
m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* A2, A3, A9, B1, and D4.
o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. George S. Cook, 5312 Groometown Road, Greensboro, North Carolina 27407 (919) 294–9995.

7 a. *Type of Application:* Transfer of License.
b. *Project No.:* 9654–015.
c. *Date filed:* October 21, 1993.
d. *Applicant:* MSW Credit Shelter Trust, Brian M. Wirkkala, Trustee, and Brenda Wirkkala See.
e. *Name of Project:* Burnham Creek.
f. *Location:* On Burnham Creek in Pacific County, Washington.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant contact:* Brenda Wirkkala See, HCR 78 Box 608, Naselle, WA 98638, (206) 484–3878.
i. *FERC contact:* Etta Foster, (202) 219–2679.
j. *Comment Date:* December 17, 1993.
k. *Description of Proposed Action:* MSW Credit Shelter Trust, Brian M. Wirkkala, Trustee, representing the estate of Martin S. Wirkkala proposes to transfer the license for the Burnham Creek Project to Brenda Wirkkala See. MSW Credit Shelter Trust was created in accordance with the last will and testament of Martin S. Wirkkala.
l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

8 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11439–000.
c. *Date filed:* October 1, 1993.
d. *Applicant:* Hydro Matrix Partnership, Ltd.
e. *Name of Project:* Gathright Dam Project.
f. *Location:* On the Jackson River, near Falling Spring, in Allegheny County, Virginia.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § § 791 (a)–825(r).
h. *Applicant Contact:* Mr. James B. Price, Ph. D., W.V. Hydro, Inc., 120 Calumet Ct., Aiken, SC 29803. (803) 642–2749.
i. *FERC Contact:* Mary Golato (202) 219–2804.
j. *Comment Date:* January 3, 1994.
k. *Description of Project:* The proposed project would utilize the U.S. Department of the Army Corps of Engineers Gathright dam and would consist of the following: (1) a proposed penstock; (2) a proposed powerhouse containing one turbine-generator unit at a total rated capacity of 3,000 kilowatts; (3) a proposed 13.8–kilovolt (kV) transmission line running .26 mile from the switchyard connecting to an existing 13.8–kV substation. The average annual generation is estimated to be 22 gigawatthours. The cost of the studies is $100,000.
l. *This notice also consists of the following standard paragraphs:* A3, A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11434–000.
c. *Date Filed:* September 13, 1993.
d. *Applicant:* City of Flint DPW & Utilities.
e. *Name of Project:* Holloway Dam.
f. *Location:* On the Flint River in Genesee County, Michigan.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Robert C. Evans, 4520 Comanche Dr., Okemos, MI 48864, (517) 351–5400.
i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.
j. *Comment Date:* January 7, 1994.
k. *Description of Project:* The proposed project would consist of: (1) The existing 3,948-foot-long and 30-foot-high earth dam; (2) the existing 1,400-acre reservoir; (3) a proposed intake structure; (4) a new concrete powerhouse located downstream of the dam and housing two generating units for total installed capacity of 700 kW; (5) a proposed tailrace; (6) a new 115–kV or equivalent transmission line; and (7) appurtenant facilities. The cost of the studies to be performed under the permit would be $250,000. The site is owned by the City of Flint, Michigan. The applicant proposes that all power generated would be sold to Consumers Power Company.
l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, D2.

10 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11438–000.
c. *Date Filed:* September 27, 1993.
d. *Applicant:* Dashields Hydro Associates.
e. *Name of Project:* Dashields Hydro Project.
f. *Location:* On the Ohio River, near Sewickely, Allegehany County, Pennsylvania.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. V. James Dunlevy, 185 Genesee Street, Suite 1518, Utica, NY 13501, (315) 793–0366.
i. *FERC Contact:* Ed Lee (202) 219–2809.
j. *Comment Date:* December 27, 1993.
k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Dashields Lock and Dam and consists of the following new facilities: (1) A powerhouse containing three 8.3–MW generating units for a total installed capacity of 25 MW; (2) a 230-foot-wide, 88-foot-long tailrace; (3) a 2.2-mile-long, 69–Kv transmission line; and (5) appurtenant facilities. The average annual generation would be 96.8 GWh. The applicant estimates that the cost of the studies under the terms of the

permit would be $85,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Pittsburgh District, 1000 Liberty, Federal Building, Room 1834, Pittsburgh, PA 15222.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. *Developement Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. *Developement Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representives.

D4. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 27, 1993 for Project No. 11264–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 10, 1994 for Project No. 11264–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (December 27, 1993 for Project No. 2283–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 10, 1994 for Project No. 2283–005).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (December 27, 1993 for Project Nos. 2396–001, *et al.* and Project No. 2489–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 7, 1994 for project Nos. 2396–001, *et al.* and Project No. 2489–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 9, 1993, Washington, DC.
Lois D. Cashell,
Secretary.
[FR Doc. 93-27981 Filed 11-12-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-3-004]

Arkla Energy Resources Co.; Proposed Changes in FERC Gas Tariff

November 8, 1993.

Take notice that on November 1, 1993, Arkla Energy Resources Company (AERCo) P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket Nos. RS92-3-004, RP93-3 and TM94-1-31 revised tariff sheets. The following tariff sheets, filed in compliance with the Commission's August 2, 1993, order in Docket No. RS92-3-001, to be effective September 1, 1993, reduce AERCo's rates for restructured services to reflect the overall cost of service and throughput approved by the Commission in its September 23, 1993, order in Docket No. RP93-3:

Third Revised Volume No. 1

Revised Original Sheet No. 4
Revised Original Sheet No. 4.1

AERCo states that the following tariff sheets, which are effective as of November 1, 1993, are identical to the tariff sheets described above, except that they reflect fuel percentages and fuel cost tracker language in compliance with the Commission's order of October 29, 1993, in Docket No. TM94-1-31:

Third Revised Volume No. 1

Sub 1st. Revised Sheet No. 4
Sub 1st. Revised Sheet No. 4.1

Any person desiring to be heard or to make any protest with reference to said application should on or before November 18, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Secretary.
[FR Doc. 93-27937 Filed 11-12-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. EF93-2011-001, EF93-2021-001, and EF93-2041-001]

United States Department of Energy—Bonneville Power Administration; Filing

November 8, 1993.

Take notice that on November 1, 1993, the Bonneville Power Administration tendered for filing in these dockets its Errata to Final Studies and Documentation filed as part of its original filings in these dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 93-27939 Filed 11-12-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP94-46-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

November 8, 1993.

Take notice that on October 27, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94-46-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization for the construction and operation of 20 delivery points installed or proposed to be installed under NGPA Section 311 authorization, under Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to operate the 20 delivery points, 15 of which consist of existing facilities (Nos. 1-15) and 5 of which are scheduled to be constructed (Nos. 16-20), for the delivery of natural gas being transported under Columbia's Part 284 blanket certificate, issued in Docket No CP86-240-000. Details of the facilities and proposed deliveries are as follows.

Customer	Location (county/state)	Proposed quantity (dt equivalent per day)	Estimated cost (dollars)
1. National Gas and Oil Corp	Perry/OH	5,000	45,400
2. Northern Industrial Energy Development	Muskingum/OH	15	5,521
3. Kalida Natural Gas Company	Putnam/OH	1,500	36,604
4. Gasco Distribution System	Licking/OH	500	33,300
5. Panda Rosemary Corp	Northampton/NC	36,000	49,387
6. Paramount Transmission Co	Hocking/OH	5,000	13,031
7. Commonwealth Gas Services, Inc	Chesapeake/VA	96,000	15,146
8. Prestonsburg City's Utilities	Floyd/KY	3,000	51,342
9. West Ohio Gas Company	Putnam/OH	10,000	59,247
10. Graham Energy Marketing Corp	Westmoreland/PA	50,000	214,960
11. Kalida Natural Gas Company	Hancock/OH	1,500	34,306
12. Northeast Ohio Natural Gas Corp	Holmes/OH	200	9,654
13. Foraker Gas Co	Perry/OH	900	27,944
14. Symmes Natural Gas Company	Lawrence/OH	50	7,831
15. Southeastern Natural Gas Co	Morgan/OH	10,200	89,602
16. Northeast Ohio Natural Gas Corp	Fairfield/OH	100	27,100
17. Northeast Ohio Natural Gas Corp	Fairfield/OH	50	21,500

Customer	Location (county/state)	Proposed quantity (dt equivalent per day)	Estimated cost (dollars)
18. Northeast Ohio Natural Gas Corp	Trumbull/OH	250	20,000
19. Mountaineer Gas Company	Upshur/WV	200	20,830
20. Ohio Cumberland Gas Company	Holmes/OH	975	21,000

It is stated that all of the facilities were authorized for transportation service under NGPA section 311. It is explained that the transportation services are being rendered on an interruptible basis pursuant to the terms of Columbia's Rate Schedule ITS. It is stated that Columbia is being reimbursed by the customers for the construction costs. It is asserted that the proposed deliveries will be within Columbia's authorized level of service and that the proposal will have no impact on Columbia's existing design day and annual obligations to its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27941 Filed 11-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-56-000]

Columbia Gas Transmission Corp.; Notice of Application

November 8, 1993.

Take notice that on November 3, 1993, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP94-56-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a separate compression service provided to North Carolina Natural Gas Corporation (NCN), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that by order issued October 25, 1989, in Docket No. CP89-636-000, it was authorized to provide compression service as well as sales service to NCN at the new Pleasant Hill Interconnection. It is stated that compression service was to be provided pursuant to an agreement executed between the parties on January 12, 1989, which agreement was proposed to be included in Columbia's FERC Gas Tariff, Original Volume No. 2 as Rate Schedule X-134. Columbia states that the January 12, 1989, agreement was previously filed with the Commission on January 17, 1989, as part of Exhibit P in Columbia's application in Docket No. CP89-636-000.

Columbia submits that it proposed to charge NCN an incremental rate of $.077 per Dth under Rate Schedule X-134 as originally filed. It is stated that the Commission rejected this proposed rate, 57 FERC ¶61,277 (1991). Columbia states that it refiled Rate Schedule X-134 utilizing a one part demand charge based on the cost of service. Columbia states that, while the Commission found this proposed rate treatment, subject to condition, to be acceptable (59 FERC ¶61,278 at 62,014 (1992), NCN did not agree to the proposed rate treatment and would not accept the proposed terms and conditions contained in the agreement authorized by the Commission. It is stated that NCN's application for rehearing of the latter order is currently pending before the Commission. Columbia states that authorization of its request for abandonment would render NCN's rehearing request moot.

Columbia states that an additional supplier of gas to NCN at the Pleasant Hill delivery point is Transcontinental Gas Pipe Line Corporation (Transco). It is stated that Transco subsequently agreed to provide and is currently providing increased pressure to NCN. Therefore, Columbia submits that NCN no longer requires that compression service be made available by Columbia for third party gas supplies delivered to NCN, and has withdrawn its request for such service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-27942 Filed 11-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-431-001]

Questar Pipeline Co.; Amendment to Application

November 8, 1993.

Take notice that on November 1, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt

Lake City, Utah 84111 filed in Docket No. CP93–431–001 an amendment to its application requesting authority to abandon, by reclassification to a nonjurisdictional gathering designation, specific certificated non-main-line facilities and petition for declaratory order filed June 7, 1993, in Docket No. CP93–431–000. It is stated that Questar's amendment informs the Commission of the revised ownership of the 1.48 miles of proposed 10-inch diameter residue pipeline extending from the discharge side of the proposed Cutthroat Processing Plant, a joint venture between Questar and ANR Production company (ANRPC), to a point of interconnection with Questar's transmission facilities in southwestern Wyoming.

Quester submitted the following information to inform the Commission of changes to the previously filed application for certificate:

(1) The initial throughout of the proposed nonjurisdictional Cutthroat Processing Plant will be 68 MMcf per day rather than 35 Mmcf per day.

(2) With a pant size of 68 Mmcf per day, the estimated cost of the Cutthroat Processing Plant, excluding the residue line, has been revised upward from $9.0 million to $11.85 million.

(3) The status of ANRPC, as plant operator, is now a topic of further negotiations between Questar and ANPRC and is likely to result in Questar being designated plant operator.

(4) Questar, rather than the processing joint venture, will construct, own and operate the 1.48-mile, 10-inch diameter residue pipeline extending from the discharge side of the processing plant to Questar's transmission facilities.

Any person desiring to be heard or to make any protest with reference to said amendment to application should, on or before November 19, 1993, file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27940 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–5–000]

San Diego Gas & Electric Co. v. Public Service Company of New Mexico; Notice of Filing

November 8, 1993.

Take notice that on October 27, 1993, San Diego Gas & Electric Company (SDG&E) filed a complaint against the Public Service Company of New Mexico (PNM). SDG&E states that the basis for the complaint is that the demand rate, combined with a five-mill energy rate "adder", charged to SDG&E by PNM under a 100-megawatt system power sale agreement (the Agreement), which went into effect in June, 1988, is unjust, unreasonable, and unduly discriminatory.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before December 8, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27938 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Final Closing Date for Special Refund Proceeding No. KEF–0120 Involving Anchor Gasoline Corporation

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of closure of Special Refund Proceeding KEF–0120, Anchor Gasoline Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to a consent order entered into between the DOE and Anchor Gasoline Corporation.

FOR FURTHER INFORMATION CONTACT: Thomas S. Bloom, Staff Analyst, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: On April 2, 1992, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Anchor Gasoline Corporation. See Anchor Gasoline Corporation, 22 DOE ¶ 85,071 (1988), 53 FR 36879 (September 22, 1988). That decision established October 13, 1992, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Anchor's refined petroleum products. 22 DOE 88,221.

The Office of Hearings and Appeals commenced accepting refund applications in the Anchor refund proceeding on April 2, 1992, more than one year ago. All of the Applications for Refund filed in the Anchor proceeding are currently being considered and will be resolved in the near future. Furthermore, in view of the extended period of time that has transpired since the commencement of the proceeding, we have concluded that all eligible applicants have been provided with more than ample time to file. Accordingly, as of December 13, 1993, the proceeding established to distribute funds from the escrow account maintained pursuant to the consent order entered into between the DOE and Anchor Gasoline Corporation will be closed. Applications for Refund filed after December 13, 1993, will be subject to summary dismissal. Any unclaimed funds remaining after all meritorious claims have been paid will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28013 Filed 11–12–93; 8:45 am]

BILLING CODE 6450–01–P

Final Closing Date for Special Refund Proceeding No. LEF–0005 Involving Automatic Comfort Corporation

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of closure of Special Refund Proceeding LEF–0005, Automatic Comfort Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to a consent order entered into between the DOE and Automatic Comfort Corporation.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: On February 8, 1993, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Automatic Comfort Corporation. See Automatic Comfort Corporation, 22 DOE ¶ 85,250 (1993), 58 FR 8591 (February 16, 1993). That Decision established May 17, 1993, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Automatic Comfort Corporation's refined petroleum products. 22 DOE at 88,669.

The Office of Hearings and Appeals has not received any refund applications in the Automatic refund proceeding since the special refund procedures were established on February 16, 1993. Accordingly, 30 days from the date of issuance of this Notice, the proceeding established to distribute funds from the escrow account maintained pursuant to the consent order entered into between the DOE and Automatic Comfort Corporation will be closed. The unclaimed funds will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28014 Filed 11–12–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4800–5]

Control Techniques Guidelines Document: Reactor Processes and Distillation Operations Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of control techniques guidelines (CTG) document.

SUMMARY: A CTG document for control of volatile organic compound (VOC) process vent emissions from synthetic organic chemical manufacturing industry reactor processes and distillation operations is available to the public. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The control techniques described in this CTG are universal and can be used to reduce VOC process vent emissions from reactor processes and distillation operations processes in other industries.

ADDRESSES: Copies of the CTG may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, NC 27711, telephone number (919) 541–2777.

Docket. Docket No. A–91–38 containing supporting information used in developing the information document, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Evans, (919) 541–5410, Emissions Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: Under the clean Air Act as amended (1990 Amendments), State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the 1990 Amendments were enacted and the date an area achieves attainment status. **Federal Register** notice 44 FR 53761 (September 176, 1979) defines RACT as the "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility."

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analysis of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and economic and technical circumstances of the individual source. Such determinations of case-by-case RACT must be approved by the EPA in order to become part of a State implementation plan.

This CTG recommends a RACT presumptive norm for the control of VOC rent emissions from reactor processes and distillation operations processes. Each production unit within the synthetic organic chemical manufacturing industry uses either a reactor process, a distillation operations process, or both, in manufacturing their products. The sources, mechanisms, and control of VOC process vent emissions are described.

Under Executive Order (E.O.) 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This CTG document is not "rulemaking;" rather it provides information to States to aid them in developing rules. This **Federal Register** notice and the CTG were submitted to the Office of Management and Budget (OMB) for review. There were no OMB comments. The CTG has also been submitted for public review. A summary of the public comments and the EPA responses to those comments are included in the CTG document Appendix F. The complete public comments are included in the docket, which is listed in the **ADDRESSES** section of this notice.

Dated: November 2, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-27984 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-140216; FRL-4742-1]

Access to Confidential Business Information by EG and G Dynatrend, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, EG and G Dynatrend, Inc. (DYT) of Burlington, Massachusetts for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-W8-0126, contractor DYT, of 24 New England Executive Park, Burlington, MA 01803-5203, will assist the Office of Pollution Prevention and Toxics (OPPT) in responding to malfunctioning alarms, setting up alarms, and storing tapes with CBI data.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-W8-0126, DYT will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. DYT personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide DYT access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at the Environmental Research Center (ERC), EPA's Annex in Research Triangle Park, North Carolina.

In a previous notice published in the **Federal Register** of February 22, 1989 (54 FR 7598), DYT was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend DYT's access to TSCA CBI under contract number 68-W8-0126. Upon completing review of the CBI materials, DYT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until July 18, 1994.

DYT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 3, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-27989 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140215; FRL-4738-6]

Access to Confidential Business Information by Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Inc. (LAI) of Arlington, Virginia for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26,1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-W9-0052, contractor LAI, of 2200 Clarendon Blvd., Suite 900, Arlington, VA 22201, will assist the Office of Pollution Prevention and Toxics (OPPT) in managing and operating the TSCA Confidential and NonConfidential Business Information Centers.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-W9-0052, LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at LAI's leased facility at EPA Headquarters.

In a previous notice published in the **Federal Register** of November 10, 1992, (57 FR 53501), LAI was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend LAI's access to TSCA CBI under contract number 68-W9-0052. LAI is currently authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual.* EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, LAI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

LAI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 3, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-27990 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140214; FRL-4649-3]

Access to Confidential Business Information by Research Triangle Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research Triangle Institute

(RTI) of Research Triangle Park, North Carolina, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D1-0118, contractor RTI of 3040 Cornwallis Rd., P.O. Box 12194, Research Triangle Park, NC, will assist the Office of Pollution Prevention and Toxics (OPPT) in reviewing data submitted to EPA on asbestos milling, manufacturing, and fabrication sources in support of development of national emission standards for hazardous air pollutants.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D1-0118, RTI will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. RTI personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of October 19, 1992, (57 FR 47644), RTI was authorized for access to CBI submitted to EPA under section 8 of TSCA. EPA is issuing this notice to extend RTI's access to TSCA CBI under the new contract number 68-D1-0118.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide RTI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at RTI's Research Triangle Park site only. Upon completing review of the CBI materials, RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

RTI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: October 29, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-27991 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4800-8]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Public Law 93-339), will be held at 9 a.m. on December 2, 1993 and at 8:30 a.m. on December 3, 1993, at the St. James Hotel, St. James Room, 950 24th Street NW., Washington, DC 20007. Council Subcommittees will hold their meetings on November 30 and December 1, 1993, at the Environmental Protection Agency.

The purpose of the meeting will be to seek Council advice and comments on major program issues. Some issues include: Reauthorization of the Safe Drinking Water Act; Drinking Water Research Needs; Selection of Chemicals for Standard Setting; and Small System Compliance. They will be updated on the Regulatory Negotiation for Disinfectants/Disinfection By-Products and other on-going regulatory packages.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be only one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 29, 1993.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460 or at (202) 260-2285.

Dated: November 4, 1993.

Edward A. Kramer,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 93-27983 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4800-7]

Delaware; Adequacy Determination of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of tentative determination on application of State of Delaware for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal municipal solid waste landfill permit programs. EPA intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in

interpreting these requirements. Approved state/tribe permit programs provide for interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria continue to apply to all permitted and unpermitted MSWLF facilities.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258, independent of any state/tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

The State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) has applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Delaware's MSWLF application and has made a tentative determination that all portions of Delaware's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria.

DATES: All comments on Delaware's application for a determination of adequacy must be received by EPA Region III by the close of business on December 27, 1993. If there is sufficient public interest, EPA Region III will hold a public hearing on December 27, 1993 from 10 a.m. to 1 p.m. at the offices of the Delaware Department of Natural Resources and Environmental Control, located at 89 Kings Highway, Dover, Delaware. Delaware will attend the public hearing held by EPA Region III on this subject. Oral and/or written comments can be submitted during the public hearing. In addition, written comments on Delaware's application may be submitted to EPA Region III at the address specified below during the public comment period.

Persons requesting that EPA Region III hold a public hearing and/or wishing to be notified of the public hearing, if held, should contact the EPA Region III contact given below in the **FOR FURTHER INFORMATION CONTACT** section, within thirty (30) days of the date of the publication of this notice. Such persons so contacting EPA will be notified directly if the public hearing will be held or not held, at least two weeks prior to December 27, 1993.

ADDRESSES: Copies of Delaware's application for adequacy determination are available for inspection and copying from 9 a.m. to 4 p.m. at the following State and EPA addresses: Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, Attn: Mr. Richard A. Folmsbee, telephone (302) 739–3820; and U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher J. Luksic, mailcode (3HW53), telephone (215) 597–2842.

The public may submit written comments on EPA Region III's tentative determination until the close of business on December 27, 1993. All comments must be sent to U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Jeffrey M. Alper, mailcode (3HW53).

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Section 4005 of Subtitle D requires that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

Each EPA Region will determine whether a state/tribe has submitted an "adequate" program based on the criteria outlined above. EPA expects states/tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Delaware

On October 7, 1993, Delaware submitted a final application for adequacy determination. EPA Region III reviewed Delaware's application and tentatively has determined that all portions of Delaware's MSW landfill permitting program, with the changes proposed, will ensure compliance with the revised Federal Criteria.

EPA Region III has determined that Delaware's program satisfies the requirements of the draft State and Tribal Implementation Rule (STIR). In addition, Delaware's solid waste permit program will ensure compliance with the revised Federal MSWLF Criteria when the Delaware Regulations Governing Solid Waste (DRGSW) are amended to incorporate the changes specified in their application and described below.

Subpart A—General

The current Delaware requirements fully comply with: 40 CFR 258.1, Purpose, Scope, and Applicability; and § 258.3, Consideration of other Federal laws.

§ 258.2 Definitions—Where appropriate, the State will adopt key terms and definitions which will more clearly ensure compliance with the 40 CFR part 258 Criteria. Subpart B—Location Restrictions

§ 258.10 Airport Safety—The State will amend DRGSW Section 5.A.3. to require that the Federal Aviation Administration (FAA) and affected airport(s) are notified of a proposed landfill located within 5 miles of an airport.

§ 258.11 Floodplains—Delaware will include the requirements and terms of this section in DRGSW § 5.A.4.a.

§ 258.12 Wetlands—The current Delaware requirements fully comply with this section.

§§ 258.13 Fault Areas, 258.14 Seismic Impact Zones, and 258.15 Unstable Areas—The State will include the requirements and terms of these sections in DRGSW Sections 5.A.4.h., 5.A.4.i., and 5.A.4.j., respectively.

§ 258.16 Closure of Existing MSWLF Units—Section 258.16 will not be adopted by Delaware, since Delaware has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

§ 258.20 Excluding Receipt of Hazardous Waste and § 258.26 Run-on/Run-off Control Systems—The State will amend DRGSW Sections 5.I.2.l. and 5.F.2., to include the respective requirements of these sections.

The current State requirements fully comply with: § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.27, Surface Water; and § 258.29, Record Keeping.

§ 258.23 Explosive Gas Control—The State will amend DRGSW § 5.E.4. to require the specific response actions of this section when critical levels of explosive gas are exceeded.

§ 258.28 Liquids Restrictions—The Delaware Solid Waste Authority (DSWA) conducts ongoing research to stabilize wastes through leachate recirculation, thereby minimizing the length of the post-closure care periods. Delaware will allow such recirculation in landfills designed with double synthetic liners, requiring recordkeeping and reporting of leachate recirculation activities and problems encountered. Leachate recirculation at such landfill units will be subject to annual renewal and approval by the Delaware DNREC.

Subpart D—Design Criteria

§ 258.40 Design Criteria—The State will amend DRGSW § 5.B.2. to adopt EPA's performance standard for landfill design as specified in § 258.40(a)(1), (c) and (d).

Subpart E—Ground-water Monitoring and Corrective Action

§ 258.50 Applicability—Delaware fully complies with the requirements in this section.

§ 258.51 Ground-water Monitoring Systems—The State will adopt EPA's relevant point of compliance (150 meters), within which the downgradient monitoring wells must be located.

§ 258.53 Ground-water Sampling and Analysis Requirements—The State will require that unfiltered ground-water samples be obtained except where turbidity cannot be controlled through careful well construction, development, and sampling. In addition, the State will adopt the data evaluation requirements found in subsections (e), (g), (h), and (i) of this section.

§ 258.54 Detection Monitoring—The State will adopt the requirements of this section, including the requirement that the owner/operators sample ground-water at least semi-annually for Appendix I parameters. Based on the results of ground-water and leachate monitoring, the State may modify the required list of ground-water monitoring parameters. In addition, the State will amend its regulations to require leachate sampling with monthly analyses for indicator parameters and semi-annual analyses for Appendix II constituents.

§ 258.55 Assessment Monitoring—The State will proceed directly from Detection Monitoring to Corrective Measures Assessment.

§ 258.56 Corrective Measures Assessment—The required list of parameters for ground-water monitoring will be expanded in the corrective measures assessment to include those Appendix II constituents deemed appropriate from the leachate monitoring data. During the corrective measures process there will be an opportunity for public input at the time of permit modification. A permit modification is required when corrective measures are deemed necessary.

§ 258.57 Selection of Remedy, and § 258.58 Implementation of Corrective Action—The State will adopt into regulation, the requirements of these sections.

Subpart F—Closure And Post-Closure Care

§ 258.60 Closure Criteria—The State will amend their regulations to require that a geomembrane cover be used as part of a capping system where a MSWLF has been constructed with a geomembrane liner.

§ 258.61 Post-Closure Care Requirements—Delaware's current regulations fulfill the requirements of this section.

Subpart G—Financial Assurance Criteria

§ 258.70 Applicability and Effective Date—The State will remove the current financial assurance exemption for the DSWA, which currently manages all of Delaware's municipal solid waste. DSWA will comply with the financial assurance requirements which will be effective on April 9, 1995.

§ 258.71 Financial Assurance for Closure; § 258.72 Financial Assurance for Post-Closure Care; and § 258.74 Allowable Mechanisms—Delaware's current regulations fulfill the requirements of these respective sections.

§ 258.73 Financial Responsibility for Corrective Action—The State will adopt into regulation the requirements of this section.

EPA Region III will consider all public comments on its tentative determination received during the public comment period and during any public hearing if held. Issues raised by those comments will be the basis for a final determination of adequacy for Delaware's program. EPA Region III will make a final decision on whether or not to approve Delaware's program, and will give notice in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments. Delaware submitted a schedule indicating that it will be able to complete their revisions by December 15, 1993. EPA Region III's final determination will not be made until Delaware has revised regulations as discussed above and they are in affect.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b) and 40 CFR Part 258, I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: November 5, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93-27985 Filed 11-12-93; 8:45 am]

BILLING CODE 6560-50-P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting Cancellation

AGENCY: General Accounting Office.

ACTION: Cancellation of November meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given of cancellation of the November 18 meeting of the Federal Accounting Standards Advisory Board. Notice of the meeting was previously published in the **Federal Register** of November 8. It is currently anticipated that the December meeting will be held as scheduled. Due notice of it will be published at a later date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512–7354.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988)); 41 CFR 101–6.1015 (1990).

Dated: November 9, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93–28001 Filed 11–12–93; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Scientific Review of Draft Current Intelligence Bulletin on the Carcinogenic Potential of Occupational Exposure to Asphalt Products; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Scientific Review of Draft Current Intelligence Bulletin on the Carcinogenic Potential of Occupational Exposure to Asphalt Products.

Times and Dates: 9 a.m.–5:30 p.m., December 1, 1993; 8 a.m.–12 noon, December 2, 1993.

Place: Robert A. Taft Laboratories, Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to review and discuss the draft of Current Intelligence Bulletin, "Carcinogenic Potential of Occupational Exposure to Asphalt Products," with a panel of invited participants selected by NIOSH for their expertise and background in this area. The scientific review will provide NIOSH with individual input and opinion from experts outside the Institute prior to finalizing the Current Intelligence Bulletin for publication and transmittal to the Department of Labor. The review will focus on the health effects related to occupational exposures to asphalt products and on data from carcinogenicity studies in animals. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact persons for additional information: General Information may be obtained from Pam Graydon, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–30, Cincinnati, Ohio 45226, telephone 513/533–8312.

Technical information may be obtained from Crystal Ellison NIOSH, CDC 4676 Columbia Parkway, Mailstop C–31, Cincinnati, Ohio 45226, telephone 513/533–8331.

Dated: November 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27949 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–19–M

Control of Chemical Exposures and Ergonomic Risk Factors in Commercial Dry Cleaners; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Chemical Exposures and Ergonomic Risk Factors in Commercial Dry Cleaners.

time and Date: 1 p.m.—5 p.m., December 8, 1993.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review the protocol for a proposed NIOSH study entitled "Control of Chemical Exposures and Ergonomic Risk Factors in Commercial Dry Cleaners." This study would evaluate perchloroethylene exposures associated with the use of various dry cleaning control technologies. It would also evaluate chemical exposures during the spotting process and ergonomic risk factors during pressing. The goal of this study is to identify technologies effective in reducing these hazards to the dry cleaning worker. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person For Additional Information: Gary S. Earnest, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R–5, Cincinnati, Ohio 45226, telephone 513/841–4370.

Dated: November 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27948 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–19–M

National Institute for Occupational Safety and Health; Request for Existing Information Relevant to Implementing the Workers' Family Protection Act

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for existing information.

SUMMARY: NIOSH is requesting existing information on the contamination of workers' homes by hazardous chemicals and substances transported from the workplace on equipment, clothing, or the worker's person. This information would include existing reports of incidents resulting in familial poisonings or illnesses, methods of preventing and remediating such incidents, relevant statutes and regulations to prevent such incidents, and past investigations, enforcement actions, and the role of governmental agencies in preventing and responding to such incidents.

DATES: Information in response to this notice should be submitted by February 14, 1994.

ADDRESSES: Please submit two copies of any information to Diane Manning, Docket Office Manager, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–34, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Galson, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, telephone 513/533–8302.

SUPPLEMENTARY INFORMATION: The Workers' Family Protection Act (29 U.S.C. 671a), hereafter referred to as "the Act," was enacted on October 26, 1992, as section 209 of Public Law 102–522, the "Fire Administration Authorization Act of 1992." The purpose of the Act is to protect the health of workers and their families from hazardous chemicals and substances, including infectious agents, transported from the workplace to the

home on equipment, clothing, or the worker's person. The specific objectives of the Act are the following:

(1) To increase understanding and awareness of the extent and impact on health of hazardous chemicals and substances transported from the workplace to the home;

(2) To prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(3) To clarify regulatory authority for preventing and responding to incidents of home contamination; and

(4) To assist workers in redressing and responding to incidents.

Under the Act, NIOSH is mandated to conduct a study to evaluate the problem of contamination of workers' homes by hazardous chemicals and substances transported from the workplace. The study is to include review of past incidents of home contamination, actions taken by governmental agencies in response to such incidents, the roles and practices of governmental agencies and NIOSH study, and an analysis of relevant statutes, regulations, and voluntary measures. In addition to requesting existing information on these matters, NIOSH is also requesting existing information on incidents of home contamination and family illness or poisoning in situations where the workplace and home located together, such as farms and certain small businesses. NIOSH is requesting both published reports, including studies, case histories, voluntary guidance, statutes, and regulations, and unpublished reports including accounts from physicians, poison control centers, industry management, labor unions, and other parties. Existing information is specifically requested on the following:

1. Measurements of home contamination or incidents of familial poisoning or illness due to contamination of the home by hazardous chemicals or substances transported to the home from the workplace on the equipment (including vehicles), clothing, or a worker's person.

2. Any measurements of home contamination or incidents of familial poisoning or illness resulting from hazardous chemicals or substances due to the proximity of the workplace and the home, such as farms or other businesses with attached living quarters.

3. Reports of Federal, state or local government actions to either enforce statutes or regulations or provide assistance in incidents of familial poisoning or illness due to hazardous chemicals or substances transported home from the workplace, or due to the proximate nature of the home and workplace.

4. Measures used by employers to prevent or remedy home contamination, including statutory, regulatory, or voluntary industrial hygiene measures. (Please specify the approximate number of workers employed by the business establishment.)

5. Effectiveness of industrial hygiene practices in the workplace, such as housekeeping practices and the use of personal protective equipment, in preventing home contamination.

6. Effectiveness of normal house cleaning and laundry procedures in removing hazardous materials and agents from workers' homes, personal clothing and equipment (including vehicles).

7. Information on indoor air quality research that pertains to the fate of chemicals transported from a workplace into the home environment.

8. Information on any of the above items that pertains specifically to firefighters.

NIOSH presently has copies of the references listed at the end of this request for existing information.

Information received in response to this notice (except that designated trade secret and protected under Section 15 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 664], or that exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a) will be available for public examination and copying at the above address.

Dated: November 5, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

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[FR Doc. 93–27947 Filed 11–12–93; 8:45 am]
BILLING CODE 4160–19–P

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Establishing Procedures for Transmitting Information Between Medicare Carriers and Medicare Supplemental Insurers; *Form No.:* HCFA–R–140; *Use:* These procedures provide for the transfer of claims information from a Medicare carrier to a Medicare supplemental (Medigap) insurer when a beneficiary has assigned his/her right of payment under the Medigap policy to a participating physician or supplier in order to speed payment of Medigap benefits to participating physicians and suppliers. Medigap insurers are required to issue, to beneficiaries, insurance enrollment cards and notification of claims payment determinations. They are also required to report to the Secretary a single mailing address to

which claims notices may be sent. States are required to submit an annual report to the Secretary which includes information on Medigap policies within the State; *Frequency:* On occasion (claims information) and annually (Medigap insurers address and State information on Medigap policies); *Respondents:* Individuals or households, State/local government, businesses or other for profit, and nonprofit institutions; *Estimated Number of Responses:* Insurers: 170,000 (cards), 350 (reports), 86,400,000 (notices); States: 50; *Average Hours Per Response:* 1 (cards), 1 (report), 3 minutes (notices), and 5–60 hours (State report); *Total Estimated Burden Hours:* 170,000 (cards), 350 (insurers reports), 4,320,000 (notices), and 1,075 (State reports) for a total of 4,491,425.

2. *Type of Request:* Extension; *Title of Information Collection:* Medicare Physician or Supplier Agreement; *Form Nos.:* HCFA–460, –463; *Use:* These forms require all physicians and suppliers to select or decline participation in Medicare. These two groupings are the basis for updating fee schedules and an annual publication of a directory of participating physicians and suppliers. Those physicians and suppliers choosing to participate in Medicare agree to accept reimbursement on a fee basis. The forms are filled out only by new physicians and suppliers; *Frequency:* Annually; *Respondents:* Businesses or other for profit, State or local governments; *Estimated Number of Responses:* 99,357; *Average Hours Per Response:* .16; *Total Estimated Burden Hours:* 15,897.

3. *Type of Request:* Extension; *Title of Information Collection:* Patient Intake Data Form for the National Home Health Agency; *Form No.:* HCFA–442; *Use:* This information collection provides data about the health and functional status characteristics of Medicare home health patients served by home health agency prospective payment demonstration providers in order to monitor the operations of the demonstration and provide information for its evaluation about the project's effects on types of patients; *Frequency:* Annually; *Respondents:* Individuals or households, businesses or other for profit, nonprofit organizations; *Estimated Number of Responses:* 46,550; *Average Hours Per Response:* .10; *Total Estimated Burden Hours:* 4,655.

4. *Type of Request:* Extension; *Title of Information Collection:* Agency Characteristics Form for the National Home Health Agency Prospective Payment Demonstration; *Form Nos.:* HCFA–443, –444; *Use:* This form will collect baseline information on approximately 400 home health agencies interested in participating in the home health agency prospective payment demonstration. An annual update will be completed by 133 agencies actually selected for participation in the two phases of the demonstration; *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit institutions, small businesses or organizations; *Estimated Number of Responses:* 111; *Average Hours Per Response:* .65; *Total Estimated Burden Hours:* 72.

5. *Type of Request:* New collection; *Title of Information Collection:* Intake and Assessment Survey Package for the Community Nursing Organization Demonstration; *Form No.:* HCFA–644; *Use:* This survey will collect information on approximately 4,800 individuals enrolled in the community nursing organization demonstration. The information collected will be used to evaluate the effectiveness and outcomes of the demonstration project; *Frequency:* Annually; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 4,032; *Average Hours Per Response:* 1.0119; *Total Estimated Burden Hours:* 4,080.

6. *Type of Request:* Revision; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements Contained in 42 CFR 485.56, 485.58, 485.60, 485.66, and 405.262; *Form Nos.:* HCFA–R–55, –359, –360; *Use:* In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to HCFA; *Frequency:* Annually; *Respondents:* State or local governments, small businesses or organizations; *Estimated Number of Responses:* 162 (reporting), 162 (recordkeeping); *Average Hours Per Response:* 3.25 (reporting), 475.39 (recordkeeping); *Total Estimated Burden Hours:* 526 (reporting), 77,013 (recordkeeping) for a total of 77,539.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Date: November 4, 1993.

John A. Streb,

Director, MPAS, OBA, Health Care Financing Administration.

[FR Doc. 93–27897 Filed 11–12–93; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on the National Health Service Corps

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Nada Schnabel, National Advisory Council on the National Health Service Corps, 4350 East West Highway, 8th Floor, Rockville, Maryland 20857, Telephone (301) 594–4137.

Dated: November 8, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–27959 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: October 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that

submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-related Convictions:	
Alcalen, Gloria S, Somerset, NJ	11/04/93
Anastas, Nick G, Pittsford, NY	11/04/93
Bravo, Sergio, Miami, FL	11/11/93
Chalkley, Walter, Baltimore, MD	11/11/93
Chaudhry, Muhammad R, Jersey City, NJ	11/04/93
Del Gizzo, Giovanni, Highlands, NJ	11/04/93
Drucker, Robert N, Napa, CA	11/03/93
Gordon, David L, Great Neck, NY	11/04/93
Grewal, Jagmohan S, Florence, CO	11/03/93
Hiotis, Michael P, Baltimore, MD	11/11/93
Hussain, Ahmed G, Forest Hills, NY	11/04/93
Hussain, Saleem, Elmhurst, NY	11/04/93
Iweagwu, Tony, Chicago, IL	11/11/93
Kalvar, Patricia N, Huntington, NY	11/04/93
Khan, Ali S, West Hempstead, NY	11/04/93
Munshi, Prabhakar, Irvington, NJ	11/04/93
Rowe, Algernon, Queens, NY	11/04/93
Samu, William, Lincoln Park, MI	11/11/93
Taylor, Grandell A, Huntington, WV	11/11/93
Vallone, Michael, Lewisburg, PA	11/04/93
Patient Abuse/Neglect Convictions:	
Beyer, Kathryn P, Georgetown, TX	11/11/93
Bland, Johnetta, Detroit, MI	11/11/93
Cook, Darryl, Detroit, MI	11/11/93
Delph, Diane Marie, Tucson, AZ	11/03/93
Heath, Janet Futral, Centreville, AL	11/11/93
Johnson, Glenda J, Tuscaloosa, AL	11/11/93
Kirksey, Anthony R, Independence, MO	11/11/93
Lizotte, Lue Ann, Bangor, ME	11/16/93
McGuire, Steven H, Farmington, MO	11/11/93
McKnight, Shannon, Conway, AR	11/11/93
Mingo, Christopher, Buckfield, ME	11/16/93
Robinson, Lena A, West Memphis, AR	11/11/93
Shields, Fabiola Canas, Tucson, AZ	11/03/93
Upchurch, Irene, Tuscaloosa, AL	11/11/93
Williams, Mary G, BALTIMORE, MD	11/11/93
Conviction for Health Care Fraud:	
Sacha, Sam, Stockton, CA	11/03/93
Winstead, Arthur III, San Jose, CA	11/03/93
Controlled Substance Convictions:	
Datto, Ralph B, Carbondale, PA	11/11/93
License Revocation/Suspension:	
Moore, Lornold W, Chicago, IL	11/21/93
Sitomer, Allen Z, Newport, RI	11/16/93
Entities Owned/Controlled by Convicted:	
Bass Ambulance, Hopkinsville, KY	06/06/91
Default on Heal Loan:	
Bacon, Pamela M, Spadalia, MO	11/21/93
Barner, Russell J, Tampa, FL	11/21/93
Burns, Christopher D, Milford, DE	11/21/93
Chow, Aaron L, Shelton, WA	11/13/93
Clifford, Fred W, Palm Desert, CA	11/13/93
Clinch, Patrick J, Rapid City, SD	11/26/93
Davis, Edward Lee, Memphis, TN	11/21/93
Diesen, James D, Orange Park, FL	11/21/93
Driessen, Todd G, Faribault, MN	11/21/93
Fontenette, Vernie, Gulfport, MS	11/21/93
Goodwin, Mark A, Tulsa, OK	11/21/93
Gorton, George F, Hinton, OK	11/21/93
Hagn, William R, E Fort Myers, FL	11/21/93
Hicks, Paul S, Elmira, NY	11/14/93
Hollander, Gregg M, Philadelphia, PA	11/21/93
Hundley, Kenneth L, Panama City, FL	11/21/93
Israelsen, John A, Logan, UT	11/26/93
Jackson, Zona G, Freeman, VA	11/21/93
Johnson, Mark A, Hyattsville, MD	11/21/93
Jones, Gale F, Richmond, VA	11/21/93
Jones, Richard H, Camp Verde, AZ	11/13/93
Jones, William B, Englewood, NJ	11/14/93
Kratt, Thomas William, Nacogdoches, TX	11/21/93
Krebill, Michael W, Colorado Springs, CO	11/26/93
Kronbeck, Gary M, Little Falls, MN	11/21/93
Lang, Lula B, Pine Bluff, AR	11/21/93
Lay, William Glenn, Tucson, AZ	11/13/93
Llewellyn, Allan, N Attleboro, MA	11/26/93
Mamby, Audley R Jr, Philadelphia, PA	11/21/93
Meldonia, Barbara J, Stevens Point, WI	11/21/93
Mercks, James L, Woodstock, GA	11/21/93
Montanari, Arthur M, La Porte, TX	11/21/93
Moore, Lornold W, Chicago, IL	11/21/93
Moore, Gregory S, Clay, WV	11/21/93
Murphy, Richard N, North Bergen, NJ	11/14/93
Norpel, Joseph W, Erdenheim, PA	11/21/93
Oliver, John A Jr, Linden, NJ	11/14/93
Pachomski, Michael P, Nashua, NH	11/26/93
Robinson, Bruce K, W Palm Beach, FL	11/21/93
Saintlouis, Josephus H, Boston, MA	11/26/93
Schumacher, Douglas E, Dayton, OH	11/21/93
Scott, Rosemary C, Saluda, VA	11/21/93
Shay, Robert J, China Grove, SC	11/21/93
Shook, Scott L, Columbus, OH	11/21/93
Urquhart, Charles N, Philadelphia, PA	11/21/93
Section 1128Aa:	
Parker, Stanley M, Bonifay, FL	10/06/93
Peer Review Organization Cases:	
Stoops, Donald, Truth or Consequences, NM	09/14/93

* * * * *

Dated: November 5, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93-27898 Filed 11-12-93; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-40974]

Termination of Recreation and Public Purpose Classification; Nevada

November 4, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classification N-40974 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City District, 1535

Hot Springs Road, Carson City, Nevada 89706, 702–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Recreation and Public Purpose Classification N–40974 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 8 N., R. 30 E.,
Sec. 31, SW¼NE¼NE¼.

The area described contains 10 acres in Mineral County.

The classification made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Mineral County for a rifle range. The lease has expired and the classification no longer serves any purpose.

At 10 a.m. on December 15, 1993, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 15, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 15, 1993, the land will also be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–27902 Filed 11–12–93; 8:45 am]

BILLING CODE 4310–HC–M

[ES–940–04–4210–08–25–7A]

Eastern States: Change in Public Room Hours of Operation

SUMMARY: Effective January 3, 1994, the Eastern States Public Room hours of Operation will be Monday through Friday, 8 a.m. to 4:30 p.m. Comments shall be submitted by December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Gloria M. Ridolfi (703) 440–1605.

SUBMIT WRITTEN COMMENTS TO: Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, VA 22153.

Dated: November 9, 1993

Carson W. Culp, Jr.,

State Director.

[FR Doc. 93–27957 Filed 11–12–93; 8:45 am]

BILLING CODE 4310–GJ–M

[AZ–024–04–4210–05; AZA–22268]

Notice of Realty Action; Recreation and Public; Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, located near the City of Florence, Pinal County, Arizona, have been examined and found suitable for lease or conveyance to the Arizona National Guard under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*) for use for helicopter training operations.

Gila and Salt River Meridian, Arizona

T. 2 S., R. 8 E.,
Sec. 15, N½, SW¼.
Containing approximately 480 acres.

A portion of the lands are currently leased to the Arizona National Guard for helicopter training purposes, and it is proposed to include the remaining lands in the existing lease.

The lands are presently withdrawn under PLO 776 withdrawing the lands for use by the United States Air Force for the Rittenhouse Air Force Auxiliary Field.

It has been determined that the two uses (R&PP) lease or conveyance and the withdrawal) are compatible uses. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights for pipeline purposes granted to the Bureau of Reclamation by Right-of-Way AZA–21196.

5. Those rights for canal purposes (Central Arizona Project) granted to the Bureau of Reclamation by Right-of-Way AZA–22075.

6. Those rights for road purposes granted to the State of Arizona by Right-of-Way AZA–21352.

7. All rights associated with the application for withdrawal filed by the Bureau of Reclamation for the Central Arizona Project, AZA–997.

8. All rights reserved by PLO 776 to Williams Air Force Base. For detailed information concerning this action, contact Jim Andersen at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding this proposed lease, conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for helicopter training facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a helicopter training facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register.**

Dated: November 3, 1993.

John R. Christensen,

Acting District Manager.

[FR Doc. 93-27901 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-32-M

[NM-920-4210-06; NMNM 21834]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 6.5-acre-withdrawal for the Conchas Canal, Tucumcari Project continue for an additional 20 years. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

DATES: Comments should be received by February 14, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7501.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of August 5, 1944, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The land described as follows:

New Mexico Principal Meridian

T. 12 N., R. 29 E.,

A 300' strip reserved for the Conchas Canal right-of-way across lot 2 in section 22 more particularly described as follows: One Hundred and seventy five (175) feet left (northerly aside) and one hundred and twenty five (125) feet right (southerly side) of the centerline of the Conchas Canal; beginning at a point eight hundred and seventy nine (879.4) and four tenths feet N74°57'E of the east quarter corner of sec. 21 T. 12 N., R. 29 E., N.M.P.M., at Conchas Canal Station 2958+50.4, a point on the county line between San Miguel County and Quay County. The centerline described as follows:

Backing upstream along the Conchas Canal from the above described point, S56°42'00"E to the PI Station 2056+24.7 of a six hundred (600) foot radius curve of 2°31'30"L with curve length of 26.4 feet, then S54°10'30"E of the tangent to the PI Station 2051+13.0 of a two hundred (200) foot radius curve of 51°30'00"L with a curve length of 179.8 feet then N77°26'00"E of the tangent to the PI Station 2049+27.0 of a two hundred (200) foot radius curve of 48°23'30"R to the section line between sections 21 and 22.

The area described contains 6.5 acres in Quay County.

The purpose of the withdrawal is to protect the Conchas Canal, Tucumcari Project. The withdrawal segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of lands and Realty, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 1, 1993.

William C. Calkins,

Acting State Director.

[FR Doc. 93-27903 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Availability of the Draft North Cascades Chapter of the Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft North Cascades Chapter (Chapter) of the Recovery Plan for the Grizzly Bear (*Ursus arctos horribilis*). This Chapter addresses recovery of the grizzly bear population in the North Cascade Mountains of Washington and is intended to be added to the Grizzly Bear Recovery Plan. The Service solicits review and comment from the public on this draft Chapter.

DATES: Comments on the draft Chapter must be received on or before February 14, 1994, to receive consideration by the Service

ADDRESSES: Persons wishing to review the draft Chapter may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., suite 102, Olympia, Washington 98501-2192. Written comments or materials regarding this Chapter should be sent to the same address. Comments and materials received are available on request for public inspection, by appointment, during regular business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Dave Frederick, Field Supervisor, U.S. Fish and Wildlife Service in Olympia, Washington (see ADDRESSES above), telephone (206) 753-9440.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe suggested actions that Federal and State agencies and other involved parties can undertake for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the needed recovery measures.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies will also take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species populations and habitat from human

activities. A plan for the recovery of grizzly bears in the 48 conterminous States has been developed and approved. The proposed North Cascades Recovery Chapter (Chapter) is intended to be added to that recovery plan. It addresses recovery of grizzly bears in the North Cascade Mountains of Washington. Similar recovery chapters have already been completed for other ecosystems where grizzly bears still exist within the conterminous 48 States. These chapters are included in the Grizzly Bear Recovery Plan.

Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in the North Cascades, and in each of the ecosystems covered in the Grizzly Bear Recovery Plan, can be delisted independently once recovery criteria stated in the plan are met.

Public Comments Solicited

The Service solicits written comments on the Chapter described. All comments received by the date specified in the DATES section above will be considered prior to approval of the Chapter.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 8, 1993.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 93-27946 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Missouri National Recreational River Advisory Group; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

MEETING DATE AND TIME: December 8, 1993; 1:30 p.m. until 4:30 p.m. (Inclement weather date: December 15, 1993, same time and location.)

ADDRESS: Assumption Hall of the Catholic Church, Lynch, Nebraska (1 block south of Highway 12).

The agenda of the meeting includes an update and discussion on the status of the Missouri Recreational River General Management Plan presented by the National Park Service, including draft management alternatives and draft boundary concepts as developed by planners; public comment received from the newsletter (if available); the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Missouri National Recreational River, Public Law 102-50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile, free flowing segment of the Missouri River from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763-0591, (402) 336-3970.

Dated: November 3, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93-27952 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-70-P

Petroglyph National Monument Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 7 p.m., Monday, December 6, 1993, in the Theater Conference Room, St. Joseph's on the Rio Grande Church, 4000 St. Joseph's Place, NW., Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101-313 establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

—Introduction of commissions members and guests
—Status report about monument's General Management Plan
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contract Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW., room 101, Albuquerque, New Mexico 87102, telephone 505/766-8375.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: October 29, 1993.

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 93-27951 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the one hundred and eighteenth meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on December 9, 1993 from 8:30 a.m. to 3:30 p.m.

The purposes of the Meetings are: (1) to discuss the role of U.S. universities

in support of A.I.D.'s environment strategy; (2) to receive a report from the BIFADEC budget panel; (3) to review the Administration's policies on involvement of the historically black colleges and universities in federal programs; (4) to hear a report on linkages between U.S. scientists and the international agricultural research centers and (5) to discuss how the participation of institutions of higher education in international programs is important to the U.S. economy.

This meeting will be held in the Main State Department Building, room 1107. 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/University Center (UC) staff know (tel #703–816–0295 or 0292) if you expect to attend the meeting. Provide your full name, name of employing company or organization, address and telephone number not later than November 29, 1993. A UC staff member will meet you at the Department of State Diplomatic Entrance at C and 22 Streets, NW., with your pass.

Jiryis S. Oweis, Chief BIFADEC Support Staff will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Jiryis S. Oweis in care of the Agency for International Development, room 900, SA–38, Washington, DC 20523–3801 or telephone him on (703) 816–0264.

Dated: November 4, 1993.

Richard Fairley,

Acting Executive Director, Agency Center for University, Cooperation in Development.

[FR Doc. 93–27900 Filed 11–12–93; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 159X)]

Southern Pacific Transportation Company—Abandonment Exemption—Sacramento and El Dorado Counties, CA

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 37.14-mile portion of its Placerville Branch from milepost 108.00, near the Nimbus rail station, to milepost 145.14, near the Diamond Springs rail station, in Sacramento and El Dorado Counties, CA.

SPT 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 by 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; and

(4) The requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

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 expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 22, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 2, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laasko, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effect, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 17, 1993. 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 of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27973 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32385]

Wisconsin and Southern Railroad Co.—Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company (Soo) has agreed to grant trackage rights to the Wisconsin and Southern Railroad Co. (WSOR), over approximately 2 miles of Soo trackage between the division of ownership with WSOR at North Milwaukee, WI (milepost 93.72) and WSOR's locomotive and car repair facility in the City of Milwaukee, Milwaukee County, WI (milepost 93.69). The trackage rights became effective November 3, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). 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. Pleadings must be filed with the Commission and served on: Larry D. Starns, Wisconsin and Southern Railroad Co., 5300 North 33rd Street, Milwaukee, WI 53209.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's 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 as long as it retains jurisdiction to do so.

As a condition to the use of this exemption, any employees adversely 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).

Decided: November 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-27975 Filed 11-12-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-290 (Sub-No. 134X)]

Norfolk and Western Railway Co.—Abandonment Exemption—Between Huff Creek Junction and Lynco, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 1.02-mile line of railroad between milepost HC-0.00, at Huff Creek Junction, and milepost HC-1.02 at Lynco, WV.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by 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; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

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 (OFA) has been received, this exemption will be effective on December 15, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by November 26, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by November 19, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-27972 Filed 11-12-93; 8:45 am]

BILLING CODE 7035-01-P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's 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 on 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 request as long as it retains jurisdiction to do so.

[Finance Docket No. 32392]

Chicago Southshore & South Bend Railroad—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant Chicago SouthShore & South Bend Railroad (CSS) overhead trackage rights over a portion of its line described as follows: beginning at a point on NW's trackage from the connection between the tracks of CSS and NW in the vicinity of 124th Street near Kensington, to the connection between NW and the Illinois National Port District, near 130th Street, in Chicago, IL, a total distance of approximately 2 miles. The trackage rights became effective November 8, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., suite 800, 1350 New York Avenue, N.W, Washington, DC 20005.

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).

Chicago Rail Link (CRL) filed on November 5, 1993, a petition for stay and rejection or revocation of verified notice of exemption in this proceeding. In *Railroad Consolidation Procedures*, 1 I.C.C.2d 270, 281 (1985), the Commission established a general policy against considering petitions to stay the effectiveness of notices of exemption for exempt trackage rights agreements. The Commission noted that "[s]ince notices of exemption will be effective before they are published in the **Federal Register**, petitions for stay will not lie * * *." Accordingly, we will allow time for a response from NW and CSS and will consider CRL's petition as a petition to revoke.

Dated: November 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 93-27976 Filed 11-12-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 2, 1993, a proposed consent decree in *United States* v. *William Davis, et al.*, No. 90–484–P, was lodged with the United States District Court for the District of Rhode Island. The decree resolves claims of the United States against defendant Providence Journal Company ("Settling Defendant") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Davis Liquid Waste Site in Smithfield, Rhode Island (the "Site"). In the proposed consent decree the Settling Defendant agrees to pay the United States $65,000.00 in settlement of the United States' claims for response costs incurred and to be incurred by the Environmental Protection Agency at the Site.

The proposed decree may be examined at the Office of the United States Attorney, 10 Dorrance Street, Providence, Rhode Island; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Davis, et al.* (DOJ Reference No. 90–11–2–137B).

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–27904 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 27, 1993, proposed consent decrees in *United States* v. *Farber, et al.*, Civil Action No. 86–3736, were lodged with the United States District Court for New Jersey. The proposed Consent Decrees settle the United States' claims as to these parties, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.* relating to the cleanup of the Syncon Resin Superfund Site located in Kearny, New Jersey.

Under the terms of the Consent Decrees Essex Chemical Corporation will pay $412,500, Disch Corporation Company, Inc. will pay $412,500, Agway, Inc. will pay $300,000, and A & S Transportation Company and Spectrserv, Inc. will pay $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Farber, et al.*, DOJ Ref. #90–11–3–116.

The proposed consent decree may be examined at the Office of the United States Attorney, Civil Division, 970 Broad Street, Newark, New Jersey 07102; the Office of the United States Environmental Protection Agency, Region II, 26 Federal Plaza, N.Y., N.Y. 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–27905 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Crime Information Center (NCIC) Advisory Policy Board

The National Crime Information Center (NCIC) Advisory Policy Board will meet on December 8–9, 1993, from 9 a.m. until 5 p.m., at the Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, Texas, telephone 214–718–1200, to formulate recommendations to the Director, Federal Bureau of Investigation, (FBI) on the security, policy, and operation of NCIC and related systems.

The topics to be discussed will include the progress of the NCIC 2000 project, status of the NCIC Gang File, Bureau of Alcohol, Tobacco, and Firearms proposal on the Violent Felon File criteria, and other operational matters.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the NCIC or related matters with the Board, before or after. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman of the Board.

Inquires may be addressed to the Designated Federal Employee, Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone (202) 324–8920.

Dated: November 5, 1993.

David F. Nemecek,

Inspector-Deputy Assistant Director, Designated Federal Employee.

[FR Doc. 93–27906 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–02–M

Immigration and Naturalization Service

[INS NO. 1649–93]

Office of Strategic Planning Stakeholders' Workshop

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of request for input re: INS Strategic Plan and notice of Stakeholders' Workshop.

SUMMARY: The Immigration and Naturalization Service (INS) is collecting information for input to the development of a Strategic Plan. We are soliciting information from those entities potentially affected by, or interested in, the INS Strategic Plan, which, when in place, will provide long-range goals and objectives for the major functions and operations of the agency. Interested parties may provide input through written comments or attendance at a Stakeholders' Workshop to be held in December 1993.

DATES: Written comments on Strategic Plans are due by December 7, 1993. The Stakeholders' Workshop will be held December 14, 1993, from 9 a.m. to 5 p.m. Seating is limited, so participants should RSVP by phone at (202) 616–7767, by December 7, 1993. It is requested that only one or two representatives per organization attend.

ADDRESSES: The Stakeholders' Workshop will be held at the Ramada Renaissance Hotel located at 999 9th Street NW., Washington, DC. Written comments should be sent, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1649–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Lisa Roney, Assistant Director, Policy and Planning Staff, Office of Strategic Planning, Immigration and Naturalization Service, 425 I Street, NW., room 6042, Washington, DC 20536, telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: The "Government Performance and Results Act of 1993" mandates that, no later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. The Act also mandates that during development of strategic plans, agencies must consult with Congress and those entities potentially affected by or interested in such plans. To consult with those who have an interest in the development of the INS Strategic Plan, the Service is accepting written comments. Written comments, limited to a maximum of 3 pages, should address what you believe will be the major issues confronting INS over the next 10 years, and the recommended strategies for moving INS in desired directions to properly address those major issues.

The INS will also be holding a Stakeholders' Workshop on December 14, 1993 to further solicit the views and opinions of Congressional staff, Federal agencies, immigration groups, members of the public, and other parties which have a "stake" in the future actions of INS. The 1-day workshop will be structured to encourage participants to have open dialogue about the major long-term issues that INS needs to consider in development of its Strategic Plan. The workshop will be structured in break-out sessions led by professional facilitators. Participants should have knowledge and understandings of immigration issues. Attendees will be expected to participate in the break-out sessions and to provide direct input during discussions. The information compiled in the break-out sessions will be documented and further discussed in the afternoon during a brief-out session. Significant information developed during these sessions will be recorded, evaluated, and considered during development of the INS Strategic Plan.

Dated: November 4, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–27995 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title III; State Designation of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

ADDRESSES: Submit comments regarding this listing to: Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, U.S. Department of Labor, room N–5426, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Robert N. Colombo.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone (202) 219–5577 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III. Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC., this 8th day of November, 1993.

Doug Ross,

Assistant Secretary of Labor.

Dislocated Worker Units Nationwide

Alabama

Ms. Donna Barham, Supervisor, Rapid Response, Employment & Training Division, Alabama Department of Economic and Community Affairs, P.O. Box 250347, Montgomery, Alabama 36125–0347, Telephone: 205–242–5415

Alaska

Ms. Carolyn Tuovinen, DWU Coordinator, Rural Development Division, Department of Community and Regional Affairs, 333 West 4th Avenue, Suite 220, Anchorage, Alaska 99501, Telephone: 907–269–4658

Arizona

Mr. Tommy Landa, DWU Coordinator, Division of Employment and Rehabilitation Services, 1789 West Jefferson, Site Code 920Z, Phoenix, Arizona 85005, Telephone: 602–542–2484

Arkansas

Mr. William D. Gaddy, Administrator, Arkansas Employment Security Division, 201 Capitol Mall, Room 506, Little Rock, Arkansas 72203, Telephone: 501–682–2121

California

Mr. Roger Schmitt, EDWAA Coordinator, Job Training Partnership Division, Employment Development Department, 800 Capitol Mall, MIC 83, Sacramento, California 95814, Telephone: 916–324–0655

Colorado

Mr. Dick Rautio, Planner, Dislocated Worker Unit, Governor's Job Training Office, Suite 550, 720 South Colorado Boulevard, Denver, Colorado 80222, Telephone: 303–758–5020

Connecticut

Ms. Kathleen Wimer, Title III Coordinator, State Department of Labor, Dislocated Worker Unit, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, Telephone: 203–566–7550

Delaware

Ms. Alice Mitchell, Technical Service Manager, Delaware Department of Labor, Division of Employment & Training, University Plaza, P.O. Box 9499, Newark, Delaware 19714–9499, Telephone: 302–368–6913

Florida

Mr. Larry McIntyre, DWU Coordinator, Division of Labor, Employment & Training, Department of Labor & Employment Security, 1320 Executive Center Drive, Suite 201 Atkins Building, Tallahassee, Florida 32399–0667, Telephone: 904–488–9250

Georgia

Mr. Robert Davis, Title III Coordinator, Georgia Department of Labor, Sussex Place, 148 International Boulevard NE., Atlanta, Georgia 30303, Telephone: 404–656–6336

Hawaii

Dr. Robert Watada, Administrator, Department of Labor and Industrial Relations, 830 Punchbowl Street, Room 316, Honolulu, Hawaii 96813, Telephone: 808–586–9067

Idaho

Ms. Cheryl Brush, Bureau Chief, Planning, Employment and Training Programs, Department of Employment, 317 Main Street, Boise, Idaho 83735–0001, Telephone: 208–334–6303

Illinois

Mr. Herbert Dennis, Manager, Job Training Programs Division, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62704, Telephone: 217–785–6006

Indiana

Mr. Tom Heeter, EDWAA Coordinator, Indiana Department of Employment and Training Services, Program Operations Division, 10 N. Senate Street, Indianapolis, Indiana 46204, Telephone: 317–232–0196

Iowa

Mr. Jeff Nall, Administrator, Div. of Job Training, Iowa Dept. of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: 515–242–4779

Kansas

Mr. Jim Richardson, EDWAA Director, Department of Human Resources, Division of Employment & Training, 401 SW Topeka Boulevard, Topeka, Kansas 66603, Telephone: 913–296–5060

Kentucky

Ms. Kathy McDonald, Branch Manager, Dislocated Workers Unit, Department of Employment Services, 275 East Main, 2-West, Frankfort, Kentucky 40621, Telephone: 502–564–7015

Louisiana

Mr. Dale Miller, Assistant Director, Louisiana Department of Labor, Federal Training Program Division, P.O. Box 94094, Baton Rouge, Louisiana 70804–9094, Telephone: 504–342–7637

Maine

Mr. Michael Bourret, Special Assistant to Commissioner, Maine Department of Labor, 20 Union Street, Augusta, Maine 04330, Telephone: 207–289–1292

Maryland

Mr. Ron Windsor, Office of Employment & Training, Department of Economic and Employment Development, 1100 N. Eutaw Street, Room 310, Baltimore, Maryland 21201, Telephone: 301–333–5149

Massachusetts

Ms. Suzanne Teegarden, Director, Industrial Services Program, One Ashburton Place, Room 1413, Boston, Massachusetts 02108, Telephone: 617–727–8158

Michigan

Mr. William Castanier, Manager, Rapid Response Unit, Bureau of Employment Training, Michigan Department of Labor, Victor Center Building, P.O. Box 30015, Lansing, Michigan 48909, Telephone: 517–373–6234

Minnesota

Mr. Edward Retka, Program Coordinator, State Dislocated Worker Unit, Minnesota Department of Jobs & Training, 390 North Robert Street, First Floor, St. Paul, Minnesota 55101, Telephone: 612–296–7918

Mississippi

Mr. Wayne Miley, Rapid Response Manager, Department of Economic and Community Development, 301 West Pearl Street, Jackson, Mississippi 39203–3089, Telephone: 601–949–2244

Missouri

Mr. Larry Earley, Director, Division of Job Development and Training, Department of Economic Development, 221 Metro Drive, Jefferson City, Missouri 65109, Telephone: 314–751–7796

Montana

Mr. Dan Miles, DWU Supervisor, Research, Safety & Training Division, Montana Department of Labor & Industry, P.O. Box 1728, Helena, Montana 59624, Telephone: 406–444–4500

Nebraska

Mr. Edward Kosark, Nebraska Department of Labor, Job Training Program Division, 550 South 16th Street, Box 95004, Lincoln, Nebraska 68509–5004, Telephone: 402–471–2127

Nevada

Ms. Jan Pirozzi, DWU, State Job Training Office, Capitol Complex, 400 West King Street, Carson City, Nevada 89710, Telephone: 702–687–4310

New Hampshire

Mr. James Taylor, DWU Director, New Hampshire Job Training Coordinating Council, 64B Old Suncock Road, Concord, New Hampshire 03301, Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Director, Rapid Response Team/Labor Management Committee, New Jersey Department of Labor, CN 058, Trenton, New Jersey 08625–0058, Telephone: 1–800–343–3919

New Mexico

Mr. Kent James, DWU Supervisor, New Mexico Department of Labor, Job Training Division, 1596 Pacheco Street, P.O. Box 4218, Santa Fe, New Mexico 87502, Telephone: 505–827–6866

New York

Mr. Pahl H. Gunn, DWU Acting Director, New York State Department of Labor, State Office Campus—Building 12, Albany, New York 12240, Telephone: 518–457–3101

North Carolina

Mr. Joel C. New, Director, Div. of Employment & Training, Department of Economic and Community Development, 111 Seaboard Avenue, Raleigh, North Carolina 27611, Telephone: 919–733–7546

North Dakota

Mr. James Hirsch, Director, Job Training Division, Job Service North Dakota, 1000 E. Divide Avenue, P.O. Box 5507, Bismark, North Dakota 58502, Telephone: 701–224–2843

Ohio

Mr. James Turner, DWU Supervisor, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, Ohio 43215, Telephone: 614–466–3817

Oklahoma

Mr. Joe Glenn, Chief, DWU Unit, Oklahoma Employment Security Commission, Will Rogers Building, Room 408, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Telephone: 405–557–7294

Oregon

Ms. Patricia Grose, DWU Coordinator, Economic Development Department, 775 Summer Street NE., Salem, Oregon 97310, Telephone: 503–373–1995

Pennsylvania

Mr. John Vogel, Director, DWU, Labor and Industry Building, Room 1112, 7th & Forster Streets, Harrisburg, Pennsylvania 17120, Telephone: 717–787–9282

Rhode Island

Mr. Robert Gray, EDWAA Coordinator, Department of Employment & Training, 109 Main Street, Pawtucket Rode Island 02860, Telephone: 401–277–3450

South Carolina

Mr. Maxwell F. Parrott, DWU Supervisor, South Carolina Employment Security Commission, P.O. Box 995, Columbia, South Carolina 29202, Telephone: 803–737–2588

South Dakota

Mr. Lloyd Schipper, JTPA Administrator, South Dakota Department of Labor, Kneip Building, 700 Governor's Drive, Pierre, South Dakota 57501, Telephone: 605–773–5017

Tennessee

Mr. Louis Stone, DWU Manager, Tennessee Department of Labor, Gateway Plaza, 710 James Robertson Parkway, 4th Floor, Nashville, Tennessee 37243, Telephone: 615–741–1031

Texas

Ms. Linda Williamson, Manager, DWU, Work Force Development Division, Texas Department of Commerce, P.O. Box 12728—Capitol Station, Austin, Texas 78711–2728, Telephone: 512–320–9844

Utah

Mr. Gary Gardner, DWU Supervisor, Utah Office of Job Training for Economic Development, 324 South State Street, Suite 210, Salt Lake City, Utah 84111, Telephone: 801–538–8750

Vermont

Ms. Andrea Tomasi, DWU Coordinator, Department of Employment and Training, P.O. Box 488, Montpelier, Vermont 05602, Telephone: 802–828–4177

Virginia

Mr. James Cocke, EDWAA Program Coordinator, Virginia Employment Commission, P.O. Box 1358, Richmond, Virginia 23211, Telephone: 804–786–4832.

Washington

Mr. Larry Malo, Assistant Commissioner, Employment Security Department, Training and Employment Analysis Division, 605 Woodview Drive S.E., MS KG11, Olympia, Washington 98504–5311, Telephone: 206–438–4611

West Virginia

Ms. Nancy R. Daugherty, Chief, Bureau of Employment Programs, Employment Services Division, 112 California Avenue, Charleston, West Virginia 25305, Telephone: 304–558–7849

Wisconsin

Mr. Dan Bond, Supervisor, Worker Retraining and Employer Services Section, Department of Labor, Industry and Human Relations, 201 E. Washington Avenue, P.O. Box 7972, Madison, Wisconsin 53707, Telephone: 608–226–0745

Wyoming

Mr. Matt Johnson, Deputy Director, JTPA, Department of Employment, 100 West Midwest, P.O. Box 2760, Casper, Wyoming 82602, Telephone: 307–235–3601

District of Columbia

Mrs. Shirley Arnett, DWU Chief, 1000 U Street NW., Suite 301, Washington, D.C. 202–673–4434

Puerto Rico

Mr. Ardin Teron, President, Technological-Occupational Education Council, 431 Ponce de Leon, 16th Floor, Hato Rey, Puerto Rico 00918, Telephone: 809–754–5633

Virgin Islands

Ms. Carol M. Burke, Assistant Commissioner, Employment and Training, V.I. Department of Labor, 7 & 8 Queen Street, C'sted, St. Croix, Virgin Islands 00820, Telephone: 809–773–1994

American Samoa

Mr. Uinifareti Mamea, Director, Department of Human Resources, American Samoa Government, Pago Pago, American Samoa 96799, Telephone: 9–011–684–633–4485

Federated States of Micronesia

Mr. Kohne K. Ramon, Acting Director, Office of Administrative Service, Government of the Federated States of Micronesia, Post Office Box 490, Pohnpei, FM 96941, Telephone: 228–729–6807

Guam

Mr. Peter S. Calvo, Director, Agency for Human Resources Development, P.O. Box CP, Agana, Guam 96910, Telephone: 671–646–9341

Northern Marianas

Mr. Florida M. Dela Cruz, JTPA Administrator, Office of the Governor, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands 96950, Telephone: 9–1–0288–670–322–9511

Republic of the Marshall Islands

Honorable Antonio Eliu, Minister of Social Services, P.O. Box 1138, Majuro, Republic of Marshall Islands 96960, Telephone: 415–744–6650 (Region IX)

Republic of Palau

Mr. Kerai Mariur, Executive Director, Private Industry Council/SJTCC, P.O. Box 100, Koror, Republic of Palau 96940, Telphone: 513.

[FR Doc. 93–27996 Filed 11–12–93; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–79, et al; Exemption Application No. D–9452, et al.]

Grant of Individual Exemptions; Robert W. McCurdy Medical Corp. Pension Plan and Trust, et al.]

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Robert W. McCurdy Medical Corporation Pension Plan and Trust (the Plan) Located in Anderson, Indiana

[Prohibited Transaction Exemption 93–79; Application No. D–9452]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale (the Sale) from Robert W. McCurdy, M.D.'s (Dr. McCurdy) individually-directed account (the Account) in the Plan of certain properties (the Property) to Dr. McCurdy, a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property is the greater of: (a) the original amount paid by the Account for the Property at the time of acquisition plus capital improvement expenses; or (b) its fair market value on the date of the Sale.

The Department notes that the first sentence in the first paragraph on page 49329 of the Notice of Proposed Exemption incorrectly indicates that the Plan is a profit sharing plan. The sentence should read, "Robert W. McCurdy Medical Corporation (the Employer) sponsors the Plan, which is a money purchase pension plan."

The Department wishes to correct this error and accordingly incorporate the information discussed in the paragraph above into the granted exemption as corrected. For a more complete statement of the facts and

representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 22, 1993 at 58 FR 49328.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PAMCAH-UA Local 675 Pension Fund (the Pension Plan) and PAMCAH-UA Local 675 Training Fund (the Training Plan; Collectively, the Plans) Located in Honolulu, HI

[Prohibited Transaction Exemption 93–80; Exemption Application Nos. D–9103 and L–9104, respectively]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the leasing of certain work shop space by the Pension Plan to the Training Plan under the terms of an amended lease (the Amended Lease).

This exemption is conditioned upon the following requirements: (1) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (2) Monroe and Friedlander Management, Inc. (MFMI), an independent fiduciary, monitors the Amended Lease on behalf of the Pension Plan as well as the terms and the conditions of the exemption at all times; (3) the rental charged by the Pension Plan to the Training Plan under the Amended Lease always remains at fair market value as determined by an independent appraiser; (4) the fair market value of the leased space is redetermined every three years by an independent appraiser who has been selected by MFMI; and (5) MFMI makes appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 13, 1993 at 58 FR 43133.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The UIU Health and Welfare Plan (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 93–81; Exemption Application No. D–9406]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The lending of $3 million by the United Steelworkers of America (the USWA) to the Plan; (2) the guarantee by the USWA of the repayment of certain deferred premiums owed by the Plan to Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield (BCBS); (3) the guarantee by the USWA of a $9.5 million loan made to the Plan by the Integra National Bank/Pittsburgh (Integra); and (4) the granting of a security interest by the Plan to the USWA in the Plan's building and property (the Property) or in the proceeds from the sale of the Property, in connection with the above-described extensions of credit, provided the following conditions are satisfied: (a) The loan and the extensions of credit were obtained by the Plan to enable it to satisfy its past, present and future benefit obligations; (b) the terms of the loan and extensions of credit are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) an independent consulting firm, the Segal Company (Segal), has reviewed the subject transactions and has determined that they are appropriate for the Plan; and (d) the Plan's trustees have determined that the transactions are appropriate for the Plan and in the best interest of its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 22, 1993 at 58 FR 49327.

EFFECTIVE DATE: This exemption is effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27958 Filed 11–12–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9438, et al.]

Proposed Exemptions; Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corp. Pension Plan for Hourly-Paid Employees, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days

from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corporation Pension Plan for Hourly-Paid Employees (the Plan) Located in Houston, TX

[Application No. D–9438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed transfer of shares of common stock (the Stock) of Cummins Engine Company, Inc. (Cummins) to the GEBT by Tenneco, Inc. (Tenneco), the Plan sponsor, to reflect the contribution of the Stock to the Plan, provided that: (a) The Stock is valued at its fair market value as of the date of contribution by a qualified, independent appraiser; (b) the contribution of the Stock is approved on behalf of the Plan by a qualified, independent fiduciary; (c) the GEBT's continued holding of the Stock is monitored by a qualified, independent fiduciary; (d) the GEBT's independent fiduciary will monitor and enforce the conditions of the exemption and take whatever action is necessary to protect the GEBT's rights, including, but not limited to, the enforcement of a legally enforceable contribution obligation (the Contribution Obligation) as described herein, which will remain in force for as long as the GEBT continues to hold any shares of the Stock; and (e) the Contribution Obligation is secured by a letter of credit issued by a bank approved by the GEBT's independent, qualified fiduciary.

Summary of Facts and Representations

1. The Plan is a defined benefit plan covering approximately 9,500 participants as of June 7, 1993. As of December 31, 1992, the Plan's assets totalled approximately $260,000,000 (which includes approximately $14,000,000 in contributions receivable for the 1992 Plan year). The estimated present value of accrued benefits under the Plan at December 31, 1992 exceeded the Plan's assets by approximately $260,000,000. The Plan is maintained by Tenneco, a corporation headquartered in Houston, Texas. Tenneco's major businesses are the transportation and marketing of natural gas; manufacture and sale of farm and construction equipment; manufacture and sale of automotive exhaust system parts, ride control products and brake products; construction and repair of ships; manufacture and sale of packaging products; and manufacture and sale of phosphorous chemicals and surfactant products.

2. Tenneco currently owns 1,600,000 shares of the Stock which, based on the closing price of $84.25 per share on the New York Stock Exchange (NYSE) on May 24, 1993, had an aggregate fair market value of $134,800,000. The Stock represents a 9.2% ownership interest in Cummins. The applicant is requesting an exemption to permit the contribution of the 1,600,000 shares of Stock to the Plan in lieu of a cash contribution. The applicant represents that the Stock would be a valuable contribution to the Plan. Prior to the contribution of the Stock, the fair market value of the Stock will be determined by an experienced, independent valuation company. That valuation will take account of the fact that all restrictions relating to the Stock (see paragraph 4), including the voting requirement (see paragraph 9), will continue upon transfer to the GEBT. Thus, the restriction on voting for directors will be taken into account in determining the proper value for the Stock.

3. The assets of the Plan and all other defined benefit plans maintained by Tenneco and its domestic subsidiaries (the Affected Plans) are held in the GEBT. Therefore, although the shares of Stock will be contributed on behalf of the Plan, the Stock will become an asset of the GEBT. Each of the Affected Plans holds units of participation representing its interest in the GEBT. Each unit represents an undivided interest in the assets of the GEBT. As of April 30, 1993, the assets of the GEBT were valued at approximately $2.6 billion. The applicant represents that the amount of Stock to be contributed would amount to approximately 4.93% of the assets of the GEBT at the time of contribution.

4. When Tenneco purchased the Cummins Stock on July 16, 1990, Tenneco and Cummins entered into an agreement which contains provisions concerning the voting of the Stock and restrictions on the transfer of the Stock. The applicant represents that these restrictions on the Stock are customary for transactions similar to this private placement transaction. When the Stock

is contributed to the GEBT on behalf of the Plan, all rights of Tenneco under the Tenneco-Cummins agreement will be transferred and assigned to the GEBT, including the right to designate a person for election to the Cummins Board of Directors (see paragraph 9 below). The restriction on the transfer of the Stock, which prohibits Tenneco from selling the Stock prior to July 16, 1996, will continue to be in effect after the Stock is contributed to the Plan. Tenneco's obligation to vote the Stock will be transferred to the GEBT and will not terminate until the earlier of (a) the latest of (1) July 16, 1996, and (2) the first date that Tenneco holds less than 5% of the outstanding Cummins Stock and (b) July 16, 2000.

5. In connection with the GEBT's continued holding of the Stock, Tenneco has agreed to be bound by the Contribution Obligation. The Contribution Obligation requires Tenneco to make a contribution to the GEBT for each calendar quarter in which the market price of the Stock falls below the "Lowest Price." The Lowest Price is defined as the lesser of: (a) The closing price of the Stock on the NYSE on the date of contribution of the Stock to the Plan; or (b) the closing price of the Stock on the NYSE on the last trading day of the prior calendar quarter with respect to which a payment was previously required to be made under the Contribution Obligation. The amount contributed pursuant to the Contribution Obligation will be determined by multiplying the number of shares of Stock held in the GEBT on the last trading day of a calendar quarter by the difference obtained by subtracting the closing price of the Stock on the NYSE on the last trading day of the relevant quarter from the Lowest Price. The Contribution Obligation shall be paid in cash. The following example illustrates the calculation of the Contribution Obligation.

Assume the per share price on the date of contribution of the Stock to the Plan is $90. If the per share price is not below $90 on the last trading day of a quarter until December 31, 1993, at which time the closing price is $88 per share, the Contribution Obligation for the quarter ending December 31, 1993 is $2 per share ($90–88).

If on March 31, 1994 the per share price is $85, the Contribution Obligation for that quarter is $3 per share ($88–85).

If on June 30, 1994 the share price rises to $87, no contribution is due. If at September 30, 1994 the per share price is $84, the Contribution Obligation for that quarter is $1 per share ($85–84) because $85 per share was established as the Lowest Price.

The Contribution Obligation will remain in effect for as long as the GEBT continues to hold any of the Stock. Any contributions made pursuant to the Contribution Obligation are separate from and in addition to any other obligation to make contributions to any of the Affected Plans. The applicant represents that any contributions made pursuant to the Contribution Obligation will be separately accounted for in a manner sufficient to demonstrate compliance with the preceding sentence.

If any of the Stock is sold by the GEBT after July 31, 1996 for less than the Lowest Price, the GEBT will be reimbursed through the Contribution Obligation for such loss. The Contribution Obligation due upon sale of the Stock will be determined by multiplying the number of shares of Stock sold by the difference obtained by subtracting the net price realized on such sale from the Lowest Price.

6. The applicant represents that the Contribution Obligation will be secured by an irrevocable letter of credit issued by a bank approved by the independent fiduciary for the GEBT (see below). The letter of credit will serve as an unconditional obligation of the issuing bank to pay the GEBT if Tenneco defaults on the Contribution Obligation. The letter of credit will be issued in an amount equal to 20% of the value of the Stock at the time of contribution to the Plan. The applicant represents that if the letter of credit is drawn upon, it will either increase the amount of the letter of credit to maintain the 20% level, or, in the alternative, will provide alternative collateral in the form of cash or government obligations. The applicant also represents that the letter of credit (or alternative collateral) will be in place for as long as the GEBT continues to hold the Stock. The GEBT's independent fiduciary shall have the right and is obligated to instruct Bankers Trust Company of the Southwest, the GEBT's trustee, to draw on the letter of credit if Tenneco fails to make any payments required under the Contribution Obligation.

7. Woodbridge Capital Management (Woodbridge) has agreed to act as an independent fiduciary representing the interests of the Plan and the GEBT. Woodbridge represents that it is knowledgeable of the fiduciary provisions of the Act and understands its duties, responsibilities and liabilities in acting as a fiduciary for the Plan under the Act. Woodbridge represents that it is a wholly-owned subsidiary of Comerica Incorporated, one of the largest banking corporations in the United States. Woodbridge represents that the income which Woodbridge and its affiliates will derive from Tenneco and its affiliates (including the fee for serving as independent fiduciary for this exemption) will amount to less than 1% of its gross annual income. Woodbridge also represents that Tenneco and Woodbridge have no common directors.

8. Woodbridge has reviewed the proposed transaction and determined that the transaction is prudent and in the best interests of the GEBT and its participants and beneficiaries. Prior to rendering its opinion, Woodbridge has taken the following factors into consideration: The liquidity and diversification requirements of the GEBT, Tenneco's responsibilities under the Contribution Obligation, the existence of a letter of credit securing the Contribution Obligation, and the percentage of total assets of the GEBT which will be involved in the proposed transaction. Woodbridge represents that the contribution of the Stock will give the GEBT valuable additional assets with the potential for appreciation and that the Contribution Obligation assumed by Tenneco will fully protect the GEBT from any adverse consequences caused by the potential for the decline in value of the Stock. Woodbridge also represents that the Contribution Obligation is an adequate substitute for giving the GEBT a right to put the Stock to Tenneco. Woodbridge has concluded that quarterly determinations of the Contribution Obligation are sufficient to protect the GEBT because the Stock has not been subject to precipitous downward swings in price in the past 3 years.

9. Woodbridge will remain independent fiduciary of the GEBT with respect to the GEBT's continued holding of the Stock. In that role, Woodbridge has agreed to monitor Tenneco's compliance with the Contribution Obligation and, if necessary, to take action to enforce such obligation. Woodbridge will exercise the voting and other privileges applicable to shareholders of the Stock, subject only to Tenneco's agreement with Cummins that the Stock be voted for the Cummins' proposed slate of directors.[1]

[1] The Department notes that the decisions to acquire and hold the Stock are governed by the fiduciary responsibility provisions of part 4, subtitle B, title I of the Act. The Department's longstanding position has been that to act prudently, in making investment decisions, a plan fiduciary must consider those factors which would affect the value of the plan's investment. The potential inability, due to the pre-existing agreement, to vote for the directors of the GEBT's choice, together with other relevant information pertaining to the Stock, must be considered by the independent fiduciary as part of its decision as to whether to accept the Stock as a contribution to the GEBT. In this regard, see paragraph 2 for a discussion concerning certain factors that must be taken into account in valuing the Stock.

Woodbridge will exercise the GEBT's right to designate a person for election to the Cummins Board of Directors subject to the instructions of the Plan Committee. In keeping with its fiduciary duties, Woodbridge has represented that it will reject the Plan Committee's nomination if it appears that the nominee would not serve the best interests of the GEBT.

10. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (1) The Stock contributed to the Plan would represent less than 10% of the total assets of the GEBT; (2) The fair market value of the Stock will be determined by a qualified, independent appraiser; (3) Tenneco has agreed to be bound by a Contribution Obligation which will fully protect the Affected Plans and the GEBT if the value of the Stock falls below the value of the Stock as of the date it was contributed to the Plan; (4) The Contribution Obligation will be secured by a letter of credit issued by a bank approved by Woodbridge, the GEBT's independent fiduciary; (5) Woodbridge has determined that the proposed transaction is prudent and in the best interest of the GEBT and its participants and beneficiaries; and (6) Woodbridge will monitor the holding of the Stock and will monitor Tenneco's compliance with the Contribution Obligation.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and it will be provided to all active participants in the Plan by posting on employee bulletin boards in each location where Plan participants are employed and will be provided to all other participants and beneficiaries by first class mail. The notice will inform intersted persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and requests for a public hearing are due within 35 days of publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Penn Mutual Life Insurance Company (Penn Mutual), Located in Philadelphia, Pennsylvania, The Pennsylvania Trust Company (PTC), Located in Radnor, Pennsylvania; Independence Capital Management, Inc. (ICMI), Located in Horsham, Pennsylvania

[Application Nos. D–9194, D–9195, D–9196]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The extension of credit by Penn Mutual, the sponsor and third party guarantor of an investment product involving a guaranteed investment contract (GIC), to a plan invested in the GIC pursuant to the terms of its participation in the Independence Stable Asset Trust (Stable Asset Trust); (2) the sale of the assets of a closed-end collective investment fund (Fund) which is part of the Stable Asset Trust to Penn Mutual upon termination of the Fund; (3) the transfer of a Fund's assets to Penn Mutual upon termination of the Fund; and (4) the operation of the Stable Asset Trust in accordance with the letter agreement between Penn Mutual and PTC.

The proposed exemption is subject to the following conditions which are set forth below in Section II.

Section II. General Conditions

The relief provided under Section I is available only if the following conditions are met:

1. The decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar investment products and who is independent of Penn Mutual, PTC, and ICMI and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in a Fund, the Independent Fiduciary for such plan receives the following written disclosures:

(a) All material facts concerning the structure, operation and investment objectives of the Fund including:

i. A copy of the Supplement creating the Fund in which the plan intends to invest which identifies the proposed investment portfolio of the Fund (the Supplement), the Fund Commencement Date and the Scheduled Fund Termination Date, the date projected for the funding of all investments to be made in the Fund, the guaranteed rate of return for the Fund, and any other material terms of the Fund;

ii. The confirmation document which confirms the plan fiduciary's written approval of matters set forth in the Supplement;

iii. The Independence Stable Asset Trust Participant Investment Agreement;

iv. The Declaration of Trust of the Short Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Accounts; and

v. The letter agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company (Letter Agreement).

(b) The corporate affiliation existing between Penn Mutual, PTC and ICMI and either the amount of the compensation or the method of calculation of the compensation paid to such entities.

3. Neither Penn Mutual nor any of its affiliates has discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product described herein or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

4. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment advances.

5. Penn Mutual provides copies of the proposed and final exemption as published in the **Federal Register** to each plan which invests in the proposed investment product.

6. The fees paid to Penn Mutual, PTC, and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and such fees cannot be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

7. Penn Mutual maintains or causes to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited

transaction will not be considered to have occurred if, due to circumstances beyond the control Penn Mutual or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Penn Mutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (8) below.

(8)(a). Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary, any investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)–(4) of this paragraph (8) shall be authorized to examine the trade secrets of Penn Mutual or its affiliates or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

For purposes of this exemption, affiliate means:

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person, other than an individual.

Summary of Facts and Representations

1. Penn Mutual was founded in 1847 under the laws of the Commonwealth of Pennsylvania and is licensed to do business in all 50 states, the District of Columbia and in five Canadian provinces. With headquarters in Philadelphia, Penn Mutual is a diversified financial services organization offering a complete portfolio of individual and group life insurance and annuity products, including an array of qualified pension products. These products are offered either directly or through its affiliated companies: Penn Mutual Equity Services, Janney Montgomery Scott, Independence Capital Management, Inc. and Penn Assurance and Annuity Company. As of December 31, 1992, Penn Mutual had $46.9 billion in consolidated assets and $30.8 billion of life insurance in force.

2. PTC was organized in 1986 under a trust company charter issued by the Pennsylvania Department of Banking and is subject to the Banking Code of 1965 as well as Title 10 of the Pennsylvania Code. PTC was acquired by Penn Mutual in 1991. Located in Radnor, Pennsylvania, PTC provides an array of fiduciary and investment management services for individuals, institutions and ERISA accounts. PTC has assets under management as of year end 1992 of approximately $230 million.

3. ICMI was founded in 1989 as a wholly-owned subsidiary of Penn Mutual. Registered as an Investment Advisor with the Securities and Exchange Commission under the Investment Company Act of 1940, ICMI provides advisory services for individual and institutional investors. ICMI currently manages over $1 billion in individual and retirement assets.

4. Penn Mutual proposes to market an investment product to various employee benefit plans, including some of its existing clients. The product, which is a variation of the traditional guaranteed investment contract (GIC), is described as a "synthetic GIC". The synthetic GIC marketed by Penn Mutual is benefit responsive and involves plan investments in units of one or more closed-end investment funds, which are part of a bank collective investment trust and in units of a separate short-term bank collective investment trust. The units owned by the plans represent beneficial ownership interests in the underlying investments of the trusts.

Penn Mutual represents that this product has been developed as a substitute for conventional GIC products. It is a response to plan managers' concerns regarding the risks of conventional GIC products which have become evident with the recent financial difficulties of some insurance companies. Penn Mutual represents that the proposed investment product combines the advantages of an investment in a conventional GIC with those of a direct investment in medium term government-backed and similar securities. One problem plans are understood to face is that the amount of money needed for periodic benefit payments fluctuates from period to period due to varying frequencies of participant deaths, retirements, disabilities, separations from employment, hardship withdrawals and plan loans. Normally, to manage these funding risks plan managers will either invest more assets at short maturities than they predict that they will need, or they will employ various hedging techniques.

Like the conventional GIC, the proposed investment product is benefit-responsive and permits plans to have access to their funds without penalty whenever needed to pay plan benefits. However, Penn Mutual represents that this product differs from the conventional GIC product because the underlying assets which produce the investment yield are held in a collective investment trust and beneficial title to such assets rests with the plans. Therefore, the exposure of the plans to Penn Mutual's creditworthiness will be confined to the amount by which a plan's plan account amount, as defined in footnote 6 herein, with respect to the remaining Fund portfolio at the time of termination would exceed the plan's portion of the net proceeds from the sale of the portfolio.

5. Penn Mutual represents that the proposed investment will be structured as follows:

The Independence Stable Asset Trust (Stable Asset Trust) will hold the assets of the various individual closed-end collective investment funds (Fund or Funds) which will be established under such trust.

There will be a series of individual Funds, and participating plans may invest in units of more than one such Fund. Each of the Funds will be separate from and independent of the other Funds and will be separately held, managed, administered, valued, invested and distributed. No Fund will be answerable for any obligation assumed or liability incurred by any other Fund. The Funds will be invested in treasury and government agency securities and in mortgage pass-through securities. Once sufficient plan monies have been attracted to reach a "critical

mass" level for a given Fund, the Fund will be closed-in and funded.[2]

A separate short-term investment trust, the Liquidity Fund, will be the reinvestment medium for distributions of income such as interest and dividends from individual Fund investments.[3] In addition, amounts contributed by a plan but not invested in units of an individual Fund will be temporarily invested in units of the Liquidity Fund. PTC and ICMI respectively, will be the trustee and investment advisor for the Stable Asset Trust and the Liquidity Fund.

Plans will invest in the proposed product by establishing an investment account (Custody Account) with PTC. All monies or property deposited in a Custody Account will either be invested in units of a Fund or in units of the Liquidity Fund.[4] The units purchased by a plan in either a Fund or the Liquidity Fund will be held in the plan's Custody Account and such units will represent a beneficial interest in the underlying investments of the Fund or the Liquidity Fund.[5] PTC has appointed CoreStates Bank, N.A., as the custodian for the Custody Accounts, as well as the assets of the Stable Asset Trust and the Liquidity Fund.

6. Each Fund will be invested in Treasury and government-agency securities and in mortgage pass-through securities. The Fund investments typically will have a "Treasury" or "Agency" level of risk. For example, a Fund could have a five-year outside maturity but the risk of prepayments on the mortgages underlying any pass-through securities could shorten the weighted average maturity of the overall portfolio to a term of four years. On the fifth anniversary of the date the Fund was closed-in and funded, the assets remaining in the Fund would be liquidated and the proceeds will be distributed to the Custody Accounts ratably in accordance with their interests in the Fund. Maturities of the individual Fund investments will be selected with the outside maturity in mind. However, distributions of principal could occur earlier due to prepayments.

7. Distributions of income from individual Fund assets will be credited on a daily basis to the plans' Custody Accounts. To the extent not needed to pay benefits, all such amounts credited to the Custody Accounts will be invested in the Liquidity Fund.

8. Penn Mutual will guarantee a pre-specified rate of return and an initial target rate of return for each Fund.[6] The amounts guaranteed will be stated in the Supplement to the Stable Asset Declaration of Trust. The guarantees are provided by Penn Mutual as set forth in the Letter Agreement between Penn Mutual and PTC. Penn Mutual also agrees to guarantee to pay each plan the plan's Plan Account Amount at a Fund's Scheduled Termination date which is set forth in the Supplement.[7] Finally, Penn Mutual agrees to make benefit payment advances (Advances) to a plan's Custody Account if the plan's Custody Account and Liquidity Fund balance are less than that required to meet a benefit withdrawal request.

9. Amounts required to pay plan benefits in excess of the amounts credited to a plan's Custody Account will be paid from the plan's interest in the Liquidity Fund. If at the time plan benefit payments are required, the plan's interest in the Liquidity Fund has been totally withdrawn or otherwise is not adequate for the payment, Penn Mutual will make an Advance to the plan's Custody Account in an amount equal to the remaining balance of the required benefit payments but not exceeding the plan's Plan Account Amount with respect to Fund units held by the plan on the payment date. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment Advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment Advances.

10. Penn Mutual represents that it is not expected that any participating plan will withdraw its investment in a Fund prior to the final maturity date (typically in five years). However, some withdrawal situations may be unavoidable, such as if a participating plan loses its qualified status or encounters an unforeseen exigency (such as the termination of the plan). The withdrawing plan would be subject to a surrender charge, payable to Penn Mutual as additional compensation for its undertakings, in an amount equal to a pre-specified percentage of the Plan Account Amount as of the date of withdrawal.[8] However, there would be a credit against the amount of the surrender charge owing. The credit would be the amount by which the market value of the units of such Fund held by the plan, on the date of the withdrawal, exceed the Plan Account Amount as of such date.[9]

11. If Fund assets are outstanding at the Scheduled Termination Date for a Fund, they will either be liquidated and the proceeds will be distributed to the Custody Accounts ratably in accordance with their interests in the Fund or the assets will be liquidated in the manner provided for in paragraph 12. If after the liquidation of all remaining assets of such Fund, any plan has a positive Plan Account Amount, Penn Mutual will be obligated to deposit in the plan's Custody Account an amount in cash equal to the plan's Plan Account Amount. Conversely, if on the Fund's Termination Date the net proceeds from

[2] Critical mass will be an amount on the order of $30,000,000.

[3] The Liquidity Fund will be invested in bonds, notes, and other evidences of indebtedness which are payable on demand, or which have a maturity date not exceeding 91 days from the date of purchase and which in either case are issued or fully guaranteed as to principal and interest by the United States government, any government sponsored enterprise, or any agency of the United States government.

[4] The Department is expressing no opinion regarding Penn Mutual's representation that any prohibited transaction arising in connection with the purchase or sale of an interest in a Fund or the Liquidity Fund would be exempt under section 408(b)(8) of the Act.

[5] Legal title to individual investments will be held by PTC. At all times, the assets of the Custody Accounts will remain the exclusive property of the participating plans and will be held separate of and segregated from the property of PTC and all other persons, all of which will be reflected clearly in the books and records of PTC.

[6] The target rate of return is the rate at which interest accrues on a plan's interest in a Fund. An initial target rate of return is set at the inception of a Fund for the first quarter and subsequent rates are reset by PTC and Penn Mutual on a quarterly basis. As described in the Letter Agreement between Penn Mutual and PTC, the target rate for any quarter will be reset based on the estimate of future cash flows (determined using commercially recognized investment models approved by the Independent Fiduciary at the inception of the Fund) minus fees paid to PTC. The applicants represent that in no event will the target rate of return be lower than the pre-specified guaranteed rate. The applicants also represent that, after the inception of any Fund, the terms of the Letter Agreement between Penn Mutual and PTC pertaining to the resetting of the target rate of return, will not be modified without the approval of the independent plan fiduciaries of the plans participating in such Fund.

[7] The plan's Plan Account Amount is the amount deposited in the Custody Account with respect to a particular Fund, less distributions and withdrawals, plus interest on the average daily balance accrued from the inception of the Fund at the target rate of return.

[8] The Applicants represent that, for the foreseeable future, the maximum surrender charge that would be imposed with respect to a non-benefit withdrawal would not be in excess of 5%.

[9] The market value of any fund asset would be determined by, in the case of an asset consisting of a security for which market quotations are readily available, the quoted market value of such security as reasonably determined by PTC. Because the investments will be confined to marketable U.S. Treasury, government agency and other similar investments, Penn Mutual expects that in virtually all cases investment values can be determined readily from any of a variety of widely available and published sources. In the case of any other asset the market value of such asset will be based upon an appraisal made by a securities dealer selected by the custodian of the Stable Asset Trust. The appraiser will not be affiliated with PTC.

the sale of the assets remaining in the Fund exceed the Plan Account Amount with respect to any plan, Penn Mutual will be paid, out of such net proceeds, an amount in cash equal to the excess of such net proceeds over such Plan Account Amount.

PTC, at its discretion, will be entitled at a Fund's Termination Date to sell any one or more of the Fund assets to Penn Mutual for a cash price sufficient to obtain net proceeds equal to the aggregate of the Plan Account Amounts of plans holding units in the Fund. The obligations of the parties under these arrangements will be netted against one another, resulting in a "swapping-out" of the entire remaining portfolio at an amount equal to the aggregate Plan Account Amounts.

12. Penn Mutual's fee for its minimum yield, liquidity guarantees and Plan Account Amount assurances will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount, times the Penn Mutual Quarterly Compensation Percentage specified in the applicable Fund Supplement.

PTC's fee, as trustee, will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of a predetermined fixed percentage rate which is specified in the applicable Fund's Supplement times the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount. ICMI's fee for investment management services will be paid by PTC, out of PTC's compensation.

The applicants represent that the total of all fees that are paid in connection with services rendered for the investment product described herein will be reasonable within the meaning of section 408(b)(2) of the Act and that such fees can not be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

14. In order for a plan to invest in a Fund which forms part of the Stable Asset Trust, PTC will provide the plan's Independent Fiduciary with the following: The Independence Stable Asset Trust Participant Investment Agreement; a copy of the Supplement creating the Fund in which the plan intends to invest which describes the proposed investment portfolio of the Fund, the Fund Commencement Date and the Scheduled Termination Date, the date projected for the funding of all investments to be made in the Fund and the other material terms of the Fund; an instrument of confirmation to confirm the plan fiduciary's approval of matters set forth in the supplement; the Stable Asset Declaration of Trust; the Declaration of Trust for the Short-Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Plans; and the Letter Agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company.

15. In summary, the Applicant represents that the proposed transactions will meet the statutory criteria under section 408(a) because:

(a) The investment of a plan's assets in a Fund will be made and approved by a plan fiduciary which is independent of Penn Mutual and its affiliates and who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar products;

(b) Neither Penn Mutual nor any of its affiliates have discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(c) The fees paid to Penn Mutual, PTC and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(d) The Independent Fiduciary will receive full and detailed written disclosure of all features of the proposed investment product, as well as all fees paid to Penn Mutual and its affiliates; and

(e) The investment product is both of limited risk and fully benefit-responsive.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27956 Filed 11–12–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–085)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Propulsion

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on propulsion.

DATES: December 2, 1993, 8:30 a.m. to 5 p.m.; and December 3, 1993, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, room 215, Administration Building, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Russo, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Program Update
—Lewis Research Center Aeronautics Program Strategy
—NASA Headquarters Aeronautics Program Strategy
—Lewis Research Center Aeronautics Program Direction

Dated: November 8, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–27953 Filed 11–12–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Advanced Boiling Water Reactors; Date Change

A meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors scheduled to be held on Tuesday, November 16, and Wednesday, November 17, 1993 is now scheduled to be held on Wednesday, November 17, 1993 only. Notice of this meeting was published in the **Federal Register** on Thursday, October 28, 1993 (58 FR 58021). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Dr. Medhat El-Zeftawy, cognizant staff engineer, (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: November 5, 1993.

Sam Duraiswmay,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–27954 Filed 11–12–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on November 19, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Friday, November 19, 1993—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss: (1) Current NRC and industry positions regarding thermo-lag issues, (2) technical differences between the NUMARC and NRC staff on NUMARC test programs, and (3) details of NRX and industry initiatives on thermo-lag issues, including test programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, NUMARC, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 5, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–27955 Filed 11–12–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–529]

Palo Verde Nuclear Generating Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–51, issued to Arizona Public Service Company (APS) (the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit No. 2, located in Maricopa County, Arizona.

The proposed amendment would provide for a one-time extension of up to 72 hours to be applied to the existing Technical Specification (TS) Limiting Conditions for Operation for single train inoperability for the following systems: Emergency Core Cooling System, TS 3.5.2; Containment Spray System, TS 3.6.2.1; Auxiliary Feedwater System, TS 3.7.1.2; Essential Cooling Water System, TS 3.7.3; Essential Chilled Water System, TS 3.7.6; and Shutdown Cooling System, TS 3.7.11. The amendment would allow each train of these systems to be inoperable for up to 72 hours beyond the current by allowed outage time (of 72 hours) in order to complete sleeving of the Essential Cooling Water System (EWS) heat exchangers to prevent further tube leaks.

The amendment was requested on an exigent basis because sufficient time does not exist to process the amendment under normal circumstances and still allow the repairs to be made in advance of the licensee's established schedule in support of an upcoming mid-cycle outage. Since March of 1992 the EWS heat exchangers have required repairs on eight separate occasions. The permanent repair of the heat exchangers is necessary to eliminate the potential for further inoperability of this safety

system. Additionally, completion of the repair prior to the upcoming outage is warranted because of the need for a reliable EWS system during mid-loop operations with a hot core.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, this license amendment request involves no significant hazards considerations based on the following:

Standard 1—Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

During normal plant operation, the EWS, ECCS, CSS, AFS, SDCS, and ECS are not operating. The redundancy of these systems allows testing of one train of each system without a loss of the safety function of the system. When one train of the EWS is taken out of service and the 72 hour action statement is entered, the action statements for the other systems must be entered since these systems are operable only if the necessary support systems are operable.

The allowed outage times for the Technical Specifications are based upon an acceptable probability that a single failure will not occur simultaneously with an accident while system redundancy is lost. Therefore, in order to demonstrate that the proposed increase in the allowed outage time does not involve a significant increase in the probability of an accident previously evaluated, a PRA was performed to determine the impact on Core Damage Probability (CDP) associated with the proposed one-time extension of the EWS LCO allowed outage time. This analysis determined that the CDP for the extended allowed outage time for Train A of the EWS is 3E–6 and 7E–6 for Train B. Based on these CDPs, the risk associated with the proposed extended outages of the EWS heat exchangers on a one-time basis is deemed to be acceptable and the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The CDPs can be compared to the accepted increased risk associated with removing the Train A Auxiliary Feedwater pump from service for the Technical Specification-allowed outage time of 72 hours of 1E–5. Since the risk associated with removing the Auxiliary Feedwater pump from service for the approved action statement time of 72 hours is acceptable and is greater than the risk associated with the proposed extended outages of the EWS heat exchangers, the risk associated with the proposed outages of the EWS trains on a one-time basis is deemed to be acceptable.

The PRA also evaluated the option of performing the proposed sleeving modification during plant shutdown (Mode 5). This analysis assumed that other equipment was not removed from service to perform elective maintenance during the time period in which the EWS heat exchanger was out of service. This analysis yielded CDPs of 2E–3 for each train of the EWS. This result clearly indicates that the increased risk associated with the proposed modification is much higher during Mode 5. A comparative assessment concluded that the risk of performing the proposed modification in Modes 2, 3, or 4 is comparable to the risk of performing the modification in Mode 5.

The PRA analysis assumes that all trains of Auxiliary Feedwater, offsite power, Emergency Diesel Generators and Essential Spray Ponds, remain functional and will not be removed from service to perform elective maintenance while either EWS heat exchanger is out of service. During normal operation, cooling to Train A and B component spaces is provided by the normal chilled water system (a non-safety-related system not affected by the outage of the EWS). Essential chilled water is utilized to maintain essential equipment room temperatures below the equipment qualification temperature when the ESF pumps are running, or when normal chilled water is lost (e.g. following a loss of offsite power). For non-LOCA scenarios, the critical spaces requiring cooling are the DC equipment rooms and the AFS pump rooms. However, engineering analyses performed to support the Palo Verde PRA indicate that these room temperatures would not increase to the point where essential equipment would be expected to fail for a period of 12 hours following a total loss of chilled water (normal and essential). These analyses are conservative for the current seasonal temperatures at PVNGS. Additionally, these room temperature limits would not be exceeded in cases where normal chilled water remains available. The PRA results discussed above indicate that the probability of a sustained loss of normal chilled water during the proposed EWS heat exchanger outage windows, concurrent with failures in the opposite train which would result in core damage is acceptably small as qualified above.

If an event were to occur requiring operation of shutdown cooling, an alternate means is available if the Low Pressure Safety Injection (LPSI) and CSS pumps become unavailable in the operable train. The SDCS pumps (CSS or LPSI) from the inoperable train can be cross-connected to use the operable train's SDCS heat exchanger. This lineup is described in PVNGS procedure 42AO–2ZZ22, "Loss of Shutdown Cooling." Flow through the cross-connect is adequate to remove decay heat loads existing when it would become necessary to continue the cooldown via the SDCS.

If neither train of EWS is available for performing SDCS functions, the Nuclear Cooling Water System (NCWS) is available and can be cross-connected to the desired EWS train to provide a heat sink for shutdown cooling. Additionally, if the above alternate method fails, the EWS trains could be cross-connected through the common NCWS connection using the operable EWS pump. These flow paths would only be used as a last resort as they are not analyzed or contained in procedures; however, they involve relatively simple valve alignments which can be accomplished under the direction of qualified, licensed personnel.

The proposed amendment only impacts the time allowed for the safety trains to be inoperable and does not change the equipment which is allowed to be inoperable. Therefore, the proposed license amendment does not involve a significant increase in the consequences of an accident previously evaluated.

Standard 2—Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Increasing the allowed out-of-service time of the aforementioned LCOs for an additional 72 hours on a one-time only basis for the purpose of completing sleeving modifications does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident scenarios are created by extending the allowed outage time of the subject safety systems.

Standard 3—Does the proposed license amendment involve a significant reduction in a margin of safety?

Extension of the allowed outage time does not involve a significant reduction in a margin of safety because there are no new or common failure modes being created by the extension. The performance of the associated safety systems will not be degraded by the extended out-of-service time.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 30, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 5, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 9th day of November 1993.

For the Nuclear Regulatory Commission.

Brien E. Holian,

Project Manager, Project Directorate, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28122 Filed 11–10–93; 2:19 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Report on Significant Change in Access to Existing System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Reporting change in access to an existing system of records.

SUMMARY: The purpose of this document is to give notice of a significant change in access to an existing system of records, OPM/Central–9, Personnel Investigations Records (full text published April 12, 1993 (58 FR 19154)). OPM is hereby giving notice that due to improved communications techniques and equipment, direct access to the existing electronic data base (formerly limited to headquarters and specific regional sites) will now be available to OPM field investigators. OPM has taken steps to minimize the risk of unauthorized access to the system of records. The agency foresees no effect on the privacy of individuals whose records are maintained in this system of records, because the personnel gaining direct electronic access to the records already access and use such information in hard copy in the performance of their official duties. The only difference will be an increase in the speed and efficiency of work performed.

DATES: The effective date for implementation of the direct access is September 14, 1993.

FOR FURTHER INFORMATION CONTACT: C. Ronald Trueworthy, Chief, Information Policy Branch, room CHP 500, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–27932 Filed 11–12–93; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date of the Trade Agreement Between the United States of America and the Government of Romania

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania.

SUMMARY: In Proclamation 6577 of July 2, 1993 (58 FR 35301), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Government of Romania" would enter into force and nondiscriminatory treatment would be extended to products of Romania in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVI of the Agreement. The exchange of written notices of acceptance in accordance with Article XVI of the Agreement took place in Bucharest, Romania on November 8, 1993. Accordingly, the Agreement became effective on November 8, 1993, and nondiscriminatory treatment is extended to products of Romania as of November 8, 1993 in accordance with the Agreement and as provided for in Proclamation 6577 of July 2, 1993.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–28118 Filed 11–12–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New

Mutual Fund Survey—File No. 270–383.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct a voluntary telephone consumer survey of up to 700 households to obtain background information regarding the public's understanding of the risks involved when purchasing mutual funds from a bank. The results will be used by the agency to get a sense from the general public on their understanding of the level of risk involved when purchasing mutual funds sold through banks. Each survey call is estimated to require .07 burden hour.

The estimated average burden hour is made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hour should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hour for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27933 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33162; File No. SR–CBOE–93–11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Common Stock Listing and Maintenance Criteria

November 5, 1993.

On February 16, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission

("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to its listing and maintenance criteria for common stock.

The proposed rule change was published for comment in Securities Exchange Act Release No. 32617 (July 12, 1993), 58 FR 38449 (July 16, 1993). No comments were received on the proposal.

The CBOE proposes to make two revisions to its common stock original listing and maintenance criteria in order to conform the text of CBOE's Rules more precisely with the text of the Memorandum of Understanding dated May 1991, between CBOE and the North American Securities Administrators Association, Inc. (the "MOU").[3] The first revision would add a new subsection (iii) to Rule 31.81 that would require shareholder approval of an issuance of common stock resulting in a change of control, thereby conforming the Rule to the requirements of Section II(H)(2) of the MOU.[4] The second revision would correct a drafting error to Rule 31.94(C)(b)(i), which governs the CBOE's maintenance criteria for common stock issues. The proposed rule change clarifies that such an issue must meet all not just any of the criteria set forth in Rule 31.94(C)(b)(i)(A) through Rule 31.94(C)(b)(i)(C) in order to continue to be listed on CBOE.[5]

The CBOE states that the proposed rule change is consistent with Section 6 of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by imposing appropriate original listing and maintenance criteria applicable to listed companies on CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of Section 6(b) of the Act.[6] The Commission believes that the CBOE 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 practices, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations to screen issuers and to provide listed status only to companies with substantial float, investor base and trading interest to ensure sufficient liquidity for fair and orderly markets. Listing standards also enable an exchange to assure itself of the bona fides of the company and its past trading history. Adequate maintenance standards are of equal importance to the development of standards for initial inclusion on an exchange. The Commission notes that, once an issue has been initially approved for listing, the Exchange must monitor continually the status and trading characteristics of that issue to ensure that it continues to meet exchange standards for trading depth and liquidity.

The Commission believes that the CBOE proposal to require shareholder approval when the issuance of common stock would result in a change of control is consistent with the requirements of section 6(b)(5) because it should provide investors with the opportunity to participate in a decision that could have significant implications regarding their investment. Moreover, as noted above, the proposal is consistent with section II(H)(2) of the MOU which requires shareholder approval of certain transactions, prior to the issuance of specified securities, when the issuance would result in a change in control of the issuer. The Commission also believes that the proposed amendments to Rule 31.94(C)(b)(i) should strengthen the CBOE's maintenance criteria by specifying that common stock issues must comply with all of the CBOE's applicable requirements for continued listing on the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–93–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27969 Filed 11–12–93; 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] See Securities Exchange Act Release No. 29748 (September 27, 1991), 56 FR 50404 (October 4, 1991) (File No. SR–CBOE–91–30) (immediate effectiveness of MOU between CBOE and North American Securities Administrators Association, Inc.).

[4] Section II(H)(2) of the MOU provides that each issuer shall require shareholder approval of certain transactions, prior to the issuance of specified securities, when the issuance will result in a change of control of the issuer.

[5] Rule 31.94(C)(b)(i) sets forth common stock maintenance criteria regarding the number of shares publicly held, the total number of round lot shareholders of record, and the aggregate market value of shares publicly held.

[6] 15 U.S.C. § 78f(b) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33168; International Series Release No. 609; File No. SR–NYSE–93–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to European Portfolio Market Index Target-Term Securities

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1993, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. 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 Exchange proposes to list for trading Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of European companies ("European Portfolio"). Initially, the European Portfolio will contain the securities of 24 European companies, as represented by American Depositary Receipts ("ADRs") listed in the United States. The 24 companies represent 8 countries throughout Europe.[4]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The companies represented in the European Portfolio are: Alcatel Alsthom Compagnie Generale d'Electricite; Banco Santander, S.A.; Bayer AG; Benetton Group S.p.A.; British Petroleum Company, PLC; British Telecommunications PLC; Cadbury Schweppes PLC; Deutsche Bank AG; Grand Metropolitan, PLC; Hanson PLC; Hoechst AG; L.M. Ericsson Telephone Company, Nestle S.A.; Philips Electronics N.V.; Reuters Holding PLC; Rhone-Poulenc S.A.; Royal Dutch Petroleum Company; Siemens AG; Societe Natinale Elf Aquitane; Telefonica de Espana; Total S.A.; Unilever PLC; Vodaphone Group PLC; and Waste Management International PLC.

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 Exchange 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 NYSE has prepared summaries, set forth in Section 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

Pursuant to the listing criteria set forth in section 703.19 of the Exchange's Listed Company Manual ("Manual"), the Exchange proposes to list and trade MITTS. MITTS are securities that entitle the holder to receive from the issuer upon maturity an amount based upon the change in the market value of a stock index or portfolio, provided that a minimum amount (90% of the principal amount) will be repaid. The Exchange is submitting the proposed rule change specifically to enable the Exchange to list for trading MITTS on the European Portfolio ("European Portfolio MITTS") issued by Merrill Lynch.

European Portfolio MITTS will allow investors to combine protection of a substantial portion of the principal amount of the MITTS with potential additional payments based on a portfolio of securities of selected European companies. The European Portfolio MITTS will provide that at least 90% of the principal amount thereof will be repaid at maturity.

The Security

European Portfolio MITTS will be denominated in United States dollars, will entitle the owner at maturity to receive an amount based upon the percentage change in the value of the European Portfolio from the "pricing date" to the "final calculation period," subject to a minimum repayment amount. The "pricing date" is the date on which the issuer prices the European Portfolio MITTS issue for the initial offering to the public. The "final calculation period" is a specified number of days prior to the maturity date. The average value of the European Portfolio during the final calculation period[5] will be used in calculating the amount owners will receive upon maturity.

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the European Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

As with other MITTS, European Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Owners may sell the security on the Exchange. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the European Portfolio and also on other factors, including the level of interest rates, the volatility of the value of the European Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer.

The Exchange will only list for trading European Portfolio MITTs issues that have at least one million outstanding securities, at least 400 owners, a minimum life of one year and at least a $4 million market value, and that otherwise comply with the Exchange's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[6]

Merrill Lynch will deposit registered global securities representing European Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

The Portfolio

The European Portfolio consists of ADRs representing the common stock of 24 highly capitalized European companies. The ADRs of the 24 companies initially will be equally weighted within the portfolio on the pricing date. The public float (*i.e.*, the market price multiplied by the number of shares outstanding, including shares underlying the ADRs) of the 24 companies differ significantly (from a high of US$56 billion (Royal Dutch Petroleum Company) to a low of US$476 million (Benetton Group S.p.A.)), as do the market prices of their ADRs (from a high of US$488 (Deutsche Bank AG) to a low of US$17.125 (Waste Management International PLC)).[7]

Each of the ADRs representing the common stock of the 24 European companies is listed on the Exchange or is traded over the facilities of the National Association of Securities Dealers, Inc. ("NASDAQ").[8] At the outset, the ADRs of each of the companies represented in the European Portfolio will have equal representation. That is, each ADR included in the portfolio shall be assigned a multiplier on the pricing date such that all ADRs represent an equal percentage of the value of the entire portfolio on such date. The multiplier indicates the number of ADRs (or fraction of one ADR) included in the calculation of the portfolio. Thus, each of the 24 companies represented by ADRs shall represent 4.17% of the total portfolio on the pricing date.

The multipliers assigned to the ADRs will be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the ADRs will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, consolidation, or nationalization involving the issuer of the underlying shares. For example, if the issuer of the shares underlying an ADR has been subject to a merger or a consolidation and is not the surviving entity, then a value for such ADR will be determined at the time such issuer is merged or consolidated and will equal the last available market price for such ADR and that value will be constant for the remaining term of the European Portfolio MITTS.

Based upon the reported prices of the ADRs, a Merrill Lynch affiliate will calculate the value of the European Portfolio on at least a daily basis and make those values available to investors.

The Issuer

The Exchange has determined that the issuer of the European Portfolio MITTS, Merrill Lynch, meets the listing criteria set forth in Section 703.19 of the Manual. The Exchange states that Merrill Lynch is an Exchange-listed company in good standing and has sufficient assets to justify the issuance

[5] The closing value for the European Portfolio will be determined by an affiliate of Merrill Lynch and will equal the sum of the products of the average market price and the applicable multiplier for each security over the final calculation period.

[6] *See* Section 703.19 of the Manual.

[7] Prices specified in this paragraph, and prices and exchange rates used to calculate public float specified in this paragraph, are as of October 11, 1993.

[8] Of the 8 NASDAQ components of the European Portfolio, 5 are traded over the NASDAQ OTC Bulletin Board Service and 3 are NASDAQ National Market System Securities.

of MITTS offerings of the size contemplated by the proposed rule change.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 NYSE. All submissions should refer to File No. SR-NYSE-93-44 and should be submitted by December 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28078 Filed 11-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33158; File No. SR-OCC-93-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Clearance and Settlement of Quarterly-Index Expiration Options Proposed for Trading on the New York Stock Exchange

November 4, 1993.

On May 14, 1993, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR-OCC-93-08) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on July 19, 1993, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change accommodates the clearance and settlement of a version of Quarterly Index Expiration Options ("QIX") being proposed for trading on the New York Stock Exchange ("NYSE").

A. Background

On November 6, 1992, the Commission approved an OCC rule filing to accommodate the clearance and settlement of QIX traded on the Chicago Board Options Exchange ("CBOE") and the American Stock Exchange ("Amex").[3] QIX are stock index options that have an expiration date different from the expiration date for conventional stock index options. Conventional stock index options expire on the Saturday following the third Friday of the month. In contrast, the QIX that are currently traded on the CBOE and the Amex expire on the first business day following the end of a calendar quarter. The CBOE and Amex QIX have an exercise settlement value that is based on the closing value of the corresponding index on the last trading day prior to expiration.

On January 13, 1993, the NYSE filed with the Commission a proposed rule change to list a new version of the QIX product.[4] The NYSE QIX differs in two ways from the CBOE and Amex QIX. First, the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter rather than on the first business day of the month following the end of a calendar quarter. Second, the exercise settlement value for the NYSE QIX will be based on the opening value of the corresponding index on the first trading day following the end of a calendar quarter rather than on the closing value on the trading day prior to expiration.

To accommodate the CBOE and Amex QIX, modifications were made to OCC's By-Laws. First, the definition of "expiration date" for index options was modified to provide that with respect to an index option contract that has been identified by an exchange as having an expiration date other than the Saturday following the third Friday of the expiration month, expiration date means the date identified by the exchange as such.[5] Second, a definition of QIX was added.[6] Finally, certain technical changes also were made to OCC rules.

B. NYSE QIX

QIX currently are defined as index option contracts having an expiration date on the first business day of the month following the end of a calendar quarter. Because the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter, this rule proposal amends the definition of QIX in OCC's By-Laws to include the expiration dates of both versions of the QIX product.[7]

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[9] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 32608 (July 9, 1993), 58 FR 38590.

[3] Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435 [File No. SR-OCC-92-27] (order approving proposed rule change relating to OCC's clearance and settlement of the CBOE and Amex QIX).

[4] Securities Exchange Act Release No. 32048 (March 25, 1993), 58 FR 16895 [File No. SR-NYSE-93-04] (notice of filing of proposed rule change).

[5] OCC By-Laws, Art. XVII (Index Options), § E(3).

[6] OCC By-Laws, Art. XVII, § 1.Q(1).

[7] *Id.*

Second, language will be deleted from OCC's By-Laws, Article VI (Clearance of Exchange Transactions), Section 18(a) to make Section 18 applicable to QIX and to all options that expire on a business day. Section 18(a) provides that if OCC is for any reason unable to make available on an expiration date any Preliminary Exercise Report or any Final Exercise Report prior to the applicable cut-off times, OCC shall make the delayed report available as soon as practicable thereafter or, in its discretion, may defer making the delayed report available until the calendar day immediately following such expiration date. The last sentence of section 18(a) currently provides that paragraphs (a), (b), and (c) of section 18, which all relate to delayed reports, "shall not apply to option contracts expiring on a business day in accordance with Rule 806." OCC believes that Article VI, Section 18 should be applicable to options expiring on a business day and, therefore, is deleting the last sentence of Section 18(a). This change was inadvertently omitted from the earlier rule filings on QIX and Flexible Exchange ("FLEX") Options.[8]

Previous changes made to OCC's Rules and By-Laws to accommodate the clearance and settlement of CBOE and Amex QIX also will accommodate the clearance and settlement of the NYSE QIX. Expiration day processing procedures will be the same for all QIX products. Specifically, holders of QIX may exercise their QIX positions by tendering an exercise notice to OCC in accordance with the time frames established in OCC Rules 1802 (Exercise of Index Options Other than on Expiration Date) or 1804 (Expiration Date Exercise Procedure for Index Options) or by being deemed exercised in accordance with the exercise-by-exception procedure set forth in OCC Rule 1804(b)(2).[9]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[10] Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible.

Because OCC's procedures for clearing and settling the NYSE QIX will be the same, except for the minor differences noted above, as OCC's existing procedures for clearing and settling the CBOE and Amex QIX, the previous modifications OCC made to its Rules and By-Laws to accommodate the processing of the CBOE and Amex QIX for the most part also will accommodate the clearance and settlement of the NYSE QIX.[12] Neither the fact that the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter rather than on the first business day as with the CBOE and Amex QIX nor the fact that the exercise settlement value for the NYSE QIX contracts will be based on the opening value of the corresponding index on the first business day of the month following the end of a calendar quarter rather than on the closing value of the corresponding index on the last trading day prior to expiration as with the CBOE and Amex QIX should impede OCC's ability to carry out its statutory obligations of promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds in its custody or control or for which it is responsible.

III. Conclusion

For the reasons discussed above and for the reasons set forth in the Commission's approval relating to OCC's clearance and settlement of the CBOE and Amex QIX,[13] the Commission believes that the proposal is consistent with the requirements of the Act, particularly those of section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the above-mentioned proposed rule change (File No. SR-OCC-93-08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-27934 Filed 11-12-93; 8:45 am]
BILLING CODE 8010-01-M

[8] For a discussion of FLEX options, refer to Securities Exchange Act Release No. 31912 (February 23, 1993), 58 FR 11879 [File No. SR-OCC-92-33] (order approving OCC's clearance and settlement of FLEX options).

[9] For a detailed description of the QIX exercise-by-exception procedure, refer to Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435 [File No. SR-OCC-92-27] (order approving CBOE and Amex QIX).

[10] 15 U.S.C. 78q-1 (1988).

[11] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[12] For a detailed discussion of the Commission's rationale for approving OCC's clearance and settlement of the CBOE and Amex QIX, refer to Securities Exchange Act Release No. 31418, *supra* note 3.

[13] *Supra* note 3.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30-3(a)(12) (1991).

[Investment Company Act Rel. No. 19838; 811-3597]

Collective Investment Trust for Citibank IRA's; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Collective Investment Trust for Citibank IRA's.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 153 East 53rd Street, New York, New York 10043.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized under the laws of the State of New York pursuant to a

Declaration of Trust. On November 5, 1982, Applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. Applicant filed its initial registration statement to register its shares under the Securities Act of 1933 on November 5, 1982. That registration statement became effective and the initial public offering commenced on February 20, 1983.

2. Applicant registered an indefinite number of units of beneficial interest ("Units") representing interests in four investment portfolios: The Equity Portfolio, The Balanced Portfolio, The Income Portfolio and The Short Term Portfolio (collectively, the "Portfolios").

3. At a special meeting held on September 24, 1992, the Supervisory Committee on Applicant unanimously approved an Agreement and Plan of Reorganization (the "Plan") dated December 28, 1992 by and among Citibank, N.A. ("Citibank"), individually and in its capacity as trustee of Applicant, for Applicant and on behalf of the Portfolios and each of the following investment companies: Landmark Funds I, Landmark Funds II, Landmark Fund III and Landmark Fixed Income Funds (each, a "Landmark Fund"), each acting for itself and, respectively, on behalf of Landmark Balanced Fund (a series of Landmark Funds I), Landmark Equity Fund (a series of Landmark Funds II), Landmark Cash Reserves (a series of Landmark Funds III) and Landmark Intermediate Income Funds (a series of Landmark Fixed Income Funds).

4. Because Citibank served as investment adviser of Applicant and Landmark Funds, the Supervisory Committee considered such matters as are required to be considered by rule 17a–8 under the Act. The Supervisory Committee, including each of its members who were not interested persons of Applicant or of any Landmark Fund, made the findings required to be made by rule 17a–8.

5. The Supervisory Committee also called a Special Meeting of Participants to vote on the Plan. Proxy material was distributed to securityholders ("Participants") in the Portfolios and at the Special Meeting held on February 18, 1993, Participants in each Portfolio representing a majority of all Units of such Portfolio entitled to vote, voted to approve the Plan.

6. The Plan provided for the reorganization of each Portfolio into a series of a corresponding Landmark Fund. Pursuant to the Plan, the assets of each Portfolio were transferred to its corresponding Landmark Fund in exchange for shares of beneficial interest of the series, and the assumption by that series of the stated liabilities of the Portfolio. The aggregate net asset value of shares of each series issued in these transactions was equal to the value of the assets of the Portfolio transferred to such series less the liabilities of the Portfolio assumed. Shares of the series of the Landmark Fund so acquired by Applicant were distributed to Participants by crediting the accounts of each Participant with a *pro rata* portion of the shares of the series having a value equal to the value of units of Applicant held by such Participant.

7. Pursuant to the terms of the Plan, certain securities having an adjusted tax basis below the current value of such securities (i.e., securities with unrealized gains) were sold in order to minimize the potential for taxable gains to the Landmark Fund series and their shareholders attributable to unrealized gains which accrued prior to the reorganizations. The proceeds of such sales were reinvested in securities. All commissions and charges attributable to such sales and reinvestments were paid by Citibank.

8. The reorganizations were effected following the close of business on Friday, June 25, 1993 and were effective on Monday, June 28, 1993. Applicant's Declaration of Trust provides that the Trust shall terminate as to a Portfolio upon the sale of the assets of such Portfolio to another trust or corporation and the *pro rata* distribution of the proceeds of such sale (after providing for the payment of all liabilities) to Participants of such Portfolio. Accordingly, Applicant's legal existence ceased under New York law on June 28, 1993.

9. No expenses were incurred by Applicant in connection with the transactions effected pursuant to the Plan. In accordance with the terms of the Plan, all of Applicant's expenses associated with the Plan and the transactions contemplated thereby (approximately, $1,450,000) were borne by Citibank.

10. As of the date of the application, Applicant had no remaining assets, no debts or other liabilities and no securityholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged in and does not propose to engage in, any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27929 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19837; 812–7741]

Lincoln National Convertible Securities Fund, Inc., et al.; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Lincoln National Convertible Securities Fund, Inc. (the "Convertible Securities Fund"), Lincoln National Income Fund, Inc. (the "Income Fund") (together with the Convertible Securities Fund, the "Funds"), Lincoln National Investment Management Company ("LNIMC") and Lincoln National Corporation and its subsidiaries (collectively, "Lincoln National").

RELEVANT ACT SECTION: Exemption requested under sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting (a) a Fund to purchase and sell securities in transactions in which Lincoln National or the other Fund is a participant, and (b) the receipt of certain fees and expenses by LNIMC in connection with such transactions.

FILING DATE: The application was filed on June 19, 1991, and amended on February 10, 1993, and July 15, 1993. By supplemental letter dated November 2, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary

ADDRESSES: Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicants, 1300 South Clinton Street, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are closed-end investment companies, the shares of which are traded on the New York Stock Exchange. LNIMC, a wholly-owned subsidiary of Lincoln National Corporation, serves as investment adviser to the Funds. LNIMIC also provides investment advisory services to several open-end investment companies and to Lincoln National. Lynch & Mayer, Inc., a wholly-owned subsidiary of Lincoln National Corporation, acts as a subadviser to the Convertible Securities Fund.

2. Lincoln National Corporation is an insurance holding company. Through its subsidiaries, Lincoln National Corporation operates a multi-line insurance business. Lincoln National subsidiaries include Lincoln National Life Insurance Company, American States Insurance Company, Security-Connecticut Life Insurance Company, and First Penn-Pacific Life Insurance Company.

3. The Convertible Securities Fund's investment objective is a high level of total return on its assets through a combination of capital appreciation and current income. This objective is sought to be achieved by investing principally in convertible securities, including directly placed convertible securities.

4. The Income Fund's investment objective is the production of increasing amounts of income for distribution to shareholders. This objective is pursued through investments in debt obligations and other senior securities, and may be achieved by investing in securities acquired through private placement transactions (securities acquired in transactions exempt from registration pursuant to section 4(2) of the Securities Act of 1933, as well as securities which are eligible for the exemptions set forth in rule 144A thereunder) ("Private Placement Securities").

5. Although the amount and type of portfolio investments held by Lincoln National vary from time to time in light of Lincoln National's needs or economic forecasts, Lincoln national regularly acquires investments that are consistent with the investment objectives and policies of the Convertible Securities fund or the Income Fund, including Private Placement Securities.

6. The Convertible Securities Fund is subject to an investment restriction that prohibits investments exceeding 5% of the value of the Fund's assets in the securities of any one issuer. If the requested relief is granted, it is anticipated that the board of directors of the Convertible Securities Fund would adopt investment guidelines that would limit investments in any single issuer to no more than $1.25 million at the time of purchase. Similarly, it is anticipated that the board of directors of the Income Fund would adopt investment guidelines that would limit investments in any single issuer to no more than $1 million at the time of purchase. While the proposed guidelines are stated in absolute dollar amounts, rather than percentages of the Funds' net assets, it is anticipated that the Funds' boards would review the guidelines from time to time to determine whether the guidelines are appropriate.

7. Issuers of Private Placement Securities may pay fees to purchasers or brokers of such securities in connection with the transaction. Such transaction fees may represent reimbursement for expenses, but may also include break-up or commitment fees. Break-up fees are fees that are payable if a proposed transaction is not consummated for various reasons. Commitment fees are generally fees payable to purchasers that commit to make funds available and are paid at the time such commitment is made, generally in advance of the proposed transaction. Transaction fees defray costs incurred, as well as provide compensation for a lost investment opportunity. If the requested relief is granted, it is anticipated that LNIMC would receive transaction fees in connection with the proposed transactions. Any upfront transaction fees (including break-up or commitment fees but excluding brokerage fees) paid with respect to any such transaction would be given to the co-investors on a *pro rata* basis according to the amounts invested by all co-investors. Brokerage fees payable to LNIMC in connection with the proposed transactions would be in compliance with section 17(e)(2) of the Act.

8. Applicants seek an order pursuant to sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder permitting the purchase of Private Placement Securities by the Convertible Securities Fund or the Income Fund in joint transactions in which Lincoln National, the Income Fund, and/or the Convertible Securities Fund, as the case may be, is a participant. Neither LNIMC nor Lynch & Mayer, Inc. would participate with the Funds in such transactions. The order also would permit the receipt of transaction fees and expenses by LNIMC in connection with the proposed transactions.

Applicants' Legal Analysis

1. Section 17(d) of the Act prohibits any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of such a person, acting as principal from effecting any transaction in which such registered company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the Commission grants an exemptive order after considering whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that, based on LNIMC's experience in the Private Placement Securities market, LNIMC believes that co-investments by the Fund or Funds with Lincoln National or with each other in Private Placement Securities would enable the Funds to participate in a larger number of Private Placement Securities offerings than presently available to them, and would enable the Funds to consider Private Placement Securities of larger, more creditworthy issuers. Applicants state that such increased investment opportunities would better enable the Funds to diversity their portfolios and may result in higher returns for Fund shareholders. In addition, applicants state that the flexibility to make co-investments will insure to the benefit of shareholders without, in light of the conditions set forth below, sacrificing the protections otherwise afforded under the Act. Thus, applicants submit that the requested relief is in the best interests of each Fund and its shareholders.

3. Applicants further assert that the conditions to the application provide assurances that a Fund's participation in a co-investment will not be on a basis different from or less advantageous than that of others making such co-investment. All co-investments by the Funds will be made on a *pro rata* basis

on the same terms and conditions and at the same price as the other parties making such investments. The same will be true for sales of investments. The only exceptions will be in those cases in which the applicable Fund's independent directors determine that an action different from the actions taken by other affiliates is appropriate. Finally, applicants assert that the conditions to the applicant are adequate to ensure that co-investments by the Funds and/or Lincoln National in Private Placement Securities would be consistent with the provisions, policies and purposes of the Act.

4. Applicants state that transaction fees are, in effect, a component of the return on an investment, much like points payable in connection with a mortgage. Applicants assert that such fees, when shared on a *pro rata* basis according to the amounts invested by all co-investors, are not subject to section 17(e)(1) of the Act, and applicants do not request relief from section 17(e)(1).[1]

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Co-investments will be permitted between and among only those applicants which from time to time notify LNIMC that they are willing to consider such co-investments under the terms and conditions under the application. Before a co-investment with a Fund is effected, LNIMC shall make certain determinations and provide certain information to the Funds. First, LNIMC shall, on behalf of each Fund that has elected to participate in co-investments and has monies to be invested, make an initial determination of whether the acquisition of a particular security would be consistent with the investment objective and policies of the Convertible Securities Fund or the Income Fund, as the case may be. If LNIMC determines an acquisition would be consistent with the objective and policies of a Fund, LNIMC shall prepare and deliver a written presentation regarding the proposed co-investment to a committee of the Fund's Board, comprised of all of the Independent Directors of the Fund and referred to as the Joint Transactions Committee. In addition to summarizing the terms of the security proposed to be acquired and the terms and conditions of the proposed acquisition, the materials shall provide information regarding the identity of each Fund and the Lincoln National affiliates that are considering the co-investment.

2. The Joint Transactions Committee of each Fund considering a co-investment in Private Placement Securities will review LNIMC's initial determination to make a co-investment, and may request such additional information from LNIMC or rely on such experts (including accountants and lawyers) as it deems necessary. Such review shall be conducted to determine whether the following standards are satisfied:

(a) The terms of the transaction (including the consideration to be paid) are fair and reasonable to the Fund and its shareholders and do not involve overreaching of the shareholders and the Fund on the part of any person concerned;

(b) The transaction is consistent with the investment objective and policies of the Fund as recited in its filings under the Securities Act of 1933, as amended, and the Act; and

(c) The investment by one or more of the other co-investors would not disadvantage the Fund in making, maintaining or disposing of the investment and the Fund's participation would not be on a basis different from or less advantageous than that of other co-investors.

Prior to committing to a co-investment, the Joint Transactions Committee must conclude that the standards outline above are satisfied with respect to the co-investment and the co-investment must be approved by a "required majority" of the directors of the Fund, as defined in section 57(o) of the Act (the "Required Majority").

3. Each Fund for which a co-investment would be suitable and that has funds available for investment will be entitled to acquire an amount of such class of Private Placement Securities equal to the lesser of: (a) Its *pro rata* share of the amount of the Private Placement Securities available to be acquired by Lincoln National based upon the number of co-investors (with Lincoln National and its affiliates being considered one co-investor) or (b) the amount of Private Placement Securities permitted to be acquired by the Fund pursuant to such Fund's investment objectives, policies, restrictions or guidelines.

Each of the Income Fund and the Convertible Securities Fund may, through LNIMC, decline to purchase the Private Placement Securities or decide to purchase less than the entire amount of securities offered to it, as determined by the Joint Transactions Committee. In the case where the Private Placement Securities are consistent with the objectives, policies, and restrictions of both Funds, if one of the Funds shall have declined such offer or accepted only a portion of the Private Placement Securities offered to such Fund, the other Fund will be offered up to 50% of the aggregate amount of Private Placement Securities declined by such Fund, subject again to the Fund's investment policies, restrictions or guidelines, and the other 50% of the Private Placement Securities declined will be offered to Lincoln National. Notwithstanding the preceding sentence, in no event shall the amount of the Private Placement Securities acquired by a Fund exceed the amount acquired by Lincoln National.

4. If the Income Fund and the Convertible Securities Fund choose, or either of them chooses, to acquire Private Placement Securities concurrently with Lincoln National:

(a) Each co-investor will acquire Private Placement Securities of each class acquired by any other co-investor;

(b) The ratio of the amount of Private Placement Securities of a class acquired by all co-investors will be the same for each class acquired; and

(c) The terms of the purchase, including price, settlement dates, registration rights, if any, and any other rights provided to purchasers of such investment, will be the same for each of the co-investors.

5. Any upfront transaction fees (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e)(2) under the Act) paid with respect to any co-investment shall be given on a *pro rata* basis to Lincoln National and the Fund or Funds that also invest in the Private Placement Securities. If such upfront transaction fees are to be held by LNIMC pending the consummation of the transaction, the fees shall be deposited in an account maintained by Lincoln National at a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of the Act. Lincoln National shall pay LNIMC interest on the amount of such deposits at a rate equal to the Fed AA 30-day commercial paper rate as established each day by the Federal Reserve Bank or such other published short-term rate as may be designated from time to time. LNIMC, in turn, will pay each of Lincoln National or the Fund or Funds that are to invest in the applicable Private Placement Securities in the same portion as each entity's proposed purchase of the securities bears to all those securities to be purchased by Lincoln National and the Funds.

None of such fees will be given to LNIMC. However, the reimbursement of

[1] The Division of Investment Management takes no position as to whether the transaction fees are subject to section 17(e)(1).

LNIMC's expenses in connection with a proposed acquisition of Private Placement Securities shall not be deemed to be transaction fees. The Joint Transactions Committee of the Fund or Funds shall be informed of all such fees at the time the Fund or Funds are offered the opportunity to acquire the Private Placement Securities.

6. None of Lincoln National, the Income Fund and the Convertible Securities Fund will sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and Lincoln National, unless each Fund holding such Private Placement Securities and Lincoln National, if it holds such securities, shall dispose of such interest in such Private Placement Securities and such dispositions are made at the same time, for the same unit consideration, and in amounts proportionate to their respective holding of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) Lincoln National determines to sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and Lincoln National, and LNIMC determines not to so dispose of the Private Placement Securities held by the Funds or either of them, or (b) LNIMC determines to cause the Funds or either of them to sell, exchange or otherwise dispose of any interest in Private Placement Securities of a class held by the Funds or either of them, and Lincoln National or the other Fund, as the case may be, shall not also so dispose of such interest in the Private Placement Securities, then LNIMC shall notify in writing the Chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the Chairman by overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for LNIMC's recommendation in light of the contrary decision made with respect to Lincoln National or the other Fund. The Chairman shall convene a meeting of the Joint Transactions Committee no later than five (5) business days after receipt of the above-referenced notification at which meeting the Committee will consider LNIMC's recommendation and, based upon its review, the Joint Transactions Committee shall determine (pursuant to the vote of a Required Majority of the directors), to sell, exchange, or dispose of such Private Placement Securities pursuant to LNIMC's recommendation if they determine that such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefore, shall be recorded and made a part of the records of the Fund. None of Lincoln National or the Funds or either of them shall effect such disposition until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority of directors, the action to be taken by the Fund.

7. None of Lincoln National, the Income Fund and the Convertible Securities Fund will make follow-on investments ("Follow-on Investments") or will exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and Lincoln National, unless each Fund and Lincoln National holding such Private Placement Securities shall make such Follow-on Investments or exercise such rights and such investments or exercises are made at the same time and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) Lincoln National determines to make a Follow-on Investment or exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and Lincoln National and LNIMC determines not to make such Follow-on Investments or exercise such rights with respect to such Private Placement Securities on behalf of the Funds or either of them, or (b) LNIMC determines to cause the Funds or either of them to make Follow-on Investments or to exercise warrants, conversion privileges or other rights with respect to a class of Private Placement Securities held by the Funds or either of them and Lincoln National, and Lincoln National or the other Fund shall not also so elect to make such Follow-on Investments or exercise such rights, then LNIMC shall notify in writing the Chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the Chairman by overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for LNIMC's recommendations to the Fund in light of the contrary decision made with respect to Lincoln National or the other Fund. The Chairman shall convene a meeting of the Joint Transactions Committee no later than five (5) business days after receipt of the above-referenced notification, at which meeting the Committee will consider LNIMC's recommendations and, based upon its review, shall determine to make such Follow-on Investments or exercise the rights with respect to such Private Placement Securities if it determines (pursuant to the vote of the Required Majority of the directors) such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and maintained as part of the records of the applicable Fund. None of Lincoln National or the Funds shall effect such Follow-on Investments or exercise such rights until the Joint Transactions Committee for each Fund considering such Follow-on Investments or exercise of rights has determined, pursuant to the vote of the Required Majority of directors, the action to be taken by the Fund.

8. Any expenses associated with acquiring, holding or disposing of any Private Placement Securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933, as amended) shall, to the extent not payable by the issuer of the security, be shared by Lincoln National and the Funds in proportion to the relative amounts of such securities held or being acquired or disposed of, as the case may be, by Lincoln National and each of the Funds.

9. No co-investment will be made by the Funds in Private Placement Securities of any entity if the other Fund or Lincoln National then currently holds a security issued by such entity.

10. The Joint Transactions Committee of each Fund (or the Independent Directors of the Fund in connection with its regularly scheduled quarterly meeting) will be provided quarterly for its review all information concerning co-investments transactions made by Lincoln National and each such Fund or the other Fund, as the case may be, including investments made by Lincoln National or the other Fund in which such Fund declined to participate, so

that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments in which such Fund declined to participate, comply with the conditions set forth above. In addition, the Independent Directors of a Fund will consider periodically the continued appropriateness of the standards established for co-investment by a Fund, including whether use of the standards continues to be in the best interests of the Fund and its shareholders and does not involve overreaching of the Fund and its shareholders on the part of any party concerned.

11. Each of the Funds will maintain and preserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations thereunder applicable to the Funds. The Funds will also maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the Co-Investments and any Follow-On Investments were approved under section 57(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27970 Filed 11-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25920]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 5, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions to 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 transactions(s) summarized below. The applications(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 November 29, 1993 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 requests 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.

EUA Energy Investment Corporation ("EEIC"), P.O. 2333, Boston, Massachusetts 02107, a wholly owned subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration pursuant to sections 6, 7, 9(a), 10 and 12(b) of the Act and rule 45(a) thereunder.

By order dated December 4, 1987 (HCAR No. 24515), EEIC is developing an energy-related computer system ("System").[1] EEIC proposes through December 31, 1996 to transfer the System to a joint venture limited partnership known as TransCapacity Limited Partnership ("Partnership"), and to provide financing to the Partnership as described below in order to allow the Partnership to develop the business which will employ such system.[2]

EEIC, TransCapacity Service Corporation, a Delaware Corporation ("TransCapacity"), The National Registry of Capacity Rights, Inc., a Massachusetts not-for-profit corporation ("Registry"), National Capacity Registry Service Corporation, Massachusetts corporation that is wholly-owned by the Registry, the Partnership, and Gregory M. Lander and Cheryl L. Loewen (all of which, save EEIC, are sometimes collectively referred to as the "TransCapacity Parties") have entered into various agreements as more fully described below for the development and commercialization of computer software. Lander and Loewen are the beneficial owners of TransCapacity.

EEIC and certain of the TransCapacity Parties have entered into a Research and Development Agreement dated June 3, 1993 ("R&D Agreement"). Under the R&D Agreement, EEIC is funding the research and development of the System in an amount of $750,000, and EEIC owns all right, title and interest in and to the System. Upon completion of the development of the System, EEIC will have the right to determine whether or not the System is commercially viable. If EEIC determines that the System is commercially viable, EEIC will tender a $1.1 million completion payment to the Partnership ("Completion Payment"). If EEIC determines not to proceed, the Partnership shall have the right to purchase the System from EEIC for $937,500, plus a 10% royalty on future Partnership net cash flow.

The Partnership was organized as a Massachusetts limited partnership on May 28, 1993 by the TransCapacity Parties. Subject to Commission approval, EEIC and the TransCapacity Parties have agreed under the R&D Agreement that EEIC will contribute the System to the Partnership in consideration of a general partnership interest in the Partnership and the Partnership will become a "subsidiary company" within the meaning of Section 2(a)(8) of the Act. The Partnership will then serve as the ownership entity to commercialize the System. EEIC and certain of the TransCapacity Parties have entered into an Agreement to Form Joint Venture dated September 8, 1993 to more fully set forth the rights and obligations of the parties upon completion of the System.

The capacity rights database to be maintained by means of the System ("Registry Database") will be owned by the Registry because the Registry will serve as an open-to-all information source for distribution to interested parties of basic information from the Registry Database, and because the Registry will collect the information from pipelines. In addition, the basic Registry Database will provide to the public a computer dial-in "900" number which will use structured, non-alterable query screens and menus to provide information and answers to particular questions about the location, duration and ownership of capacity rights. The Partnership will license the Registry to use the System to provide such basic

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[1] The System is an automated computer system for the collection, compilation and distribution to interested third parties of an information database composed of information regarding natural gas pipeline capacity and capacity rights. Under a series of recent Federal Energy Regulatory Commission orders (collectively, "Order 636"), such natural gas capacity rights information will no longer be proprietary information, and must be made generally accessible to the public in a non-discriminatory manner. The system will allow customers (producers, local distributing companies, pipelines, electrical generators using natural gas fuel, and others) to quickly sort and process the information they need from several hundred gigabytes of data per day which gas pipelines will report to comply with Order 636.

[2] EEIC proposes to incorporate a Massachusetts business corporation ("EEIC Subsidary") and to contribute the System to the EEIC Subsidiary in exchange for capital stock in the EEIC Subsidiary if EEIC so elects. The initial authorized capitalization of the EEIC Subsidiary will be 200,000 shares of common stock, $.01 par value per share, and EEIC will be issued a portion of such common stock in exchange for contribution to the EEIC Subsidiary of the System. No other person or entity will own stock in the EEIC Subsidiary. References to EEIC herein shall mean EEIC or the EEIC Subsidiary, where the context so allows.

services on a non-interactive basis with the Registry Database.

The System will also provide the following enhanced information services ("Enhanced Services"): (i) A proprietary hardware and software security system, which can be leased by a customer from the Partnership, will provide the customer with customized screen view, direct data download, search, report, and alert capabilities, and will also permit the customer to formulate special queries, reports, alerts, and information in a manner that is roughly equivalent to on-line legal research services; and (ii) For customers who frequently use the information in the Registry Database, the Partnership will lease secure, proprietary central processing units (with associated communications and database software) which will be connected into the Registry Database, enabling the customer to achieve rapid response, large data storage, and real-time processing capability. Other Enhanced Services to be provided by the System include a series of value added services: (i) Imbalance exchange where customers can anonymously clear transportation contract imbalances electronically through the System; (ii) A series of capacity price and status reports which identify capacity rights by shipper, pipeline, and time period; and (iii) A series of proposed and contemplated services will also respond to the demands of the market place through monitoring of specific information, value added services involving transportation, capacity, and/or contract imbalance transactions, assurance services, emergency response services, tariff search and rate index and tariff change alerts.

The TransCapacity Parties have entered into certain license agreements dated September 8, 1993 for the System and for the Registry Database pursuant to which the Partnership will have the exclusive right to provide the Enhanced Services using the System and information in the Registry Database. The Registry and the Partnership have also entered into a Management Services Agreement dated September 8, 1993, under which the Partnership will perform necessary Registry functions on behalf of the Registry for a fee equal to the cost of provision of said services, plus a ten percent (10%) markup on certain of such services. Under the license agreements, the Partnership is not obligated to make any license fee payments. Subject to Commission approval, EEIC and the TransCapacity Parties have agreed to share the revenues from the provision of enhanced, commercial services by virtue of their respective interests in the Partnership under the partnership agreement.

Under the partnership agreement, EEIC may make additional capital contributions through December 31, 1996 to the Partnership up to $1 million to provide funds for working capital and EEIC will receive all cash distributions from the Partnership as a priority return excepting only distributions sufficient to allow the partners to pay taxes on income allocated to them by the Partnership, until such date as the partnership has: (i) repaid EEIC's Completion Payment and any additional cash capital contributions (not to exceed $1 million) to the Partnership made by EEIC; and (ii) paid interest to EEIC at a rate of prime plus 6% on such Completion Payment and capital contributions. Thereafter, profits distributions from the Partnership will be made 80% to EEIC and 20% to the TransCapacity Parties until the sum of the priority return to EEIC and all other non-tax distributions to the partners, plus the net worth of the Partnership, exceeds five million dollars ("Conversion Date"). Upon the Conversion Date, the partners' interests in profits distributions will be adjusted as follows: EEIC will have a 70 percent interest, and certain TransCapacity Parties will have a 30 percent interest.

EEIC may make, through the Conversion Date, one or more loans and/or advances to the Partnership in an aggregate amount not to exceed $2 million at the interest rate of prime plus 6% for a term of up to five years. For a period of two years after the Conversion Date, EEIC may also, at its discretion, provide the Partnership with a working capital line of credit with a maximum availability of $2 million less any amounts outstanding at prime plus 2% for a term of five years. All loans and advances will be secured by all the Partnership assets. Such loans and advances will be used by the Partnership for working capital.

TransCapacity will have its own employees, including Lander and Loewen, and others as necessary. EEIC does not intend to supply any employees of the EUA system to the Partnership in the near future. Any activities that EEIC needs to perform under the Partnership Agreement would be accomplished by employees of EUA Service Corporation. The Partnership will reimburse EEIC for its costs and expenses of performing its duties as managing general partner. No employees of EUA's retail electric utilities will be assigned to any activities involving the Partnership. EEIC does not anticipate the need to hire any additional personnel in connection with its participation in the Partnership.

Eastern Edison Company, et al. (70-8287)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, MA 02403, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, RI 02865, Newport Electric Corporation ("Newport"), 12 Turner Road, P.O. Box 4128, Middletown, RI 02840, EUA Service Corporation ("Service"); EUA Ocean State Corporation ("Ocean State"); and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, MA 02107, all subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed a declaration under sections 6(a), 7 and 12(c) of the Act.

By Commission order dated November 7, 1991, HCAR No. 25404 ("November 1991 Order"), Eastern, Montaup, Blackstone, Service, and Newport were authorized, subject to various terms and agreements, to issue and sell short-term notes to banks, from time to time during the period from January 1, 1992, to December 31, 1993, in aggregate amounts outstanding at any one time not to exceed $35 million for Eastern, $25 million for Montaup, $15 million for Blackstone, $10 million for Service, and $10 million for Newport. By Commission order dated March 31, 1993, HCAR No. 25775 ("March 1993 Order") Ocean State, was authorized to borrow up to $5 million through the issuance and sale of short-term notes to banks through the period ended December 31, 1994.

Eastern, Montaup, Blackstone, Service and Newport each now propose to borrow funds through the period ending December 31, 1995 through the issuance and sale of short-term notes to banks ("Notes") in aggregate amounts outstanding at any one time not to exceed Eastern, $50 million; Montaup, $25 million; Blackstone, $15 million; Service, $10 million; and Newport, $10 million. Furthermore, Ocean State now proposes, upon the expiration of the March 1993 Order, to borrow funds through the period ending December 31, 1995 through the issuance and sale of Notes in an aggregate principal amount not to exceed $5 million at any one time. In all cases, the Notes will be issued to banks and renewed from time to time as funds are required prior to December 31, 1995 provided no such Notes will mature after September 30, 1996.

Notes will be issued to banks pursuant to informal credit line

arrangements which provide for borrowings at a floating prime rate or at available fixed money market rates. Notes will mature in not more than one year from the date of issuance. Notes bearing interest at the floating prime rate will be subject to prepayment at any time without premium. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate at time of issuance, will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees. The existing bank credit lines expire at June 30, 1994 and their availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased, decreased or changed, and additional lines may be obtained from other banks.

The existing credit line arrangements provide for borrowing at the prime rate or money market rates together with a commitment fee equal to ¼ of 1% multiplied by the line of credit. Any such commitment fee will be allocated among the six applicants and other EUA system companies who have access to system lines of credit pursuant to applicable regulatory authority, in proportion to their respective borrowing authorizations.

The funds to be borrowed by Eastern, Montaup, Blackstone, Newport, Service and Ocean State from the issuance of the Notes will be applied, together with other funds available to these companies, to: (1) Renew outstanding notes payable to banks, as they become due; (2) finance their respective 1994 and 1995 cash construction expenditures; (3) provide funds to meet certain sinking fund, and retirements or redemptions of outstanding securities; (4) provide funds to meet working capital requirements; and, (5) for other corporate purposes.

The Notes issued to banks will be repaid by any combination of, or by all of the following methods respective to each company: (1) The issuance of new notes; (2) the internal generation of funds, and; (3) the issuance and sale of long-term debt and equity securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27968 Filed 11-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19839; 812-8624]

United Financial Group, Inc.; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act to grant a conditional exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would conditionally exempt it from all provisions of the Act until December 30, 1994. The requested relief would continue an exemption originally granted until December 30, 1990 (the "1990 Order"), extended by amended orders until December 30, 1991 (the "1991 Order"), December 30, 1992 (the "1992 Order"), and December 30, 1993 (the "1993 Order").

FILING DATE: The application was filed on October 14, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5847 San Felipe, suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Law Clerk, at (202) 272-3809, or Robert A. Robertson, Branch Chief, at (202) 504-2283 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation (the "FSLIC") and its successor, the Federal Deposit Insurance Corporation (the "FDIC"), which term as used herein includes the FSLIC. The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims.

Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992. This would give the FDIC adequate time to review any possible claims against the Company that might reflect on a global settlement. This tolling agreement was subsequently extended seven times, initially through September 30, 1992, then eventually through December 30, 1993. During this tolling period, the Company has engaged in continuous discussions with the FDIC staff and as part of that process has furnished the FDIC with an extensive array of documents and financial records for their review.

4. On June 30, 1993, the Company held assets of approximately $12.58 million, comprised of approximately $.25 million in cash and cash equivalents, $10.48 million in short-term investments, $1.28 million in loans and notes receivable, and $.15 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

5. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990. Investment Company Act Release Nos. 17395 (March 21, 1990) (notice) and 17441 (April 18, 1990) (order). In 1991, this order was amended to extend this exemption until December 30, 1991. Investment Company Act Release Nos. 17941 (January 9, 1991) (notice) and 17989 (February 7, 1991) (order). In 1992, the order was amended to extend the exemption until December 30, 1992. Investment Company Act Release Nos. 18430 (December 5, 1991) (notice) and 18466 (December 31, 1991) (order). In 1993, the order was amended to extend the exemption until December 30, 1993. Investment Company Act Release Nos. 19128 (November 25, 1992) (notice) and 19175 (December 22, 1992) (order).

6. As described in detail in the applications for the 1990, 1991, and 1992 Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. By this application, the Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order amending the 1990 Order, thereby exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1994.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as:

(1) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control;

(2) Whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and

(3) Whether the company invested in securities solely to preserve the value of its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1993 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets have prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek an extension of the 1990 Order. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Tax Loss.

7. The Company believes that the issuance of an amended order exempting it from all provisions of the Act, subject to certain exemptions, until December 30, 1994 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that

term is defined in rule 2a–7(a)(10) of the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) If the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) The Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f–2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27930 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1898]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Working Group on ITU Plenipotentiary Preparations

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Working Group will meet on November 30, 1993 and December 14, 1993 from 10:30 a.m. to 1:30 p.m. in room 1207, and January 11, 1994 at 10:30 to 1:30 p.m. in room 1105, at the Department of State, 2201 C Street, NW Washington, DC 20520.

The purpose of these meetings is to continue the current U.S. preparatory for the upcoming International Telecommunication Union Plenipotentiary Conference in Kyoto, Japan, September 1994.

Members of the general public may attend these meetings and joint in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 30 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: November 2, 1993.

Earl S. Barbely,

CCITT National Committee Chairman.

Warren Richards,

CCIR National Committee Chairman.

[FR Doc. 93–27909 Filed 11–12–93; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance; Burlington Northern Railroad (BN) Docket Number H–93–4

Notice is hereby given that pursuant to 49 CFR 211.51, the Burlington Northern Railroad (BN) has requested a waiver for test purposes of 49 CFR 231.1(h)(2).

The BN requests a waiver for a one year test period of the requirements of 49 CFR 231.1(h)(2) which requires, inter alia, that side handholds on box and other house cars have a minimum clear length of 16 inches and preferably 24 inches.

The proposed test program is for two center beam bulkhead flat cars which are currently equipped with vertical side handholds, located on each of the four corners on the end bulkhead side channels. BN proposes to replace the vertical side handholds with three horizontal side handholds measuring 9.095 inches in clear length.

The BN states that the horizontal side handholds in place of the vertical side handholds, would improve safety during switching movements.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. The Federal Railroad Administration (FRA) does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–93–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before December 24, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on November 9, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–27962 Filed 11–12–93; 8:45 am]

BILLING CODE 4910–06–P

National Railroad Passenger Corporation (BS–AP–NO. 3255); Public Hearing

The National Railroad Passenger Corporation seeks approval of the proposed modification of the traffic control signal system and supplemental cab signal system, on the main tracks, between "A" Interlocking, milepost W0.2, near New York, New York and "Dock" Interlocking, milepost 8.5, near Newark, New Jersey, New York Division, Main Line, Northeast Corridor; consisting of the installation of four additional interlockings, the installation of an expanded cab signal system, and elimination of all intermediate wayside signals.

This proceeding is identified as FRA Block Signal Application Numbers 3255.

The FRA has issued a public notice seeking comments of interested parties and is conducting a field investigation in this matter. After examining the carrier's proposal, letters of protest, and available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Tuesday, December 14, 1993, in room 204 of the Peter Rodino Federal Building, located at 970 Broad Street, Newark, New Jersey. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on November 9, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93-27961 Filed 11-12-93; 8:45 am]

BILLING CODE 4910-06-P

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS-93-17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before December 23, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petitions are as follows:

Southeastern Pennsylvania Transportation Authority (SEPTA); FRA Waiver Petition Docket No. HSR-93-1

The SEPTA seeks a permanent exemption from the record keeping requirements of 49 CFR 228.17(a)(8) (distance between stations). SEPTA states that due to its high density frequent station operation, the cost of redesigning the dispatcher's record of train movements would cause an undue financial burden on the railroad. The railroad states that the dispatchers utilize a pre-printed form at each dispatchers desk. The form includes station names and location but does not include mile post location. The railroad states that with this form stations can be calculated by simple arithmetic. SEPTA has plans to implement a computer assisted train dispatching system which will automatically perform all record keeping requirements. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

CSX Transportation Incorporated (CSXT); FRA Waiver Petition Docket No. H-93-3

CSXT seeks an exemption from the record keeping requirements of 49 CFR 228.9(a)(1) (record signed by the employee). CSXT wishes to maintain the hours of service records for train dispatchers solely through electronic means. They state that CSXT should be allowed to eliminate the signed paper time slips currently submitted by its dispatchers.

Eastern Alabama Railway (EARY); FRA Waiver Petition Docket No. HS-93-20

The EARY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The EARY states that it is not its intention to employ a train and engine service employee more than 12 hours under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The EARY provides service over 25.2 miles of track between Sylacauga and Talladega, Alabama on a lease/purchase agreement with CSXT. The EARY conducts interchange services with CSXT at Talladega, Alabama and with the Norfolk Southern at Sylacauga, Alabama. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

PL&W Railroad Incorporated (PL&W); FRA Waiver Petition Docket No. HS-93-21

The PL&W seeks an exemption from the reporting requirements of 49 CFR 228.19, "monthly reports of excess service". The PL&W states that due to its takeover of the Youngstown and Southern Railway Company and its usual operating conditions, a waiver should be granted. The PL&W is an industrial switching railroad that provides service over 34 miles of trackage between Youngstown, Ohio and Cannelton, Pennsylvania. The PL&W conducts interchange with Consolidated Rail Corporation and Pittsburgh and Lake Erie Railroad Company at Cannelton, Pennsylvania.

Issued in Washington, DC on November 8, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93-27925 Filed 11-12-93; 8:45 am]

BILLING CODE 4910-06-P

National Highway Traffic Safety Administration

[Docket No. 93-83; Notice 1]

Thomas Built Buses, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Thomas Built Buses, Inc. (Thomas) of High Point, North Carolina has determined that some of its buses fail to comply with the requirements of 49 CFR 571.131, "School Bus Pedestrian Safety Devices," Federal Motor Vehicle Safety

Standard (FMVSS) No. 131, and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Thomas 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.

Paragraph S5.5 of FMVSS No. 131 states that "[t]he stop signal arm shall be automatically extended * * * at a minimum whenever the red signal lamps * * * are activated; except that a device may be installed that prevents the automatic extension of a stop signal arm * * *. While the device is activated, a continuous or intermittent signal audible to the driver shall sound."

Between September 2, 1992, and July 30, 1993, Thomas produced 305 Type A, B, C, and D school buses which were not equipped with a continuous or intermittent signal audible to the driver when the device is activated that prevents the automatic extension of a stop signal. Thus, these school buses do not comply with the standard.

Thomas supports its petition for inconsequential noncompliance with the following:

> Delivery of the noncomplying vehicles has been limited to one state, Virginia. That state has had a stop arm requirement since the early 1980's and has required an interrupt switch, wired to the stop arm and crossing gate, since approximately 1986. Drivers use that switch *only* when the vehicle is loading or unloading passengers in the school yard so that buses can be positioned close together without damaging the crossing gate (emphasis original). Bus drivers in Virginia have been accustomed to activating the interrupt switch without an audible signal since the signal was not required prior to the September 2, 1992 (sic) effective date of FMVSS 131.

In Thomas' Defect and Noncompliance Report, it stated that:

> All vehicles will be repaired through customer notification by the Thomas distributor in Virginia. Repair parts will be supplied at no charge. The repair will consist of installing a chime, adding a wire to the existing wire harness, and connecting the wire to the chime.

Interested persons are invited to submit written data, views, and arguments on the petition of Thomas, 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 indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 15, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on November 9, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-27960 Filed 11-12-93; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "In the Temple of Solomon and the Tomb of Caiaphas" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Smithsonian Institute, Washington, DC, from on or about November 19, 1993 to on or about November 28, 1993, is in the national interest. The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view of the United States concerning the ownership of the exhibition objects. Further, it is not based upon and does not represent any change in the position of the United States regarding any issue in the Middle East peace process.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 8, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93-27944 Filed 11-12-93; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Lucian Freud: Recent Work" (see list [2]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are important pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about December 14, 1993 to on or about March 13, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 8, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93-27943 Filed 11-12-93; 8:45 am]

BILLING CODE 8230-01-M

[2] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

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 COMMUNICATIONS COMMISSION

Deletion of Agenda Item From November 10th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the November 10, 1993, Open Meeting and previously listed in the Commission's Notice of November 3, 1993.

Item No., Bureau, and Subject

2—Common Carrier—Title: Rules and Policies Regarding Calling Number Identification Service-Caller ID (CC Docket No. 91-281). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* establishing federal policies for interstate Caller ID and proposing restrictions on the unauthorized use or resale of calling party information.

Dated: November 9, 1993.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-28069 Filed 11-10-93; 10:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

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, November 9, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain insured financial institutions.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., 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)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 522b (c)(4), (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, NW., Washington, DC.

Dated: November 9, 1993.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 93-28050 Filed 11-10-93; 8:54 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 16, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Recommendation concerning a proposed amendment to the Compact of Free Association Act of 1985 in regards to the availability of federal deposit insurance to banks in the Freely Associated States of the Republic of the Marshall Islands and the Federated States of Micronesia.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 9, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-28051 Filed 11-10-93; 8:54 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: November 10, 1993 (following Regular Meeting).

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Marysville Hydro Partners, Project No. 9885.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

The following members of the Commission voted that agency business requires the holding of a closed meeting on the above-described matter on less than the seven days' notice required under the Government in the Sunshine Act:

Chair Moler
Commissioner Bailey
Commissioner Hoecker
Commissioner Massey
Commissioner Santa

Dated: November 10, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28173 Filed 11-10-93; 3:54 pm]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published in the **Federal Register** on November 10, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Friday, November 12, 1993.

CHANGES IN THE MEETING:

1. *Deletion of the following open item from the agenda:* Proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) regarding (A) increasing the aggregate lending limit for certain small banks (proposed earlier for public comment; Docket No. R-0800); and (B)(i) exceptions to the aggregate insider lending limit; (ii) the

definition of "extension of credit"; and (iii) modifications to the recordkeeping requirements (proposed earlier for public comment; Docket No. R–0809).

2. *Addition of the following open item to the meeting:* Proposed 90-day extension of the interim rule establishing a higher aggregate lending limit under Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) for certain small banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28036 Filed 11–9–93; 4:42 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, November 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28174 Filed 11–10–93; 3:54 pm]

BILLING CODE 6210–01–P–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., November 23, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings.*

AB–33 (Sub-No. 78), *Union Pacific Railroad Company—Abandonment—In Saline, Ottawa, Lincoln, Russell, Osborne and Rooks Counties, KS.*

AB–55 (Sub-No. 469), *CSX Transportation, Inc.—Abandonment—Between South Hardeeville and North Savannah in Jasper County, SC, and Chatham County, GA.*

MC–C–30198, *Advantage Tank Lines, Inc.—Petition for Declaratory Order—Ex-Pipeline Movements.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28094 Filed 11–10–93; 12:47 pm]

BILLING CODE 7035–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 2, 1993.

PLACE: Hearing Room 965, One Lafayette Centre, 1120—20th Street, N.W., Washington, D.C. 20036–3419.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *McNally Construction and Tunneling, Inc.*

OSHRC Docket No. 90–2337

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: November 10, 1993.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 93–2815 Filed 11–10–93; 3:20 pm]

BILLING CODE 7600–01–P–M

Corrections

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

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.

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 242

Defense Federal Acquisition Regulation Supplement; Contractor Accounting Controls

Correction

In proposed rule document 93-26604 appearing on page 58315 in the issue of Monday, November 1, 1993, in the third column, in **SUMMARY**, in the third line, "September 14, 1993" should read "September 24, 1993", and beginning in the fifth line, "October 5, 1993" should read "October 25, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Organizational Conflict of Interest

Correction

In proposed rule document 93-26602 beginning on page 58316 in the issue of Monday, November 1, 1993, make the following correction:

252.209-7XXX [Corrected]

1. On page 58316, in the third column, in section 252.209-7XXX, in paragraph (c) of the clause, in the third line, "in participating" should read "is participating".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1993-25]

Recordkeeping and Reporting by Political Committees: Best Efforts

Correction

In rule document 93-26445 beginning on page 57725 in the issue of Wednesday, October 27, 1993, make the following correction:

§ 104.7 [Corrected]

On page 57729, in the second column, in § 104.7(b)(1), in the first line, "of" should read "in".

BILLING CODE 1505-01-D

federal register

Monday
November 15, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

Changes to the Minimum Property Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-93-1495; FR-2599-F-02]

RIN 2502-AE64

Changes to the Minimum Property Standards

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

ACTION: Final rule.

SUMMARY: This final rule amends the Minimum Property Standards (MPS) by removing federal agency standards for thermal insulation, and referencing a model energy code; standardizing requirements to control termites and wood decay, and referencing the latest editions of private sector standards now in the MPS; adding requirements for the restriction of the use of fire retardant treated plywood; and revising the time for periodic changes to the MPS, and making changes of an editorial nature. These changes to the MPS are needed to keep referenced standards current, to eliminate unnecessarily duplicative and confusing federal standards, and to protect the Department's insurance fund.

DATES: Effective Date: This regulation is effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Donald Fairman, Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490 E, 451 Seventh Street, SW., Mail Room B-133, Washington, DC 20410-8000, telephone, voice: (202) 755-7440; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 5, 1990 the Department published in the **Federal Register** a proposed rule (55 FR 46632) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S by:

(1) Removing federal agency standards for thermal insulation, referencing a model agency code;

(2) Standardizing requirements to control termites and wood decay;

(3) Referencing the latest editions of private sector standards now in the MPS;

(4) Adding requirements for the restriction of the use of fire retardant treated plywood; and

(5) Revising the time for periodic changes to the MPS and making changes of an editorial nature.

Seventeen public comments were received on the proposed rule. Fifteen of the comments dealt with HUD's proposal to adopt the Council of American Building Officials' (CABO) Model Energy Code (MEC) in lieu of the energy requirements in the current MPS. Eleven were in favor of the adoption and four were opposed.

One commenter opposed adoption of the MEC on the basis that the commenter did not view the 1992 MEC as being cost effective for homes that use natural gas. The commenter urged HUD to continue to use the current standard, and claimed that the proposed rule would encourage the use of electric resistance heating. The commenter contended that the efficiency of gas is almost three times that of electric resistance as a heat source, and that natural gas produces lower levels of carbon dioxide emissions.

Other commenters recommended that HUD use two standards of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE): ASHRAE/IES Standard 90.1-1989 Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings and ASHRAE Standard 90.2 P-Energy Efficient Design of New Low-Rise Residential Buildings. These suggestions were supported by the commenter's data, which will be considered in future Department of Energy and HUD energy studies.

A commenter contended that the use of the MEC for low-rise residential construction would have all the impact associated with a major rule, and homeowners would not "break even" on MEC-mandated energy efficient investments for up to twelve years.

Regarding the contention that adoption of the MEC for low-rise residential construction has the impact of a major rule, there are a number of factors to consider. The basic yardstick for identification of a major rule is an annual effect on the economy of $100 million or more. HUD's current calculations indicate costs far below the $100 million threshold. Over the past several years, construction starts for single family homes have been close to one hundred thousand per year. Any change in construction would be associated with a portion of homes with gas heat—which comprise approximately sixty percent of HUD single family home construction. (Requirements for electric resistance heating are equivalent in the MPS and the MEC.) Preliminary estimates indicate the average per unit cost for changing from MPS to MEC thermal criteria would be $1000. This would result in a total construction cost of $60 million. This amount would be further diminished by the number of homes already being constructed to the thermal requirements of the MEC, which is the case in a number of localities where either the MEC or more stringent local requirements already have been adopted. (Where local codes treat the same subject as the MPS, the more stringent local code prevails.) Another important consideration affecting the major rule determination is the net impact of the MEC. The net impact of adoption of the MEC will be energy and life-cycle cost savings. The present value of future reductions in fuel costs significantly exceeds the front-end costs for the energy conservation measures.

One commenter supported adoption of the MEC only if several amendments are made to the MEC in the process. One change the commenter proposed would involve retaining directions for using the MEC for rehabilitation work. This feature of the rule was removed by HUD because the MPS is used only as a standard for new construction. By HUD policy, rehabilitation is governed by local requirements. The Department feels that other changes to the MEC suggested by the commenter should be made through the established code change process.

Section 109 of the National Affordable Housing Act of 1990 (NAHA) states, in part, that:

> The Secretary of Housing and Urban Development shall, not later than one year after the date of enactment of this Act, promulgate energy efficiency standards for new construction of public and assisted housing and single-family- and multifamily residential housing (other than manufactured homes) subject to mortgages under the National Housing Act. Such standards shall meet or exceed the provisions of the most recent edition of the Model Energy Code of the Council of American Building Officials and shall be cost-effective with respect to construction and operating costs.

While the Department finds many of the above-described comments worthy of consideration for future HUD energy studies, the Department has determined that they are not sufficiently persuasive to permit HUD to violate the clearly stated mandate of the Act regarding the promulgation of energy efficiency standards. The Department's consultations with the Department of Energy (DOE) and others indicate that the MEC clearly can be considered a cost-effective standard. The following

studies, focused on various aspects of the MEC, support this position:

Economic Assessment of Model Energy Code Proposal 87–20, Submitted by MIMI, M. F. McBride, July 9, 1987;

Impacts of Alternative Residential Energy Standards—Rural Housing Amendments Study, Department of Energy, June 1988;

Comparison of the Economic Effects of Three Residential Energy Codes on Home Buyers, Battelle PNL, November 1990;

Assessment of Energy Savings Resulting from Thermal Insulation Use in the Residential Sector, RCG/Hagler, Bailey, Inc., et al., December 1990;

Better Building Codes for Energy Efficiency, the Alliance to Save Energy, September 1991.

To comply with the mandate of Section 109 of the NAHA which states: "In developing such standards the Secretary shall consult an advisory task force composed of home builders, national, state and local housing agencies (including public housing agencies), energy agencies and building code organizations and agencies, energy efficiency organizations, utility organizations, low income housing organizations, and other parties designated by the Secretary." HUD has consulted with many individuals and organizations with interest in energy usage. DOE is involved with a study to identify areas where additional research is needed that will improve energy conservation. As new improved methods and products are developed they will be proposed for changes to the standard.

One comment recommended that several standards from the American Concrete Institute, the American Society of Civil Engineers and the American Society for Testing and Materials be added to Appendix A. The recommended standards, upon examination, were determined either to be outdated or already referenced or listed in the Model Codes that HUD has adopted by reference. Accordingly, the Department has determined that it is not necessary to include them in the MPS.

A commenter opposed the use of the CABO One and Two Family Dwelling Code (OTFDC) 1992 Edition and its errata package for townhouse design because of problems the commenter claimed would be raised involving consistency with fire risk factors, and concerns involving fire retardant treated plywood. Section 200.926(d)(3) has been revised in this final rule to state that fire retardant treated plywood, where approved by a state or local building code, shall not be permitted for use in roof construction unless a technical suitability bulletin has been issued by the Department for that product.

The CABO One and Two Family Dwelling Code was developed for use in all types of One and Two Family dwellings, including townhouses (See Section R–103, Scope). In areas where no building code exists, the CABO code will establish a minimum level of construction requirements. Where a Model, State or local code is in use and it is more stringent than the CABO OTFDC, the more stringent code would apply.

One of the recommendations for fire retardant treated plywood was for a time-delay strength evaluation procedure. It was suggested that this be a part of the approval process for acceptance of this product. It was also recommended that a national standard be developed that would incorporate a method of verifying test results.

Because of the recent history of premature failures of fire retardant treated plywood, its manufacturing durability tests are being reviewed by HUD. Durability and strength tests, after treatment, must be verified before the issuance of any HUD approvals. HUD is currently working with the plywood manufacturers and treaters, the National Forest Products Association and the Forest Products Laboratory to determine future manufacturing and testing procedures. When this work has been completed, HUD will determine how and where this fire retardant treated plywood may be used.

It was recommended by one commenter that the U.S. Department of Agriculture's Home and Garden Bulletin No. 64, "Subterranean Termites, Their Prevention and Control in Buildings," be added to the list of references in Appendix A, as a convenience for builders and building officials. This bulletin is a companion to the Agriculture Handbook for Wood Frame Construction, Handbook No. 73 specified in the proposed rule. Its addition is acceptable to the Department. It was also requested that the design standards for wood construction and P.S. 20–70, the softwood lumber standards, be added to those listed in the appendix. The National Design Specification (NDS) for wood construction is included in the three Model Codes: Uniform, BOCA, and Southern. The Department has determined that it is unnecessary to reference these standards again.

By recognizing the National Design Standards for wood construction, it is not considered necessary to include P.S. 20–70. Soft wood is included in the NDS.

Consistent with section 804(f)(5)(C) of the Fair Housing Act, a new section has been added that references the Department's Fair Housing Accessibility Guidelines, published in the **Federal Register** on March 6, 1991 (56 FR 9472). The Guidelines may be used by builders and developers in designing and constructing covered multifamily dwelling units to comply with the Fair Housing Act and 24 CFR 100.205.

The proposed changes to the Minimum Property Standards for Housing (MPS) 4910.1 (Chapters 1 and 6) will be adopted as published in the proposed rule.

A sentence has been added to § 200.925. That section explains the applicability of the MPS. The new sentence clarifies that MPS provisions may be waived to the extent that the eligibility regulations for the specific mortgage insurance program involved may be waived. Single family program regulations are generally waiverable. For example, § 203.248 permits waiver of the eligibility requirements in Part 203 that apply to the basic section 203(b) single family program, if the requirements are not required by statute. Among those requirements is § 203.39, which requires that "buildings on the mortgaged property must conform with the standards prescribed by the Commissioner." In order for the authority to waive § 203.39 to be meaningful, waiver of the MPS is also needed since for new construction cases the MPS constitutes the standards referred to in § 203.39. HUD has therefore interpreted the § 203.39 in a case where § 203.39 applies. The rule change will expressly add this interpretation.

The Department has deleted in this final rule Appendix B to Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One- and Two-Family Dwellings.

This final rule does not constitute a "significant regulatory action" as that term is defined in section 3(f) of Executive Order 12866 on Federal Regulations issued by the President on October 4, 1993. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in this Executive order.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not alter the current practice by which housing is designed or constructed. It reduces the burden of compliance which already exists for both small and large entities. In all cases, housing must be built in compliance with local codes.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 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 during regular business hours at the Office of Rules Docket Clerk at room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

This rule was listed as item 1523 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56427) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule only revises HUD's Minimum Property Standards, which are harmonized with local codes and local construction practice to the maximum feasible extent. This rule presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards.

Accordingly, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701 through 1715a–18; 42 U.S.C. 3535(d)).

2. Section 200.925 is revised to read as follows:

§ 200.925 Applicability of minimum property standards.

All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD Minimum Property Standards, except that this requirement shall be applicable to manufactured homes eligible for insurance pursuant to § 203.43f of this chapter only to the extent provided therein. The Minimum Property Standards may be waived to the same extent as the other regulatory requirements for eligibility for insurance under the specific mortgage insurance program involved.

3. Section 200.925a is amended by revising paragraph (d)(3)(iii) to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(d) * * *

(3) * * *

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

* * * * *

4. Section 200.925b is amended by revising paragraph (k)(1) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(k) * * *

(1) Reference ASME/ANSI Standard A 17.1–1987; and the ASME/ANSI A17.1b-1989 Addenda.

* * * * *

5. Section 200.925c is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2); by adding paragraph (a)(3); by revising paragraphs (c)(1), (c)(2) and (c)(3), and by adding paragraph (c)(4) to read as follows:

§ 200.925c Model codes.

(a) * * *

(1) * * *

(i) *The BOCA National Building Code, 1993 Edition, The BOCA National Plumbing Code, 1993 Edition, and the BOCA National Mechanical Code, 1993 Edition*, excluding Chapter I, Administration, for the Building, Plumbing and Mechanical Codes and the references to fire retardant treated wood and a distance of 4 feet (1219 mm) from the wall in exception number 1 of paragraph 705.6 and 707.5.2 number 2 (Chapter 7) of the Building Code, but including the Appendices of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478.

(ii) *Standard Building Code, 1991 Edition, including 1992/1993 revisions. Standard Plumbing Code, 1991 Edition, Standard Mechanical Code, 1991 Edition, including 1992 revisions, and Standard Gas Code, 1991 Edition*, including the 1992 revisions, but excluding Chapter I—Administration from each standard code and the phrase "or fire retardant treated wood" in reference note (a) of table 600 (Chapter 6) of the Standard Building Code, but including Appendices A, C, E, J, K, M, and R. Available from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(iii) *Uniform Building Code, 1991 Edition*, including the 1993 Accumulative Supplement, but excluding Part I—Administrative, and the reference to fire retardant treated plywood in section 2504(c)3 and to fire retardant treated wood in 1–HR type III and V construction referenced in paragraph 4203.2., but including the Appendix of the Code. *Uniform Plumbing Code, 1991 Edition, including the 1992 Code Changes* but excluding Part I—Administration, but including the Appendices of the Code. *Uniform Mechanical Code, 1991 Edition*, including the 1993 Accumulative Supplement but excluding Part I—Administrative, but including the Appendices of the Code. All available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) *National Electrical Code*, NFPA 70, 1993 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(3) *National Standard Plumbing Code*, 1993 Edition. Available from the National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, Virginia 22046.

* * * * *

(c) * * *

(1) *The BOCA National Building Code, The BOCA National Plumbing and The BOCA National Mechanical Code*, 1993 Editions.

(2) *Standard Building Code, Standard Plumbing Code, Standard Mechanical Code and Standard Gas Code*, 1991 Editions, including the revisions specified in paragraph (a)(1)(ii) of this section, and the *National Electrical Code*, 1993 Edition.

(3) *Uniform Building Code, Uniform Plumbing Code and Uniform Mechanical Code*, 1991 Editions, including the 1993 Accumulative Supplements to the Building and Mechanical Codes, and the 1992 Code Changes to the *Uniform Plumbing Code*, and the *National Electrical Code*, NFPA 70, 1993 Edition.

(4) *The National Electrical Code*, NFPA 70, 1993 Edition.

6. Section 200.926 is amended by revising paragraphs (d)(1)(i)(B)(*2*), (d)(1)(i)(C)(*1*), and (d)(1)(ii)(B)(*2*)(*ii*), and paragraph (d)(3), to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(C) * * *

(*1*) The CABO One and Two Family Dwelling Code as identified in § 200.926b(a); and

* * * * *

(ii) * * *

(B) * * *

(*2*) * * *

(*ii*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(d) * * *

(3) *Notification of decision.* (i) Fire retardant treated plywood, where approved by a State or local building code, shall not be permitted for use in roof construction unless a HUD technical suitability bulletin has been issued by the Department for that product.

(ii) The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his or her discretion, permit either an oral or written presentation of views.

* * * * *

7. Section 200.926b is amended by revising paragraphs (a)(1), (a)(2), and (c), to read as follows:

§ 200.926b Model codes.

(a) * * *

(1) *CABO One and Two Family Dwelling Code*, 1992 Edition, including the 1993 amendments, but excluding Chapter I—Administrative, and the phrase "or approved fire retardant wood" contained in the exception of paragraph R–218.2.2(2), but including the Appendices A, B, D, and E of the Code. (Available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041.)

(2) *Electrical Code for One and Two Family Dwellings*, NFPA 70A, 1990 Edition, including Tables and Examples. Available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

* * * * *

(c) *Designation of Model Codes.* When a one or two family dwelling or townhouse is to comply with portions of the model code or the entire model code, the dwelling shall comply with the CABO One and Two Family Dwelling Code 1992 Edition, including the 1993 amendments, or portion thereof as modified by § 200.926e of this part and designated by the HUD Field Office serving a jurisdiction in which a property is located. In addition, the property shall comply with all of the standards which are referenced for any designated portions of the model code, and with the Electrical Code for One and Two Family Dwellings, NFPA 70A/1990.

§ 200.926c [Amended]

8. In Section 200.926c, the table is amended by revising the heading for the second column to read, "Portions of the CABO One and Two Family Dwelling Code, 1992 Edition, including the 1993 amendments, with which a property must comply" and by revising the last entry in the second column to read "Electrical code for 1- and 2-family dwellings (NFPA 70A–1990)."

9. Section 200.926d is amended by revising paragraphs (a)(1), (b)(3)(i), (d)(3), and (e), to read as follows:

§ 200.926d Construction requirements.

(a) * * *

(1) *General.* These standards cover the agency requirements for accessibility to physically handicapped people, variations to standards, real estate entity, trespass and utilities, site conditions, access, site design, streets, dedication of utilities, drainage and flood hazard exposure, special construction and product acceptance, thermal requirements, and water supply systems.

* * * * *

(b) * * *

(3) * * *

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection.

* * * * *

(d) * * *

(3) *Standard Features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards and practices to which compliance is required, see HUD Handbook 4910.1, Appendix C and Appendices E and F, available from HUD, 451 Seventh Street, SW., Attention: Mailroom B–133, Washington, DC 20410.

(e) *Energy efficiency.* All detached one- and two-family dwellings and one-family townhouses not more than three stories in height shall comply with the CABO Model Energy Code, 1992

Edition, Residential Buildings, except for Sections 101.3.1, 101.3.2, 104, and 105, but Section 101.3.2.2, Historic Buildings, shall remain, and including the Appendix, and HUD intermediate MPS Supplement 4930.2 Solar Heating and Domestic Hot Water Systems, 1989 edition.

* * * * *

10. Section 200.929 is amended by revising paragraph (b)(2) and by removing paragraph (b)(3), to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1993 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

11. A new § 200.929a is added, to read as follows:

§ 200.929a Fair Housing Accessibility Guidelines.

Builders and developers may use the Department's Fair Housing Accessibility Guideline when designing or constructing covered multifamily dwelling units in order to comply with the Fair Housing Act. The Guidelines may be found in the 24 CFR Chapter I, Subchapter A, Appendix II, titled Fair Housing Accessibility Guidelines—Design Guidelines for Accessible/Adaptable Dwellings.

12. Section 200.933 is amended by revising the first sentence to read as follows:

§ 200.933 Changes in minimum property standards.

Changes in the Minimum Property Standards will generally be made every three years. * * *

13. In § 200.934, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 200.934 User fee system for the technical suitability of products program.

* * * * *

(b) *Filing address*—(1) *Applications containing payment.* When applications for or correspondence concerning SEBs, MEBs, TCBs, MRs, or program administrator approval contain payment, such applications or correspondence shall be sent to the following address:

U.S. Department of Housing and Urban Development, Technical Suitability of Product Fees, P.O. Box 954199, St. Louis, MO. 63195–4199.

(2) *Other correspondence.* All other correspondence concerning SEBs, MEBs, TCBs, MRs, and program administrator acceptance shall be sent to the following address:

Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Attn: Mail Room B–133, Washington, DC 20410.

* * * * *

14. Appendix A to part 200 is revised to read as follows:

Appendix A to 24 CFR Part 200 Standards incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1)

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200. The MPS are available for public inspection and can be obtained for appropriate use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the **Federal Register**, 800 North Capital Street, NW., Suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.

Air Conditioning Contractors of America 1513 16th Street, NW., Washington, DC 20036, (202) 483–9370.

Load Calculation for Residential Winter and Summer Air Conditioning, Manual J 1986

Aluminum Association, 900 19th Street, NW., Washington, DC 20006, Telephone (202) 862–5100.

AA–ASM 35–80 Specifications for Aluminum Sheet Metal Work in Building Construction

American Architectural Manufacturers Association, 1540 East Dundee Road, Paletine, IL 60067, Telephone (708) 202–1350.

AAMA–800–92 Voluntary Specifications and Test Methods for Sealants

AAMA–1503.1–88 Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors and Glazed Wall Sections

AAMA 1504–88 Voluntary Standards for Thermal Performance of Windows, Doors and Glazed Wall Sections

American Concrete Institute, P. O. Box 19150, Redford Station, Detroit, Michigan 48219, Telephone (313) 532–2600.

ACI 211.1–89 Standard Practice for Selecting Proportions for Normal, Heavyweight and Mass Concrete

ACI 211.2–91 Standard Practice for Selecting Proportions for Structural Lightweight Concrete

ACI 213R–87 Guide for Structural Lightweight Aggregate Concrete

ACI 301–89 Specifications for Structural Concrete for Buildings

ACI 302.1R–80 Guide for Concrete Floor and Slab Construction

ACI 304R–89 Guide for Measuring, Mixing, Transporting and Placing Concrete

ACI 305R–77 Hot Weather Concreting (Revised 1989)

ACI 306R–78 Cold Weather Concreting (Revised 1988)

ACI 311.4R–80 Guide for Concrete Inspection (Revised 1988)

ACI 315–80 Guide for Detailing of Concrete Reinforcement

ACI 318–89 Building Code Requirements for Reinforced Structural Plain Concrete (Revised 1992)

ACI 322–72 Structural Plain Concrete

ACI 347–78 Recommended Practice for Concrete Formwork (Reapproved 1984)

ACI 504R–77 Guide to Joint Sealants for Concrete Structures

ACI 506–90 Recommended Practice for Shotcreting

ACI 515.1R–79 A Guide to the Use of Waterproofing, Dampproofing, Protective and Decorative Barrier Systems for Concrete (Revised 1985)

ACI 533.1R–69 Quality Standards and Tests for Precast Concrete Wall Panels

ACI 533.2R–69 Selection and Use of Materials for Precast Concrete Wall Panels

ACI 533.3R–70 Fabrication, Handling and Erection of Precast Concrete Wall Panels

American Forest & Paper Association, (formerly National Forest Products Association), 1250 Connecticut Ave., NW., Washington, DC 20036. National Design Specification for Wood Construction—1991.

American National Standards Institute, 11 West 42nd Street, New York, NY 10036, Telephone (212) 642–4900.

ANSI A108.1A–92 Specifications for Installation of Ceramic Tile, in the Wet Set Method with Portland Cement Mortar

ANSI A137.1–1988 Specifications for Ceramic Tile

ANSI/BHMA A156.2–1989 Standard for Bored and Preassembled Locks and Latches

ANSI/NKCA A161.1–1985 Recommended Performance and Construction Standards for Kitchen and Vanity Cabinets (Approved March 18, 1986)

ANSI A208.1–1989 Wood Particleboard

ANSI/AAMA 101–1988 Voluntary Specifications for Aluminum Prime Windows and Sliding Glass Doors

ANSI/AAMA 1002.10–1983 Voluntary Specifications for Aluminum Insulating Storm Products for Windows and Sliding Glass Doors

ANSI/AAMA 1102.7–1989 Voluntary Specifications for Aluminum Storm Doors

ANSI/AAMA 1402–1986 Standard Specifications for Aluminum Siding, Soffit and Fascia (ANSI Approved 1989)

ANSI/ACI 214–77 Recommended Practice for Evaluation of Strength Test Results of Concrete (Reapproved 1983)

ANSI/AHA A135.4–1982 Basic Hardboard (Reaffirmed 1988)

ANSI/AHA A135.6–1990 Hardboard Siding

ANSI/AHA A194.1–1985 Cellulosic Fiber Board

ANSI/APA 1–1984 Mosaic-Parquet Hardboard Slat Flooring
ANSI/NSPI–1–91 Standard for Public Swimming Pools
ANSI Z34.1–1987 American National Standard for Certification, Third-Party Certification Program
ANSI Z124.5–1989 American National Standard for Plastic Toilet Seats (Water Closet Seats)

American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017.

ASCE 7–88 Minimum Design Loads for Buildings and Other Structures (Formerly ANSI A58.1)

American Society of Mechanical Engineers, 345 E 47th Street, New York, NY 10017.

ASME/ANSI A17.1–87 Safety Code for Elevators and Escalators Including the A17.1b-89 Addenda
ASME A 112.18.1M89 Plumbing Fixture Fittings

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, Telephone (215) 299–5400.

ASTM C 12–91 Standard Practice for Installing Vitrified Clay Pipe Lines
ASTM C 208–72 Insulating Board (Cellulosic Fiber), Structural and Decorative (Reapproved 1982)
ASTM C 209–84 Standard Methods of Testing Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 216–91c Standard Specification for Facing Brick (Solid Masonry Units Made from Clay or Shale)
ASTM C 220–91 Standard Specification for Flat Asbestos-Cement Sheets
ASTM C 221–91 Standard Specification for Corrugated Asbestos-Cement Sheets
ASTM C 223–91 Standard Specification for Asbestos-Cement Siding
ASTM C 509–91 Standard Specification for Elastomeric Cellular Preformed Gasket and Sealing Material
ASTM C 516–80 Standard Specification for Vermiculite Loose Fill Thermal Insulation (Reapproved 1985)
ASTM C 549–81 Standard Specification for Perlite Loose Fill Insulation (Reapproved 1986)
ASTM C 578–92 Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation
ASTM C 640–83 Standard Specification for Insulation Board, Thermal (Cork)
ASTM C 726–88 Standard Specification for Mineral Fiber and Roof Insulation Board
ASTM C 739–91 Standard Specification for Cellulosic Fiber (Wood-Based) Loose-Fill Thermal Insulation
ASTM C 754–88 Standard Specification for Installation of Steel Framing Members to Receive Screw-Attached Gypsum
ASTM C 834–91 Standard Specification for Latex Sealants
ASTM C 841–90 Standard Specification for Installation of Interior Lathing and Furring
ASTM C 842–85 Standard Specification for Application of Interior Gypsum Plaster (Reapproved 1990)
ASTM C 843–92 Standard Specification for Application of Gypsum Veneer Plaster
ASTM C 844–85 Standard Specification for Application of Gypsum Base to Receive Gypsum Veneer Plaster
ASTM C 846–76 Standard Practice for Application of Structural Insulating Board (Fiberboard) Sheathing (Reapproved 1982)
ASTM C 864–90 Standard Specification for Dense Elastomeric Compression Seal Gaskets, Setting Blocks and Spacers.
ASTM C 926–90 Standard Specification for Application of Portland Cement-Based Plaster
ASTM C 1036–91 Standard Specification for Flat Glass
ASTM D 1037–89 Standard Test Methods for Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials
ASTM C 1048–91 Standard Specification for Heat-Treated Flat Glass-Kind HS, Kind FT Coated and Uncoated Glass
ASTM D 1557–91 Test Method for Laboratory Compaction Characteristics of Soil Using the Modified Method (56,000 ft-lbf/ft$_3$ (2,700 kN-m/m$_3$))
ASTM D 2316–75 Standard Recommended Practice for Installing Bituminized Fiber Drain and Sewer Pipe (Reapproved 1984)
ASTM D 2321–89 Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications
ASTM D 3656–89 Standard Specifications for Insect Screening and Louver Cloth Woven From Vinyl-Coated Glass Yarns
ASTM D 3679–92 Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Siding
ASTM E 72–80 Standard Methods of Conducting Strength Tests of Panels for Building Construction
ASTM E 283–91 Standard Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Spectrum
ASTM E 330–90 Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 331–86 Standard Test Method for Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 380–91a Standard Practices for Use of the International Systems of Units (SI) (the Modernized Metric System)

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329. ASHRAE Handbook—Fundamentals—1989. ASHRAE Cooling and Heating Load Calculation Manual—GRP 158 1979. ASHRAE Handbook—Equipment—1988. ASHRAE Handbook—HVAC Systems and Applications—1987.

American Welding Society, 550 NW Le Jeune Road, P. O. Box 351040, Miami, FL 33126, Telephone (305) 443–9353. ANSI/AWS D1.1–90 Structural Welding Code—Steel. ANSI/AWS D1.4–79 Structural Welding Code-Reinforcing Steel.

The Asphalt Institute, Asphalt Institute Building, College Park, MD 20740 Telephone (301) 277–4258.

MSI–1–81 Thickness Design—Asphalt Pavements for Highways and Streets

Asphalt Roofing Manufacturers Association, 6288 Montrose Road, Rockville, MD 20852, Telephone (301) 231–9050.
Residential Asphalt Roofing Manual—1988.

Carpet and Rug Institute, 310 Holiday Avenue, Box 2048, Dalton, GA 30722–0048, Telephone (404) 278–3176. How to Specify Commercial Carpet Installation, 1984.

Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone (703) 931–4533. CABO One and Two Family Dwelling Code 1992 edition with Errata Package and 1993 Amendments. CABO Model Energy Code 1992 edition CABO/ANSI A117.1–92 Accessible and Usable Buildings and Facilities.

Department of Agriculture, Publications Division, 14th and Independence Avenue, SW., Washington, DC 20050, Telephone (202) 447–3957.

Agriculture Handbook No. 73, Wood Frame House Construction
Home and Garden Bulletin No. 64. Subterranean Termites—Their Prevention and Control in Buildings, October 1983
Home and Garden Bulletin No. 73, Wood Decay in Houses, How to Prevent and Control It, May 1986

Department of Commerce, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, Telephone (301) 975–4025. PS 1–83 Product Standard for Construction and Industrial Plywood with Typical APA Trademarks. PS 2–92 Performance Standard for Wood-Based Structural-Use Panels.

Commercial Standards:
CS 138–55 Insect Wire Screening
CS 242–62 1 3/4" Steel Doors & Frames

Department of Defense, Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120, Telephone (215) 697–2179.

Federal Specifications:
L–S–125B Screening, Insect, Non-metallic Febuary 3, 1972
L–F–001641 Floor Covering Translucent or Transparent Vinyl Surface with Backing—1971 and Amendment 2—September 24, 1982
L–F–00450A Flooring, Vinyl Plastic (GSAFSS)—1970 and Amendment 1, August 5, 1975
L–F–475A Floor Covering Vinyl, Surface Tile and Roll, with Backing including Amendment 2—February 9, 1971
HH–I–521F Insulation Blankets, Thermal (Mineral Fiber—for Ambient Temperatures—1980)
HH–I–526C Insulation Board, Thermal (Mineral Fiber)—1968
HH–I–529B Insulation Board, Thermal (Mineral Aggregate)—1971
HH–I–530B Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate and Interim I—1982
HH–I–551E Insulation Block and Boards, Thermal (Cellular Glass) Fiber, for Ambient Temperatures, 1974
HH–I–558B Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type) and Amendment 3—1976
HH–I–574B Insulation, Thermal (Perlite) and Interim Amendment—1976

HH–I–585C Insulation, Thermal (Vermiculite) and Interim Amendment 1—1976
HH–I–1030B Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application)—1980
HH–I–1252B Insulation, Thermal Reflective, (Aluminum Foil) and Interim Amendment 1—1976
HH–I–1972 Insulation Board, Thermal, Faced, Gen; 1, 2, 3, Polyurethane and Polyisocyanurate and 4, 5 & 6 Amendments—1985
LLL–I–535B Insulation Board, Thermal, Cellulosic Fiber, 1977
SS–S–346C Siding (Shingles, Clapboards, and Sheets) 1968
SS–T–312B Tile, Floor: Asphalt, Rubber, Vinyl-Composition and Interim Amendment—1979

Department of Housing and Urban Development, 451 Seventh Street, SW., Mail Room B–133, Washington, DC 20410, Telephone (202) 755–7440.

Handbooks:

4940.2–1973 Minimum Design Standards for Community Water Supply Systems
4940.3–1992 Minimum Design Standards for Community Sewerage Systems (Rev. 1–92)
4950.1–1988 Technical Suitability of Products Program, Technical and Processing Procedures (Rev. 2 which includes revisions and changes through October 24, 1991)
4930.2–1989 HUD Intermediate MPS Supplement, Solar Heating & Domestic Hot Water Systems

Use of Materials Bulletins:

25d Power Driven, Mechanically Driven and Manually Driven Fasteners—9/5/73
38h Grademarking of Lumber—7/31/79
44c HUD/FHA Standard for Carpet and Carpet Certification Program—2/22/78 (Plus Addendum 1 & 2)
48 Labels of Independent Programs for Certifying Pressure-Treated Lumber and Plywood (Plus 5 Supplements—11/15/67)
52a Quality Certification and Labeling for Wood Flush Doors—10/7/75)
58a Acrylic Plastic Sheets for Glazing—9/2/75
60 Field Glued Plywood & Wood Frame Structural Floor Systems—12/9/70
62a Factory-Applied Laminated Roofing Systems Based on Chlorosulfonated Polyethylene (CPSE)—11/16/72
65 Controlled Density Cellular Concrete Floor Fill—10/11/73
67 Polycarbonate Plastic Sheets for Glazing—9/3/75
70a Particleboard Interior Stair Treads and Certification Program—5/19/82
71 Polystyrene Foam Insulation Sheathing Board—1/10/77
72 HUD Standard for Carpet Cushion—2/6/80
76 Chlorinated Poly (Vinyl Chloride) CPVC and Polybutylene (PB) Hot and Cold Water Distribution—4/25/78
77a Cast Iron Sanitary Drainage System with Hubless Pipe and Fittings—3/28/80
78 Polyethylene (PE), Acrylonitrile-Butadiene-Styrene (ABS), Poly Vinyl Chloride (PVC) and Polybutylene (PB) Plastic Piping for Domestic Cold Water Service—4/25/78
79a Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste and Vent Pipe and Fittings—3/7/82
80 Spray Applied Cellulosic Thermal Insulation—10/31/79
101 HUD Building Product Standards and Certification Program for Exterior Wall Insulation and Finish Systems, July 26, 1993

Environmental Protection Agency, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382–5533.

EPA 570/9–82–004 Manual of Individual Water Supply (NTIS–PB 85242279) Systems (October 1982)

Flat Glass Marketing Association, White Lakes Professional, Building 3310 Harrison Street, Topeka, KS 66611, Telephone (913) 266–7013. FGMA Glazing Manual—1986. FGMA Sealant Manual—1990.

Hardwood Plywood Manufacturers Association, P.O. Box 2789, 1825 Michael Faraday Drive, Reston, VA 22090, Telephone (703) 435–2900. ANSI/HPMA LHF–1987 Laminated Hardwood Flooring.

Insect Screening Weavers Assn., 2000 Maple Hill Street, P.O. Box 309, Yorktown Heights, NY 10598. IWS–089 Insect Wire Screening (Wire Fabric).

National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418. Publication 1571 Criteria for Selection and Design of Residential Slabs-on-Ground, Report #33, Building Research Advisory Board (BRAB), 1968.

National Association of Home Builders, Research Center, 400 Prince Georges Boulevard, Upper Marlboro, MD 20772, Telephone (301) 249–4000. Insulation Manual, Homes and Apartments—1979.

National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, VA 22046, Telephone (703) 237–8100. National Standard Plumbing Code—1993.

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, Telephone 1–800–344–3555.

ANSI/NFPA 58–89 Standard for the Storage and Handling of Liquefied Petroleum Gases
NFPA 54–88 National Fuel Gas Code (ANSI Z223.1–1988) NFPA 70–93 National Electrical Code

National Institute of Building Sciences, 1201 L Street, NW., Washington, DC 20005. Metric Guide for Federal Construction—1992.

National Oak Flooring Manufacturers Association, 22 North Front Street, Memphis, TN 38103. Official Grading Rules, Oak, Beech, Birch, Hard Maple, Pecan (OFGR/Vol. 1, No. 1/1986 and the 1989 Addendum). Hardwood Flooring Finishing/Refinishing Manual, 1986. Hardwood Flooring Installation Manual, 1986.

National Roofing Contractors Association, One O'Hare Centre, 6250 River Road, Rosemont, IL 60018, Telephone (708) 318–6722. NRCA Roofing and Waterproofing Manual, 1989.

National Terrazzo and Mosaic Association, 3166 Des Plaines Avenue, Suite 132, Des Plaines, IL 60018, Telephone (708) 635–7744. NTMA Specifications, Details and Technical Data, "Terrazzo Ideas & Design Guide", 1990.

National Wood Window and Door Association, 205 West Touhy Avenue, Park Ridge, IL 60018, Telephone (708) 299–5200.

ANSI/NWWDA IS 1–87 Industry Standard for Wood Flush Doors
ANSI/NWWDA IS 2–87 Industry Standard for Wood Windows
NWWDA IS 3–88 Industry Standard for Wood Sliding Patio Doors
ANSI/NWWDA IS 6–86 Industry Standard for Wood Stile and Rail Doors

Post-tensioning Institute, 301 West Osborn, Suite 3500, Phoenix, AZ 85013, Telephone (602) 870–7540. Design and Construction of Post-tensioned Slabs-on-Ground—1980.

Prestressed Concrete Institute, 175 West Jackson Boulevard, Suite 1859, Chicago, IL 60604, Telephone (312) 786–0353.

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Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12–B, Rockville, MD 20850, Telephone (301) 340–8580. Recommended Installation Specifications for Vinyl Composition, Solid Vinyl and Asphalt Tile Floorings, 1987.

Safety Glazing Certification Council, c/o ETL Testing Laboratories, Industrial Park, Route 11, Cortland, New York 13045, Telephone (607) 753–6711. Certified Products Directory—1990.

Southern California Association of Cabinet Manufacturers, 1933 South Broadway, L. 39, Los Angeles, CA 90007, Telephone (213) 749–4355. Certified Construction Standards and Specifications, Guide for Uniform Cabinet Specifications—1973 (Revised 1985).

Steel Door Institute, 30200 Detroit Road, Cleveland, OH 44145, Telephone (216) 899–0010. ANSI/SDI A123.1–82 Nomenclature for Steel Doors and Steel Door Frames.

Tile Council of America, Inc., Box 326, Princeton, NJ 08542–0326, Telephone (609) 921–7050. Handbook for Ceramic Tile Installation—1993.

Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062, Telephone (708) 272–8800. Electrical Appliance and Utilization Equipment Directory, 1992.

Water Quality Association, 4151 Naperville Road, Lisle, IL 60532. Telephone (708) 396–1600.

WQA S–100 Household Commericial and Portable Exchange Water Softeners—1985
WQA S–200 Household and Commercial Water Filters—1988
WQA S–300 Point-of-Use, Low Pressure Reverse Osmosis Drinking Water Systems—1984
WQA S–400 Point-of-Use Distillation Drinking Water Systems—1986

Wood Moulding and Millwork Producers, P.O. Box 25278, Portland, OR 97225, Telephone (503) 292–9288.

WM 3–79 Exterior Wood Door Frames

PART 200—[AMENDED]

15. Appendix B to Part 200 is removed.

Dated: November 3, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part III

Department of Transportation

Coast Guard

46 CFR Parts 1 and 67

Documentation of Vessels; Recording of Instruments; Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1 and 67

[CGD 89-007; CGD 89-007a]

RIN 2115-AD60

Documentation of Vessels; Recording of Instruments; Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing new recording practices to fully implement the provisions of the codification of the Ship Mortgage Act. In addition, it is simplifying the procedures for documentation of vessels and establishing new and revised fees for vessel documentation services. This final rule will make the regulations easier to use by the affected public and will more fully implement statutory requirements.

DATES: This rule is effective on January 1, 1994. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia J. Williams, Chief, Vessel Documentation Section, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-1492.

Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal authors of this regulation are Thomas L. Willis, Project Manager, Lieutenant Commander Don M. Wrye, Attorney Advisor, Vessel Documentation and Tonnage Survey Branch, and C.G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On March 26, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Documentation of Vessels; Recording of Instruments" in the **Federal Register** (57 FR 15044). That NPRM contained the Coast Guard's proposed revision of 46 CFR part 67, setting forth standards and procedural simplifications for documenting vessels and filing and recording instruments affecting the title of documented vessels. On May 20, 1992, the Coast Guard published an additional NPRM entitled "Documentation of Vessels; Recording of Instruments; Fees" in the **Federal Register** (57 FR 21546). The additional NPRM set forth proposed fees for services provided based on the revision to part 67 proposed on March 26, 1992 (57 FR 10544).

Comments on both proposals were received from individuals, law firms, commercial vessel documentation services, industry groups, and maritime corporations. The Coast Guard received 41 comments on its proposed standards and procedures, and 40 comments on the proposed fees. Although some comments were received after the close of the comment period, all were considered in promulgating this final rule. No public hearing was requested and none was held.

Following analysis of those comments dealing with proposed rules for submission of citizenship declarations, a final rule entitled "Documentation of Vessels; Recording of Instruments; Citizenship Declarations" was published on September 24, 1992 (57 FR 44126). This final rule partially implemented certain provisions of the Coast Guard's proposal of March 26, 1992, regarding filing a declaration of citizenship (MA-899) in connection with the filing and recording of certain instruments.

In the interest of setting forth documentation regulations as clearly as possible, the Coast Guard has combined its proposals of March 26, 1992 (57 FR 10544), and May 20, 1992 (57 FR 21546), into this single final rule. The comments received in response to both proposals are discussed below. Because this final rule revises all of part 67, the changes made in the final rule of September 24, 1992 (57 FR 44126), concerning citizenship declarations are republished without change in this rule.

Background and Purpose

On November 28, 1988, Congress enacted Public Law 100-710 (the "Codification Act") which amended and codified the Ship Mortgage Act, 1920 into 46 U.S.C. chapter 313; amended the Shipping Act, 1916 (46 U.S.C. app. 808); and eliminated the prohibition against collecting fees for commercial vessel documentation services by amending 46 U.S.C. 2210. The Codification Act was the subject of technical corrections ("Corrections") when Congress enacted Pub. L. 101-225. Both the Codification Act and the Corrections introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Codification Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes were unequivocal and were implemented by an interim final rule published October 12, 1989 (54 FR 41835). The interim final rule was adopted as final in a rulemaking published January 10, 1991 (56 FR 960).

Other statutory revisions, some of which became effective on January 1, 1989, and others which became effective on January 1, 1990, required a more considered approach, including the opportunity for public comment. These latter changes were the subject of the NPRM published March 26, 1992 (57 FR 10544). The intent of the Codification Act and the Corrections was to simplify and streamline the documentation process. Accordingly, the Coast Guard has revised all of its regulations to simplify and clarify the rules and present them in a more orderly fashion.

In addition to requiring changes in the Coast Guard's regulations, the Codification Act also required changes in rules administered by the Maritime Administration affecting the transfer of documented vessels. Those rules, which are set forth in 46 CFR part 221 were the subject of an interim final rule published on February 2, 1989 (54 FR 5382, amended at 54 FR 8195). In addition, the Maritime Administration published a notice of proposed rulemaking on April 13, 1990 (55 FR 14040), and a second interim final rule on July 3, 1991 (56 FR 30656). Following a comment period, the Maritime Administration published a final rule on June 3, 1992 (57 FR 23470). That rule was at variance with the Coast Guard requirements which were then in force with regard to the requirement to file Declarations of Citizenship with certain instruments affecting the title of documented vessels. In order to reduce uncertainty regarding the validity of certain instruments, and to allow the Coast Guard to immediately eliminate a needless paperwork burden on the public estimated at 19,600 hours per year, the Coast Guard published a final rule on September 24, 1992 (57 FR 44126), which conformed the Coast Guard's regulations regarding the filing of Declarations of Citizenship to those of the Maritime Administration.

In addition to the foregoing, the Omnibus Budget Reconciliation Act of 1990 ("Reconciliation Act") (Public Law 101-508) requires the Coast Guard to establish user fees for, among other things, Coast Guard services related to vessel documentation. The user fees required by the Reconciliation Act were the subject of the NPRM published on

May 20, 1992 (57 FR 21546). Prior to the Reconciliation Act, the only vessel documentation fees prescribed by the Coast Guard were for services related to recreational vessels, and several fees prescribed by statute relative to recording instruments affecting the title of documented vessels. As required by the Reconciliation Act, the fees set forth in this rule use the criteria in 31 U.S.C. 9701 and reflect the Coast Guard's current program costs associated with commercial and recreational vessel transactions. By implementing these fees, the Coast Guard will recover current operating and overhead costs associated with vessel documentation and filing and recording activities under 46 U.S.C. chapters 121 and 313. The fees in this rule will be reviewed annually to determine if adjustments or changes are necessary. The Coast Guard will revise these fees when costs change because of inflation, deflation, or changes in the way services are provided. In addition, new statutes may require the Coast Guard to establish new regulations or make substantive amendments to its existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Discussion of Comments and Changes

Some of the comment letters were very detailed in their comments and suggestions, while others raised questions or simply supported or opposed certain sections of the proposed rules without detailed comments or suggestions. Each comment letter received has been considered in the development of this final rule.

Among the comment letters were four requests for an extension of the comment period for the proposal published March 26, 1992 (57 FR 10544). The Coast Guard allowed 90 days for comment instead of the usual 60 days. It is doubtful that any new substantive material would be developed as a result of extending the comment period. Accordingly, the comment period was not extended. The substantive comments received are discussed below.

Four comments were received concerning the definition of acknowledgment. One comment merely expressed support for the proposed change. Three noted that the attestation which the Coast Guard proposed to accept as an acknowledgment was actually a notarization and not a true acknowledgment. One comment observed that not all of the States have adopted one of the uniform acts regarding acknowledgments. It also noted that the proposed format for a universally acceptable acknowledgment for vessel documentation purposes might not satisfy the legal requirements for an acknowledgment in a given State. In addition, the comment stated that the definition of acknowledgement as a "certificate issued under the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961" needs elaboration. The Coast Guard's sole purpose in providing certain standards for acknowledgments is to define the minimal requirements which must be met in order to make instruments eligible for filing and recording. The proposed definition, which is based upon the statutory definition in 46 U.S.C. 31301, was not intended to be an exhaustive or exclusive list of acceptable forms of acknowledgment. Although the Coast Guard is aware that some States may have additional requirements for acknowledgments, the legislative history of the underlying statute makes clear that the Secretary can prescribe a uniform form of acknowledgment or notarization. (H.R. 100–918) Based on the comments, the definition of *acknowledgment* has been expanded to clarify that acknowledgments or notarizations made pursuant to the laws of any State satisfy the Federal statutory requirements for acknowledgments of instruments. In addition to amending the proposed form of acknowledgment to include the term "acknowledged," there is a fuller discussion of procedures to be fulfilled in affixing certificates or "apostilles" pursuant to the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961.

One comment contended that the words "as defined in this section" in the definition of citizen should be struck as meaningless. The Coast Guard agrees and has made the suggested change.

One comment objected to the inclusion of "passengers" in the definition of coastwise trade, noting that the term "coastwise trade" more appropriately applies to transportation of merchandise. Although the Coast Guard agrees that the comment is technically correct, it is noted that under the statutes administered by the U.S. Customs Service a coastwise endorsement is required for transportation of passengers between points embraced within the coastwise laws of the United States. Therefore, the definition was not changed.

One comment contended that the definitions of the terms coastwise trade and fisheries were not new. Although the terms are not new, their definitions have been revised to conform to statutory changes. That comment further inquired about the change in the wording of the definition of coastwise trade from "a point in the United States embraced within the coastwise laws" to "points embraced within the coastwise laws of the United States." The change is required because Pub. L. 100–329 expanded the scope of section 27 of the Merchant Marine Act, 1920, (46 U.S.C. app. 883), to include transportation from a point or place in the United States to a point or place in the Exclusive Economic Zone of the United States.

One comment noted that the word "shellfish" had been inadvertently omitted from the definition of *fisheries*. That omission has been corrected.

The definition of hull was characterized by one comment as potentially confusing when read in conjunction with the definition of superstructure. As proposed, it would be possible to conclude that the main deck of a vessel is included in neither its hull nor superstructure. The definition of superstructure has been amended to avoid confusion.

Two comments observed that the Virgin Islands should have been included in the definition of United States. That observation is correct, and the oversight has been corrected.

Section 67.7 has been amended in response to a comment to clearly reflect the requirement that a valid endorsement is required for vessel operation.

Six comments addressed § 67.11. Each comment addressed a slightly different portion of the section, noting the need for consistency between Coast Guard regulations and pertinent Maritime Administration regulations in 46 CFR part 221. Review of the comments revealed that the proposed rulemaking had inadvertently stated that only vessels owned by citizens of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802) require approval of the Maritime Administration prior to transfer to foreign registry or operation under the authority of a foreign country. However, section 9 of the Shipping Act, 1916 (46 U.S.C. app. 808) provides that approval of the Maritime Administration is required for any documented vessel to be transferred to foreign registry or operated under the authority of a foreign country, whether or not the owner is a citizen within the meaning of section 2 of the Shipping Act, 1916. Section 67.11 has been rewritten in this final rule to properly reflect the requirements of the applicable statutes and to conform more closely to the rules of the Maritime Administration.

Two comments expressed the opinion that the cross reference in § 67.12 to 46 CFR subpart 1.03 dealing with the right of appeal is confusing. They suggest that part 67 be expanded to set out the applicable sections of subpart 1.03 or that reference be made to specific applicable sections of subpart 1.03. The Coast Guard does not agree. Complying with those suggestions would require revision of part 67 whenever subpart 1.03 is revised, and would increase the potential for the public to be misled. However, the Coast Guard has decided to amend the procedural appeal provisions in subpart 1.03 to clarify their application to vessel documentation decisions.

One comment suggested that § 67.15 should provide for a temporary Certificate of Documentation for vessels not previously documented, and which are to be used exclusively for recreational purposes. The comment asserts that 46 U.S.C. 12102(b) provides statutory authority for issuing temporary documents to avoid delays caused by a heavy workload. That assertion is a strained reading of the statute. Section 12102(b) was originally enacted as part of the Vessel Documentation Act, 1980, and was intended solely to allow documentation of vessels prior to issuance of tonnage certificates. Although there are no plans at present for issuance of temporary Certificates of Documentation for any purpose, the suggestion will be reviewed in the future.

Two comments noted that in § 67.17, Wake Island had been omitted from the list of places with which a vessel with a registry endorsement may trade. The comments are correct, and the oversight has been corrected.

One comment argued that paragraphs (a) and (b) of § 67.19 should be reworded, by substituting the words "gives a lawful right to a vessel to engage in * * *" for "entitles a vessel to employment in * * *" It is also suggested that a similar change be made in paragraph (d). The purpose of the comment is to support the submitter's contention that the First and Second Provisos of section 27 of the Merchant Marine Act of 1920 ("First Proviso" and "Second Provision") are inapplicable to any vessel which has never actually been documented with a coastwise or a Great Lakes endorsement, and therefore, in the submitter's opinion, has never gained a lawful right to engage in coastwise or Great Lakes trade. The Coast Guard does not agree. Both Coast Guard and the U.S. Customs Service, which was formerly responsible for documentation of vessels under the U.S. flag, have consistently held that a vessel gains the lawful right to engage in the coastwise trade by virtue of meeting build and ownership requirements, not by virtue of having obtained the endorsement required to engage in that trade. This interpretation is also consistent with the long-held policy of the Coast Guard that the right to engage in the restricted trades is an entitlement that appertains to the vessel and arises as a matter of law upon meeting the requisite conditions. On the other hand, a coastwise endorsement is a license to engage in the coastwise trade. Although a right is not necessarily dependent upon a license or registration, exercising that right may require obtaining a license or other registration. As an example, U.S. citizens have the lawful right to vote, but, in most cases, must register in order to exercise that right. The same comment also recommends changes to § 67.50, 67.57, 67.59, 67.63, 67.177 to make them consistent with the recommended amendment to § 67.19. Because the Coast Guard does not agree with the comment's interpretation of the meaning of the First and Second Proviso of section 27, none of the suggested changes have been adopted.

One comment questioned the propriety of granting coastwise and Great Lakes privileges to any vessel which as the subject of a forfeiture for breach of law of the United States if that vessel had previously lost coastwise privileges by virtue of having been sold foreign. The comment is based on language in the First Proviso which states that any such vessel losing its coastwise trading privileges as discussed shall not thereafter acquire the right to engage in the coastwise trade. (46 U.S.C. app. 883). However, the restriction is not absolute. Congress may, and in fact frequently does, grant special legislative relief from the First Proviso. Further, vessels qualifying under the Wrecked Vessel Statute (46 U.S.C. app. 14) have previously lost trading privileges restored. Likewise, the Coast Guard's long-standing position is that although a vessel loses coastwise trading privileges upon sale foreign, it may regain those privileges if it is subsequently forfeited for breach of law of the United States.

Section 67.31 is not new, as one comment asserted, but is an almost verbatim restatement of existing § 67.03–2. Three comments objected to paragraph (b) which requires that where title to a vessel is held by an entity comprised in whole or in part of other entities which are not individuals, each entity contributing to the stock or equity qualification of the entity holding title must be a citizen eligible in its own right to document the vessel with the trade endorsement(s) sought. This section has been the subject of litigation, *Conoco, Inc.* v. *Skinner*, 970 F.2d 1206 (3d Circ. 1992). The Third Circuit Court of Appeals has upheld the regulation from which this section is derived as proper.

Two of the comments addressing § 67.31 also argued for adoption of a "fair inference" rule, which would establish a standard for use by publicly traded corporations to infer the percentage of stock owned by U.S. citizens. The comments indicated that the Coast Guard should adopt such a test to conform its regulations to those of the Maritime Administration. The Coast Guard has consistently declined to adopt a fair inference rule. The standard most often suggested is one based on the address of the stockholders. The Coast Guard will not accept any standard based solely upon the address of the stockholders. In today's business climate of tiered corporate structures and complex equity ownership arrangements it is not unusual to find entities which are not U.S. citizens, but which have a U.S. address, owing significant percentages of the stock in a publicly traded corporation which owns a U.S. vessel.

Vessel-owning corporations are not routinely required to provide supporting evidence that their stock is owned by U.S. citizens, even to establish eligibility for coastwise or fisheries endorsements. The documentation application form (Form CG–1258), requires only that a vessel owner state, within broad ranges, the amount of stock owned by U.S. citizens.

In the past, some corporations were required to provide evidence establishing their eligibility because the Coast Guard had reason to suspect they did not meet stock interest requirements. A presumption in favor of eligibility in those cases would not have precluded the Coast Guard from requiring the additional information. The Coast Guard's experience is that a presumption in favor of eligibility would not serve to further reduce the paperwork burden on the public or make the documentation process any more efficient. The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. flag and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it

qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by an presumptions or inferences in making eligibility determinations for documentation purposes. Therefore, none have been incorporated into this final rule.

Five comments were received regarding the proposal in § 67.37 which would permit documentation of a vessel by a trust notwithstanding the existence of non-citizen beneficiaries who do not have an enforceable interest in the trust. Four of the comments found the rule too restrictive, noting that the rules concerning trusts have proven troublesome in recreational vessel documentation. The fifth comment supported the rule as written. While it is recognized that restrictive citizenship requirements may prove troublesome in documenting recreational vessels, the Coast Guard's position is that current law prohibits documentation of a vessel owned in a trust arrangement where non-citizens hold an enforceable interest in the trust. The enforceable interest requirement only defines citizenship with respect to the eligibility of a trust to document a vessel under 46 U.S.C. 12102. A trust seeking to document a vessel with a coastwise endorsement must also meet the citizenship requirements of 2 of the Shipping Act, 1916 (46 U.S.C. app. 802).

One comment agreed with the wording of § 67.39, dealing with corporations, but took exception to the Coast Guard's interpretation of the statutory requirement on which the regulation is based. The Coast Guard has consistently held that when a corporation has both a chief executive officer and president, both must be U.S. citizens. That interpretation is consistent with the language of 46 U.S.C. 121102(a)(4), which requires that the "president or other chief executive officer" must be citizens. To be consistent with the requirement that documented vessels be owned by U.S. citizens, it is necessary to read the word "or" as conjunctive, and not as exclusive in nature. Therefore, when a corporation has both a chief executive officer and a president, it is not permissible for merely one or the other to be a citizen. The Coast Guard's interpretation also furthers the general purpose of the statute ensuring that corporate officers with actual or ostensible authority to act on behalf of the corporation be U.S. citizens.

It was correctly noted by one comment that part of § 67.41 was omitted, so that the section failed to state the purpose for which it defines governmental entities as citizens. That oversight has been corrected so that it now states that "A governmental entity is a citizen for the purpose of obtaining a vessel document * * *."

No comments were received regarding § 67.45, which sets forth the citizenship savings provision for fishing vessels. This section was promulgated in its present form in the Coast Guard's final rule (CGD 88–031) published on December 12, 1990 (55 FR 51244), implementing the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. As was noted in the NPRM of March 26, 1992, this section has been the subject of litigation. In *Southeast Shipyard Assn. v. United States*, No. 90–11142 (D.D.C., April 30, 1991), the District Court decided that the Coast Guard's interpretation of the citizenship savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 was incorrect. Also as noted the NPRM of March 26, 1992, the decision of the District Court was under appeal. On September 21, 1992, the Coast Guard published an advance notice of proposed rulemaking (57 FR 43432; CGD 88–031a), seeking comments on a number of issues which would need to be addressed in order to develop a rule consistent with the order of the District Court should that order be upheld on appeal. On November 24, 1992, the Circuit Court of Appeals for the District of Columbia reversed the decision of the District Court and upheld the Coast Guard's interpretation of the citizenship savings provision. Therefore, this section is unchanged in this final rule. On March 4, 1993, the Coast Guard published a notice in the **Federal Register** (58 FR 12352) withdrawing the advance notice of proposed rulemaking published on September 21, 1992. Since the Circuit Court's decision was not appealed, the Coast Guard considers this matter closed.

One comment addressing § 67.50 questioned the omission of a previous requirement for presentation of title evidence upon a change of legal name of the vessel owner. The omission was deliberate since a change of legal name does not actually constitute a change in ownership.

Four comments observed that the simplified methods of establishing title to vessels described in § 67.53 are subject to misuse and fraud, and should not be encouraged. The NPRM merely proposed options whereby owners of certain vessels may use a simplified method to establish title to a vessel. While the simplified method of establishing title may not be foolproof, any title system is vulnerable to fraud. Furthermore, 46 U.S.C. 12104(3) specifically provides that a Certificate of Documentation is not conclusive evidence of ownership in a proceeding in which ownership is in dispute.

One comment suggested that it would be appropriate to include language in § 67.57 dealing with coastwise trade prohibitions for vessels built with the aid of a construction-differential subsidy under the provisions of Article (sic) V of the Merchant Marine Act of 1936. The Coast Guard does not agree. Title V of that Act (46 U.S.C. app. 1151–1161, as amended), generally limits vessels built with construction differential subsidy funds to foreign trade, and with few exceptions, bars them from "domestic" trade. However, notwithstanding the requirement in sections 1153 and 1154 providing that such vessels must be documented under the laws of the United States, Title V is silent on the issue of coastwise trade. Moreover, any restrictions on vessel operation pursuant to the strictures of Title V arise as a contractual arrangement which is outside the scope of the Coast Guard's responsibilities under the vessel documentation laws.

One comment stated the fact that a chain of title beginning with a Manufacturer's Certificate of Origin is deemed incomplete is a reason to combine the Manufacturer's Certificate (or Statement) of Origin with the Builder's Certification. The two forms serve somewhat different purposes, and while the Coast Guard does not oppose combining the two, it lacks the statutory authority to do so.

One comment noted an error in the cross reference to § 67.13(b) in paragraph (a) of § 67.63. The cross reference should have been to § 67.131(b). That error has been corrected. Paragraph (b) of § 67.63 has also been reworded in order to eliminate the inadvertent suggestion that presentation of title evidence is applicable only to vessels documented pursuant to the Wrecked Vessel Statute (46 U.S.C. app. 14). Presentation of title evidence is also required for vessels documented pursuant to grants of special legislation.

Several comments objected to the provision in § 67.73, permitting use of the reverse of either the Builder's Certification on form CG–1261 or the Manufacturer's Certificate of Origin to transfer undocumented vessels from the party for whom built. The Coast Guard notes that these methods of evidencing transfer of title are permissible, not mandatory, and that parties still have the option to present a bill of sale if desired.

In response to a comment, § 67.79 has been reworded for clarity without substantive change.

Comments received in regard to § 67.83 demonstrated the need for a section devoted to sale of vessels deemed abandoned under State statutes. Accordingly, § 67.91 has been added to address passage of title in this manner. Another comment suggested that only an affidavit from a foreclosing party should be required, that there should be no requirement for submission of the instrument under which foreclosure was made, and that the Coast Guard was placing "undue burden" on itself in requiring demonstration of compliance with the terms of the instrument and any applicable statutes. The Coast Guard disagrees. The requirements of the regulation are the minimum necessary to ensure that there has been actual passage of title, and that the passage of title was in accordance with State law.

One comment urged the Coast Guard to merge the Builder's Certification provided for in § 67.99 with the form used for a Manufacturer's Certificate of Origin. As discussed earlier in this preamble, the Coast Guard does not disagree with this suggestion. However, the Coast Guard has concluded that it does not have the statutory authority to mandate combining the forms. Another comment recommended controlling the issuance of duplicate Builder's Certification. It was suggested that this could be done by requiring any person issuing a Builder's Certification to report that fact to the Coast Guard for inclusion in the "Coast Guard's data bank * * *." While this suggestion may seem simple to implement, the Coast Guard considers it impracticable. There is neither a restriction on who may build a vessel nor a central registry of "data bank" for vessel builders, many of whom may build only one or two vessels. Accordingly, it would be virtually impossible to enforce such a provision.

In response to § 67.101, one comment requested a definition of "competent and persuasive evidence." The term is a standard by which the Coast Guard evaluates evidence of build. Promulgating a regulatory definition of that term may ultimately prove to severely limit the types of evidence which might help to establish the facts of vessel build. The same comment suggested that a statement of a "certified surveyor" should be sufficient to establish the facts of vessel build. That suggestion has not been adopted since surveyors typically are knowledgeable about a vessel's condition and value, but will rarely, if even, know if (a) the manufacturer fabricated all major components of the vessel's hull or superstructure in the U.S., and (b) the identity of the person(s) for whom the vessel was built, along with the ownership percentage of the vessel vested in each.

One comment stated that the requirements set forth in subpart G "duplicated" measurement requirements in 46 CFR part 69. The Coast Guard does not agree. Subpart of part 67 provides basic information needed by applicants for vessel documentation, and links part 69 by cross reference.

There was general support for identifying the managing owner of a vessel as required in § 67.113, provided that owners of vessels which are currently documented do not have to exchange those documents or make a filing to designate a managing owner. There are no plans to require any such filings or exchanges of documents. However, designation of a managing owner will be required for vessels currently documented whenever the document is required to be exchanged in accordance with § 67.167, or replaced in accordance with § 67.169. One comment objected to allowing the address of the managing owner of a vessel to be based upon "any residence" suggesting that the requirement be restricted to "principal residence." It is asserted that this would assist in determining which documentation office would be most likely to have the records of a particular vessel, and establish a single place at which a vessel owner would be subject to personal jurisdiction as a foreclosure action. Another comment suggested restricting the choices of an individual vessel owner to the owner's "principal residence" or "principal place of business." The Coast Guard does not agree that limiting a vessel owner's options for establishing the port of record would be particularly advantageous in determining which port of documentation would be most likely to have records of a vessel owned by a certain owner, or necessary to establish personal jurisdiction in foreclosure actions. Allowing individuals to establish addresses based upon principal places of business is not considered a good idea since in the event of relocation, the Post Office will generally forward mail addressed to one's residence, but the same service may not be available for mail addressed to an individual at a place of business. The Coast Guard's present computer search capabilities make rigid port choices less important. Moreover, by requiring that all vessels owned by an owning entity must have the same port of record, there is a greater assurance that all records for a given vessel owner will be found at the same location. Two comments suggested that the Coast Guard continued its past practice of allowing the address of the managing owner to be based upon the address of a long-term bareboat charterer. That practice has proven problematic. Renewal notices, for instance, require an affirmative statement about such things as the vessel owner's citizenship; charterers are rarely able to make such affirmations with any degree of certitude. Moreover, the very practice of having the charterer attend to vessel documentation functions raises questions about the *de facto* ownership of the vessel. Therefore, the suggestion is not adopted.

Comments on relaxation of the rule for choice of hailing port contained in § 67.119 were generally favorable. However, one vessel documentation agent objected based on a perception that this would increase the opportunity for smugglers to confuse authorities. An individual questioned the purpose of a hailing port if the guidelines for choosing that port were liberal. The requirement for a hailing port assists in identifying vessels, particularly since there is no prohibition against many vessels bearing the same name. Moreover, because the hailing port will appear on the Certificate of Documentation upon implementation of these regulations, it will in fact be easier to identify an unauthorized alteration of a vessel's hailing port by smugglers and other miscreants.

Several persons objected to the provision of § 67.120 which would have deemed vessel documents invalid until the vessel was properly marked with its name, hailing port, and official number, noting that such a provision would give rise to questions about the efficacy of a mortgage filed to evidence a security interest in the vessel. The section has been corrected to provide that the vessel's document will not be valid for operation until it is marked in accordance with the regulations found elsewhere in subpart I.

Section 67.123 has been amended in response to a comment to provide marking criteria for certain types of vessels for which the usual marking requirements are impracticable. The same comment queried whether abbreviations of the city and State of the hailing port would be permitted. While generally recognized abbreviations, such as N.Y., N.Y. would be permitted, determinations concerning abbreviations would have to be made on a case-by-case basis. The final authority

to determine the propriety of a given hailing port, including abbreviations in a hailing port, and the proper marking of the vessel is vested in the Officer in Charge, Marine Inspection for the zone in which the vessel is principally operated.

One comment noted that there was no provision in § 67.141 for submission of consent of the vessel mortgagee to certain vessel documentation actions, if applicable. That oversight has been corrected.

Two comments objected to the fact that the prohibition against exchange of a document without mortgagee consent in § 67.145 does not apply to vessels subject only to mortgages filed or recorded before January 1, 1989, and which had not attained preferred status as of that date. The distinction in paragraph (b) of § 67.145 is based upon the provisions of section 301(b) of the Corrections, which limits the applicability of 46 U.S.C. 12111(c)(3) to those mortgages filed or recorded after January 1, 1989, the effective date of the statute, and to those mortgages which had attained preferred status as of that date. Accordingly, no change has been made.

Two comments objected to the requirement for annual renewal of the vessel's endorsement(s) in § 67.163. The Coast Guard considered alternatives to annual renewal. However, experience has shown that where annual renewal is not required, vessel owners often fail to report changes of address and other facts which may require exchange of the Certificate of Documentation. In addition, annual renewal helps the Coast Guard fulfill its statutory responsibility to ensure that vessels engaging in restricted trades remain eligible for those trades. Because the Post Office will forward mail for only one year, it is more expensive to track down vessel owners than to process renewals. The current renewal process requires a minimal effort by the vessel owner, who must merely sign a printed form and return it to the documentation officer. There is no requirement to remove the Certificate from the vessel unless there is a change requiring exchange of the document. One comment requested that renewal notices be sent to bareboat charterers rather than the vessel owner. As noted earlier in this preamble, the bareboat charterer is usually not qualified to make definitive statements about the citizenship of the vessel owner, especially if the owner is a publicly traded corporation.

In accordance with a comment, a cross reference in § 67.165(b)(2) has been corrected. The cross reference should have been to § 67.171(a) (1) through (8).

One comment espoused the view that requiring exchange of a Certificate of Documentation upon the death of a beneficiary in a family trust was too stringent. While the Coast Guard agrees, the issue is moot. The requirement in § 67.167(c)(2) for exchange applies only when a beneficiary with an enforceable interest in the trust changes by addition or substitution, not when there is a change by deletion. Two comments suggested that the new 30-day "grace period" for exchange of the document is too short under certain circumstances. The Coast Guard disagrees. This change is a significant liberalization of the current regulations which generally provide for immediate invalidation of the Certificate of Documentations. However, paragraph (f) of the section has been corrected to eradicate the erroneous statement that a Certificate of Documentation which becomes invalid under paragraph (b) remains valid for 30 days for the purposes of 46 U.S.C. chapter 313. As amended, paragraph (f) provides that a Certificate of Documentation which becomes invalid under paragraph (c) remains valid for 30 days after it otherwise would have become invalid for the purposes of filing a new mortgage or amendment, assignment, assumption, or subordination agreement.

One comment expressed concern about the provision in § 67.171 for deletion of vessels from documentation for failure to maintain the markings required elsewhere in this part. Markings are essential for proper identification of the vessel. It is incumbent on the vessel owner to maintain required markings in a legible manner.

Section 67.177 was the subject of two comments. The first, addressing paragraph (b), requested substitution of the words "had acquired the lawful right to engage in the coastwise trade * * *" in place of "which has not previously permanently lost * * * privileges * * *." The only purpose which would be served by the suggested change would be to give credence to the submitter's interpretation of the applicability of the Second Proviso of section 27 of the Merchant Marine Act, 1920; that interpretation, as noted earlier in the preamble discussion of § 67.19, has been rejected by the Coast Guard. The second comment requested that the regulation be expanded to include the Coast Guard's interpretation of the rebuilding "grandfather" of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. Since the period during which a rebuilding must be accomplished has passed, the Coast Guard has determined that it is not necessary to expand the regulation for that purpose.

One comment complained that § 67.200 was too restrictive by limiting the types of instruments which are eligible for filing and recording. It was suggested that the Coast Guard should also record such instruments as conditional sales contracts and charters of a vessel with an option to purchase. The rationale for the suggestion is based on the words of 46 U.S.C. 31321(a)(1), providing for filing and recording of "A bill of sale, conveyance, mortgage, assignment, or related instrument * * *." The purpose of 46 U.S.C. 31321(a)(1) is to provide for filing of instruments for a vessel at the time the application for documentation is submitted. This filing eliminates the gap in validity perceived to exist while the application for documentation is being processed. The legislative history also indicates the intent of Congress that the types of related instruments required to be filed be defined by regulations. There is nothing in the legislative history to indicate that Congress intended in the statute to expand the types of instruments requiring public notice. Furthermore, an expansion as suggested in the comment would raise a potential conflict between the regulations and those provisions in 46 U.S.C. chapter 313 which distinguish between a vessel owner, charterer, or agreed buyer in possession of the vessel. Therefore, the suggestion is not accepted. Another comment notes that there is no provision for recording a Builder's Certification, but that there is a provision for using the Builder's Certification to evidence transfer of title. Builder's Certifications are filed, noted on the General Index or Abstract of Title (form CG–1332) (referred to hereafter in this preamble as the Abstract of Title), and are kept in the vessel file, thereby fulfilling the notice provisions of 46 U.S.C. 31321 without placing them in a separate record book.

One comment suggested that § 67.203(a)(1) would foreclose the possibility of filing instruments when a vessel is undergoing changes, such as vessel lengthening. That understanding is flawed. The new "grace period" established in § 67.167(f) provides for such filings for the first time. Moreover, if the 30-day grade period has passed, it is permissible to submit new filings by filing them with a new application for documentation, provided that application is in substantial compliance with pertinent regulations in this part. Another comment requested that the Coast Guard define the term "material

alteration." The Coast Guard has employed a material alteration standard in accepting instruments for recording for many years. These long years of experience have not revealed any significant difficulty in applying that standard. Therefore, the Coast Guard will not define the term. The Coast Guard also disagrees with concern expressed in one comment that § 67.203 would preclude recording of an instrument when a Certificate of Documentation is deemed invalid because of a Coast Guard clerical error. In such an event, the vessel affected would still be the subject of an application for documentation in substantial compliance with the applicable regulations, thus permitting filing and recording of appropriate instruments.

Section 67.207 was the subject of one comment which noted that although the Coast Guard accepts "as of" dates on instruments, it does not necessarily index the "as of" date on the Abstract of Title. The comment goes on to state that "as long as an instrument bears a date, (the) Coast Guard should accept the instrument and index the date of the instrument, regardless of when it is acknowledged." The present policy of the Coast Guard is to accept instruments with "as of" dates. However, the Coast Guard does not agree that it should accept without reservation instruments bearing any date whatever. It would be improper, for example, to accept an instrument for filing in a situation where the wording and date of the acknowledgement make it apparent that the instrument could not have been signed on the purported date. Moreover, because notices of claim of lien may be recorded only against the record of a vessel subject to a preferred mortgage, the dating of that type of instrument may be absolutely critical to determine the statutory eligibility of the instrument to be filed and recorded.

Six comments were received with regard to the required number of copies set forth in § 67.209. Generally, reaction to reduction in the number of copies required was mixed. However, all six comments, which were from agents who prepare instruments for a fee, objected to language in the preamble in which the Coast Guard proposed a policy to allow mortgagors and mortgagees to jointly certify copies of preferred mortgages. The policy option of allowing the parties to a preferred mortgage to jointly certify copies has been retained.

The discussion of comments received regarding the requirement in § 67.211 for filing a citizenship declaration in connection with certain instruments was published in the preamble to the Coast Guard's final rule published on September 24, 1992 (57 FR 44126), and is not repeated here.

In response to a comment, the heading of § 67.215 has been amended by eliminating the words "and recording." Another comment noted that paragraph (b) of that section provides that when an instrument whose filing is subject to termination is replaced with a new instrument, the new instrument will receive a new filing date and time. The comment is correct in the observation. When the filing of an instrument is subject to termination, and a second instrument is substituted for that instrument, the filing of the substitute instrument does not "relate back" to the date and time of filing of the instrument being replaced. Rather, the substituted instrument receives a new date and time of filing. This does not, as claimed in the comment, contradict the discussion in the preamble which notes that the original date and time of filing may be retained in those situations where supplemental materials are filed to obviate termination of a filing. Section 67.215 has been reworded to clarify the difference in treatment between supplementing a filing and substituting a new filing.

Two comments took issue with the provisions of paragraph (c)(5) of § 67.217. One stated that vessel owners should be able to permit mortgagees to receive all terminated filings submitted in connection with documentation of the vessel and the filing of the mortgage, and that the mortgagee in turn should be able to authorize an agent on its behalf to receive all terminated filings. Another comment, from a documentation agent asserted that requiring documentation agents to obtain authorization from affected parties to receive instruments whose filing has been terminated is "an excessive burden on the agent". The Coast Guard agrees with the first comment and has clarified the section accordingly. It does not agree with the second comment. For many years, the extant requirement for agents to obtain written authorization from mortgagees in order to receive the original preferred mortgage has neither proven to be nor been portrayed as unduly burdensome.

Two comments were received with regard to § 67.223. Both favored the Coast Guard's proposal to permit the filing of bills of sale in conjunction with an application for deletion from documentation. Accordingly, that section is unchanged.

Three comments were received from documentation agents in response to the provision in § 67.231 for an Optional Application for Filing. All questioned the appropriateness of such an application. The Coast Guard notes, however, that the legislative history of the Codification Act clearly expresses the intent of Congress that such an application be accepted by the Coast Guard in accordance with the terms in § 67.231.

One comment, submitted on behalf of a legal association, objected to the provision in § 67.233 that mortgages and assumptions will not be deemed eligible for filing and recording if the mortgagor or assuming party did not hold legal title at the time of filing. It is suggested that this may be contrary to the statutory scheme and that the regulations could remain silent on this point. The Coast Guard notes that similar provisions which have been in place for many years, including one adopted in 1989, have not proven unduly burdensome. Moreover, the Coast Guard's position is that such a provision is necessary to ensure orderly administration of its filing and recording system.

In response to a comment, the Coast Guard has removed the word "chattel" from paragraph (a) of § 67.235. The word has also been removed from the heading for subpart Q.

One comment agreed with the proposal to eliminate Certificates of Ownership, but stated that the vessel's Abstract of Title should include addresses. Two comments offered no objection to elimination of Certificates of Ownership, but requested entry of addresses on Abstracts of Title. Five other comments objected outright to elimination of the Certificate of Ownership, noting that Abstracts of Title can be difficult to read, and that Certificates of Ownership provide a beneficial service. Upon consideration of all of the comments, the Coast Guard has decided that it is in the best interest of the maritime community for it to continue to issue Certificates of Ownership upon request. Section 67.305 has been added to implement this decision. The inclusion of addresses on Abstracts of Title will not be adopted since addresses are subject to change without notice and because doing so would pose an undue administrative burden on the documentation system.

Two substantive comments were received regarding §§ 67.315 and 67.317. One requested that a "temporary" certificate of some sort be made available to commercial vessels only to allow for movement of the vessel for repair work, outfitting, or similar functions, either within the confines of a port, or to another port. The Coast Guard notes that unless a vessel is being

operated in a trade, it is not required to be documented. Moreover, the Coast Guard's position is that there is insufficient statutory authority to permit issuance of such "temporary certificates."

Another comment suggested that the requirement to keep the Certificate of Documentation on board should be inapplicable when it has been submitted to a documentation officer in accordance with the requirements of § 67.167. The Coast Guard agrees in part, noting that paragraphs (d) and (e) of § 67.167 provide circumstances under which the endorsements on a Certificate of Documentation remain valid, notwithstanding an application for exchange of the Certificate. However, it is also noted that only documents whose endorsements are invalid for some reason are subject to exchange in accordance with the provisions of paragraphs (a) and (b) of § 67.167. Therefore, except for applications pursuant to paragraphs (d) and (e) of § 67.167, the affected vessel would be ineligible to engage in certain trades under any circumstances until a new Certificate of Documentation bearing the appropriate trade endorsement had been issued. Sections 67.315 and 67.317 have been modified in order to accommodate owners applying for a change in accordance with the provisions of paragraphs (d) and (e) of § 67.167.

Three comments noted the inadvertent omission of the word "invalid" from § 67.331. Actually, the phrase "which have become invalid under subpart M" was erroneously printed as a line in appendix A to part 67. The section has been corrected.

A total of 41 comments were received with regard to the fees proposed in subpart Y. Of those, 13 objected to either increase in fees or imposition of any fees whatever. Three comments found the amounts of the fees acceptable, but requested that the Coast Guard delay their implementation pending an analysis of the overall effect of all user fees affecting vessel owners. One comment requested exemption from fees for tax-exempt organizations such as the Boy Scouts. A comment from the Maritime Administration requested exemption of fees applied to vessels owned by the Federal Government.

The Coast Guard notes that the Reconciliation Act requires it to collect user fees in order to recover the costs associated with providing vessel documentation services. The law does not expressly allow for exemption of tax-exempt institutions or governmental agencies. Nor does the law provide for delayed implementation.

With regard to tax-exempt organizations, such as the Boy Scouts, vessels owned by these entities may be documented with a registry endorsement for sail-training and a recreational endorsement for other youth program purposes. Vessel documentation for these purposes is not required by law, but is permissive. Only when vessels owned by these entities are operated in the coastwise trade, Great Lakes trade, or fisheries does documentation with the requisite endorsement become mandatory. Where vessel documentation services are provided as a matter of convenience, an exemption from user fees will not be allowed. Where vessels owned by these entities compete in the restricted trades, and documentation is required by law, then as a matter of policy and fairness the tax-exempt entity should pay the fees. Therefore, no tax-exempt entity, including the Boy Scouts, is exempted.

As regards governmental entities however, further analysis is required. Underlying the Reconciliation Act, is an attempt to shift part of the cost of the administration of government from taxpayers at large to persons directly receiving a particular service. A fee charged for providing a service to a Federal agency would be directly paid with federally-appropriated funds. These funds might shift among accounts at the Treasury, but would not increase the revenues to the Treasury. Actually, this activity would increase the cost to taxpayers through added bookkeeping costs. Therefore, the purposes of the Reconciliation Act would not be met. Accordingly, when a user fee is applicable for providing documentation services to a Federal agency acting in its own behalf and that agency would have to pay the fee with federally-appropriated funds, the Coast Guard will waive collection of the fee. The Coast Guard does not anticipate waiving collection of a fee where the Federal agency obtains a documentation service for the benefit of a third party who should be obtaining the service and paying the fee directly.

Five comments, including one from an organization representing commercial vessel operators, and one from an officer of a large U.S.-flag shipping company found the fees generally fair and equitable.

Eight comments took exception to the concept of charging fees for different types of trade endorsements. These objections seem to be based on a lack of understanding of the documentation process. Although it is certainly true that the physical act of typing additional endorsements is not onerous, it is more time consuming to carefully evaluate a vessel's record to ensure that some action in the course of its history has not rendered it ineligible to engage in a restricted trade. The additional time involved in this type of evaluation results in increased costs to the Coast Guard, which in turn requires the Coast Guard to charge a higher fee to recover the costs of its operations.

Eighteen comments objected to a charge of $41.00 for Abstracts of Title. After careful analysis, the Coast Guard agrees with the comments that this fee is too high, and has reduced the fee to $25.00. The reduction is based partly on review of the time spent in issuing Abstracts of Title, which in addition to the time spent locating the file and making copies, requires a physical check of all instruments which have been received in the office, but have not yet been indexed. Another factor in the decision is the fact that the proposed fee was based on the projected number of Abstracts of Title to be issued. Although it is expected that the decision to continue to issue Certificates of Ownership will result in a lesser number of Abstracts of Title being issued, the loss of revenue will be offset by the fees the Coast Guard anticipates collecting for issuing Certificates of Ownership. Section 67.537 has been added to provide for the fee to be charged for a Certificate of Ownership, and for attachments for additional vessels with the same ownership and encumbrance information.

The fee summary table in § 67.550 of the NPRM of May 20, 1992 (57 FR 21546), contained three errors. First, the table stated the proposed fee for a Great Lakes endorsement as $19.00. The correct proposed fee of $29.00, the same as for Coastwise and Coastwise Bowaters endorsements, appeared in § 67.511. Second, the table stated the proposed fee for renewal of endorsements at a port other than the port of record as $5.00. The correct proposed fee of $15.00 appeared in § 67.515. Lastly, the table stated the proposed fee for replacement of a lost or mutilated Certificate as $49.00. The correct proposed fee of $50.00 appeared in § 67.507. The table has been corrected in this final rule. In addition, specific fee amounts are now contained only in the table for ease in use and future amendment as needed.

Eight comments suggested that payment of the proposed fees would be less onerous if fees were rounded off to multiples of five or ten dollars. Although the Coast Guard agrees in principle, there are two statutory requirements at work. First, the Coast Guard is barred from charging more than the cost of a particular service.

Second, the Coast Guard is required to recover all costs associated with documentation of recreational vessels. Although the calculation of user fees for services performed at different ports by different people is less than an exact science, the fees calculated for recreational vessels are close enough to prohibit rounding to multiples of five or ten dollars without violating the second statutory mandate. Therefore, to avoid additional confusion that would be caused where there is one fee schedule for transactions involving commercial vessels and another fee schedule for transactions involving recreational vessels, the Coast Guard has endeavored to maintain a universal cost-based fee structure in whole dollar amounts. This system provides for the most equitable and practical approach in keeping with the applicable statutory mandates and restrictions. Although the new fee schedule may initially appear unwieldy, it will be simpler than the present fee structure for recording bills of sale and mortgages, which requires payment of some multiple of 20 cents, determined by the number of words in the instrument and number of copies.

Lastly, section 5213 of the Oceans Act of 1922 (Pub. L. 102–587) added section 12123 to Title 46 U.S.C., authorizing the Coast Guard to deny the issuance or renewal of, or to revoke, the endorsement(s) on a Certificate of Documentation issued to a vessel if the owner of the vessel has failed to pay a civil penalty assessed by the Coast Guard. Section 5213 of the Oceans Act also amended 46 U.S.C. 12110(c) to render a vessel liable to seizure and forfeiture to the United States should the vessel, after its endorsement has been denied or revoked under the authority of 46 U.S.C. 12123, be operated without proper endorsement.

Almost all of the Coast Guard's vessel documentation regulations, and the statutes which authorize them, adhere to the admiralty doctrine of reification—the notion that privileges, duties, liabilities, and restrictions attached to the vessel itself rather than to its owner. However, this new authority departs from that doctrine and relates to vessel ownership, rather than the vessel itself. Therefore, if an owner fails to pay a civil penalty, adverse action may be taken against the endorsement(s) on Certificates of Documentation for any vessels owned by that owner, not just the vessel involved in the incident leading to the assessment of the civil penalty. Further, action against the endorsement(s) need not be limited to the Certificate of one vessel, but rather may be taken against the Certificates of all vessels owned by that owner. All that is required is that a civil penalty, assessed by the Coast Guard through the civil penalty process, remain unpaid. In order to conform the regulations to this new authority, amendments have been made to appropriate sections relating to application for initial issue, exchange, replacement, or renewal of a Certificate of Documentation, and deletions from documentation that denial or revocation action, as appropriate, may be taken if the vessel owner has an outstanding civil penalty assessed by the Coast Guard.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 67.13 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as listed in that section.

Regulatory Evaluation

This regulation is a significant regulatory action under Executive Order 12866. It is also significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) because it concerns matters in which there is substantial public interest. The following constitutes the regulatory evaluation for the rulemaking.

This rulemaking simplifies the paperwork and reporting requirements necessary to effect the documentation of a vessel and streamlines internal administrative procedures and requirements. In addition, it revises existing user fees and establishes new fees for services related to vessel documentation activities.

The benefits of documenting a vessel are practical, legal, and financial. The salient practical benefit (and not coincidentally the reason the concept of Federal documentation exists at all) is to ensure unencumbered interstate and international commerce. This practical benefit is intimately related to the legal benefits attendant upon Federal documentation. The existence of a Federal system of documentation serves to preempt State numbering and regulatory schemes such that a vessel operated under a Federal endorsement (e.g., a coastwise endorsement) is ensured access to State waters for various activities. In fact, the Federal documentation statutes, which date to the earliest days of our Republic, are a direct result of dissatisfaction with impediments to the free flow of commerce once imposed by the several States. That Federal documentation continues to provide this benefit is evidenced by the recurring preemption cases in which a vessel owner or operator invokes the protections of documentation against a State seeking to close its waters to nonresidents for certain activities. In the field of international commerce, documentation establishes the nationality of a vessel and confers the privileges, protections, and immunities contemplated by long-standing international law and custom. Another practical benefit of Federal documentation stems from the preferential customs and tax treatment accorded to "vessels of the United States." Established national policy seeks to promote the existence of an American merchant marine as a resource to be drawn upon in time of emergency or war. To the extent that documentation is a condition precedent to the receipt of preferential customs and tax treatment, it serves as a tool to promote national policy interests. The major financial benefit conferred by documentation is preferred mortgage financing. The availability of capital for maritime financing hinges upon the existence of the preferred mortgage as security for loans against vessels. Since the regulations will make it easier to document a vessel under U.S. law, and will make it easier to file and record instruments, including mortgages, they will enhance the benefits outlined above.

Not all vessels of the requisite size are required by law to be documented. Documentation is not statutorily required for vessels engaging in foreign trade or for those used exclusively for recreational purposes. A registry endorsement is obtained on a voluntary basis for purposes of establishing the nationality of a vessel for the protections of international law or to obtain preferred mortgage financing, or both. Recreational vessels are documented primarily for the purpose of obtaining preferred mortgage financing.

The Reconciliation Act requires the Coast Guard to collect user fees for services provided under Subtitle II of Title 46, U.S. Code. These services include: Vessel documentation, vessel inspection, marine licensing, plan review and equipment approval, and foreign vessel examinations. The bulk of this analysis will describe the vessel documentation fee structure and its cost impacts on industry and the public. Because the services performed under these regulations may impact the same individuals or companies, it is necessary to briefly examine the combined costs of these user fee regulations. Although precise final cost impacts await further study, the total amount to be collected for all services provided under Subtitle II of Title 46

U.S.C. is estimated to be less than $45 million on an annual basis. This is well below the $100 million threshold that would make this regulation a major regulation. The Coast Guard has also determined that these regulations will not have a significant impact on inflation, any one industry, geographical region, or international trade.

Estimated annual costs of the user fees associated with this regulation are $4,779,000 to the recreational boating community, and $4,156,000 to the commercial vessel industry, totalling $8,935,000. User fees, albeit at lower rates than imposed in this rule, are already in place for 60 percent of vessel documentation activities, including documentation of recreational vessels, new vessel determinations, wrecked vessel determinations, and recording of bills of sale and mortgages.

Information on the number and type of discrete vessel documentation activities and the number of transactions per activity was provided by the vessel documentation officers and Marine Safety Information System (MSIS) data. The amount of time required to complete each transaction was estimated by vessel documentation officers based on the streamlined procedures detailed herein.

Program costs were computed using COMDTINST 7310.10 dated March 21, 1990, the standard rate instruction. An average billable hourly rate was determined to be $49.75 per hour, which includes costs attributable to the MSIS computer system in support of the vessel documentation program. The Coast Guard estimates these MSIS costs to be $1,578,000 per year. Total vessel documentation program costs are estimated to be $8,935,000. Projected user fee receipts for commercial vessel documentation is based on that fraction of current vessel documentation activities that are for commercial vessels. For a vessel that is primarily used for recreational purposes (greater than 50 percent), the bulk of the projected fee collections would be identified as for the documentation of a "yacht."

The cost of these regulations to a typical owner of a new commercial vessel will be approximately $157–$210. These fees are relatively insignificant costs when compared to overall commercial vessel acquisition or operating costs. Daily rental fees for commercial vessels range from several hundred to several thousand dollars. The cost of these regulations for the owner of a new yacht will be approximately $147. Therefore, yacht owners, whose vessels are typically worth from tens of thousands to millions of dollars, should be negligibly impacted by these increased fees.

The only new fees which are more costly than the Initial Documentation fee are the fees for Rebuilt and Wrecked Vessel Determinations, which apply to the commercial vessel industry and are relatively uncommon. Of the 215,000 vessels currently documented, an average of only 15 vessels annually are the subject of a rebuilding determination. The owners of those vessels will be required to pay the $450 fee for the determination. Rebuilding a vessel is often a major financial undertaking, costing tens of thousands to millions of dollars. Comparatively, the financial impact of the Rebuilt Vessel Determination fee on vessel owners will be minimal. A very small number of vessel owners, generally fewer than four per year, will have to pay the $555 fee for each Wrecked Vessel Determination. Compared to the cost associated with rehabilitating a wrecked vessel, the financial impact of this fee compared to the overall undertaking will be minimal.

Small Entities

The procedural and administrative changes in this rulemaking are largely technical amendments which the affected small entities should have little difficulty understanding or adopting into their business practices. The new user fees and changes in existing user fees reflect the cost to the Coast Guard of providing the related documentation services and, when compared to the cost or value of the vessel, are minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains various collection of information requirements associated with vessel documentation procedures. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 6504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The OMB approval number is OMB Control Number 2115–0110, displayed in § 67.14.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This regulation deals with user fees and procedural matters including reporting and recordkeeping requirements in order to obtain privileges as vessels of the United States and to record title and encumbrance instruments. These regulations are administrative in nature and clearly have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (government agencies), Reporting and recordkeeping requirements.

46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 1 and revises 46 CFR part 67 to read as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633, 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

2. In § 1.03–15, paragraph (h)(1) is revised to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(1) Commandant (G–MVI) for appeals involving vessel inspection issues, vessel documentation issues, or tonnage measurement issues; or

* * * * *

3. Section 1.03–45 is added to read as follows:

§ 1.03–45 Appeals from decisions or actions involving documentation of vessels.

Any person directly affected by a decision or action of an officer or employee of the Coast Guard acting on or in regard to the documentation of a vessel under part 67 of this chapter, may make a formal appeal of that decision or action to the Commandant in accordance with the procedures

contained in §§ 1.03–15 through 1.03–25 of this subpart.

4. Part 67 is revised to read as follows:

PART 67—DOCUMENTATION OF VESSELS

Subpart A—General

Sec.
67.1 Purpose.
67.3 Definitions.
67.5 Vessels eligible for documentation.
67.7 Vessels requiring documentation.
67.9 Vessels excluded from or exempt from documentation.
67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.
67.12 Right of appeal.
67.13 Incorporation by reference.
67.14 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart B—Forms of Documentation; Endorsements; Eligibility of Vessel

67.15 Form of document—all endorsements.
67.17 Registry endorsement.
67.19 Coastwise or Great Lakes endorsement.
67.21 Fishery endorsement.
67.23 Recreational endorsement.

Subpart C—Citizenship Requirements for Vessel Documentation

67.30 Requirement for citizen owner.
67.31 Stock or equity interest requirements.
67.33 Individual.
67.35 Partnership, association, or joint venture.
67.37 Trust.
67.39 Corporation.
67.41 Governmental entity.
67.43 Evidence of citizenship.
67.45 Citizenship savings provision for fishing vessels.
67.47 Requirement for Maritime Administration approval.

Subpart D—Title Requirements for Vessel Documentation

67.50 Requirement for title evidence.
67.53 Methods of establishing title.
67.55 Requirement for removal from foreign registry.
67.57 Extent of title evidence required for initial documentation.
67.59 Extent of title evidence required for change in ownership of a documented vessel.
67.61 Extent of title evidence required for vessels returning to documentation.
67.63 Extent of title evidence required for captured, forfeited, special legislation, and wrecked vessels.

Subpart E—Acceptable Title Evidence; Waiver

67.70 Original owner.
67.73 Transfers prior to documentation.
67.75 Transfers by sale or donation subsequent to documentation.
67.77 Passage of title by court action.
67.79 Passage of title without court action following death of owner.
67.81 Passage of title in conjunction with a corporate merger or similar transaction.
67.83 Passage of title by extra-judicial repossession and sale.
67.85 Change in general partners of partnership.
67.87 Change of legal name of owner.
67.89 Waiver of production of a bill of sale eligible for filing and recording.
67.91 Passage of title pursuant to operation of State law.

Subpart F—Build Requirements for Vessel Documentation

67.95 Requirement for determination.
67.97 United States built.
67.99 Evidence of build.
67.101 Waiver of evidence of build.

Subpart G—Tonnage and Dimension Requirements for Vessel Documentation

67.105 Requirement for determination.
67.107 System of measurement; evidence.

Subpart H—Assignments and Designations Required for Vessel Documentation

67.111 Assignment of official number.
67.113 Managing owner designation; address; requirement to report change of address.
67.115 Assignment of port of record.
67.117 Vessel name designation.
67.119 Hailing port designation.

Subpart I—Marking Requirements for Vessel Documentation

67.120 General requirement.
67.121 Official number marking requirement.
67.123 Name and hailing port marking requirements.
67.125 Disputes.

Subpart J—Application for Special Qualifications for Vessel Documentation

67.130 Submission of applications.
67.131 Forfeited vessels.
67.132 Special legislation.
67.133 Wrecked vessels.
67.134 Captured vessels.

Subpart K—Application for Documentation, Exchange or Replacement of Certificate of Documentation, or Return to Documentation; Mortgagee Consent; Validation

67.141 Application procedure; all cases.
67.143 Restriction on withdrawal of application.
67.145 Restrictions on exchange; requirement and procedure for mortgagee consent.
67.147 Exchange of Certificate of Documentation; special procedure for change of port of record.
67.149 Exchange of Certificate of Documentation; vessel at sea.
67.151 Replacement of Certificate of Documentation; special procedure for wrongfully withheld document.

Subpart L—Validity of Certificates of Documentation; Renewal of Endorsement; Requirement for Exchange, Replacement, Deletion, Cancellation

67.161 Validity of Certificate of Documentation.
67.163 Renewal of endorsement.
67.165 Deposit of Certificate of Documentation.
67.167 Requirement for exchange of Certificate of Documentation.
67.169 Requirement for replacement of Certificate of Documentation.
67.171 Deletion; requirement and procedure.
67.173 Cancellation; requirement and procedure.

Subpart M—Miscellaneous Applications

67.175 Application for new vessel determination.
67.177 Required application for rebuilt determination.

Subpart N—[Reserved]

Subpart O—Filing and Recording of Instruments—General Provisions

67.200 Instruments eligible for filing and recording.
67.203 Restrictions on filing and recording.
67.205 Requirement for vessel identification.
67.207 Requirement for date and acknowledgment.
67.209 Required number of copies.
67.211 Requirement for citizenship declaration.
67.213 Place of filing and recording.
67.215 Date and time of filing.
67.217 Termination of filing and disposition of instruments.

Subpart P—Filing and Recording of Instruments—Bills of Sale and Related Instruments

67.220 Requirements.
67.223 Filing limitation.

Subpart Q—Filing and Recording of Instruments—Mortgages, Preferred Mortgages, and Related Instruments

67.231 General requirements; optional application for filing and recording.
67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.
67.235 Requirements for mortgages.
67.237 Requirements for assignments of mortgages.
67.239 Requirements for assumptions of mortgages.
67.241 Requirements for amendments of or supplements to mortgages.
67.243 Requirements for instruments subordinating mortgages.
67.245 Requirements for interlender agreements.

Subpart R—Filing and Recording of Instruments—Notices of Claim of Lien and Supplemental Instruments

67.250 General requirements.
67.253 Requirements for notices of claim of lien.
67.255 Restrictions on filing and recording.

67.257 Requirements for assignments of notices of claim of lien.
67.259 Requirements for amendments to notice of claim of lien.

Subpart S—Removal of Encumbrances

67.261 General requirements.
67.263 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.
67.265 Requirements for instruments evidencing satisfaction or release.

Subpart T—General Index, Abstracts of Title, and Certificates of Ownership

67.301 Forwarding of General Index.
67.303 Issuance of Abstract of Title.
67.305 Issuance of Certificate of Ownership.

Subpart U—Special Provisions

67.311 Alteration of Certificate of Documentation.
67.313 Requirement to have Certificate of Documentation on board.
67.315 Requirement to produce Certificate of Documentation.
67.317 Requirement to renew endorsements on the Certificate of Documentation.
67.319 Requirement to report change in vessel status and surrender Certificate of Documentation.
67.321 Requirement to report change of address of managing owner.
67.323 Operation without documentation.
67.325 Violation of endorsement.
67.327 Operation under Certificate of Documentation with invalid endorsement.
67.329 Unauthorized name change.
67.331 Improper markings.

Subpart V—[Reserved]

Subpart W—[Reserved]

Subpart X—[Reserved]

Subpart Y—Fees

67.500 Applicability.
67.501 Application for Certificate of Documentation.
67.503 Application for exchange or replacement of a Certificate of Documentation.
67.505 Application for return of vessel to documentation.
67.507 Application for replacement of lost or mutilated Certificate of Documentation.
67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.
67.511 Application for trade endorsement(s).
67.513 Application for evidence of deletion from documentation.
67.515 Application for renewal at port other than port of record.
67.517 Application for late renewal.
67.519 Application for waivers.
67.521 Application for new vessel determination.
67.523 Application for wrecked vessel determination.
67.525 Application for determination of rebuild.
67.527 Application for filing and recording bills of sale and instruments in the nature of a bill of sale.
67.529 Application for filing and recording mortgages and related instruments.
67.531 Application for filing and recording notices of claim of lien.
67.533 Application for Certificate of Compliance.
67.535 Issuance of Abstract of Title.
67.537 Issuance of Certificate of Ownership.
67.539 Copies of instruments and documents.
67.550 Fee table.

Appendix A to Part 67—Ports of Documentation

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 U.S.C. 322, 49 CFR 1.46.

Subpart A—General

§67.1 Purpose.

A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality, and permits a vessel to be subject to preferred mortgages.

§67.3 Definitions.

The following definitions are for terms used in this part.

Acknowledgment means:

(a) An acknowledgment or notarization in any form which is in substantial compliance with the Uniform Acknowledgments Act, the Uniform Recognition of Acknowledgments Act, the Uniform Law on Notarial Acts, or the statutes of the State within which it is taken, made before a notary public or other official authorized by a law of a State or the United States to take acknowledgment of deeds;

(b) An acknowledgment or notarization before a notary or other official authorized to take acknowledgments of deeds by the law of a foreign nation which is a party to the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961, provided that the acknowledgment or notarization is accompanied by the certificate described in Article 3 of that Convention; or

(c) Any attestation which is substantially in the following form:

State:
County:

On [date] the person(s) named above acknowledged execution of the foregoing instrument in their stated capacity(ies) for the purpose therein contained.

Notary Public
My commission expires: [date]

Captured vessel means a vessel which has been taken by citizens of the United States during a period of war and is thereafter condemned as a prize by a court of competent jurisdiction.

Certification of Documentation means form CG–1270.

Citizen, unless expressly provided otherwise, means a person meeting the applicable citizenship requirements of subpart C of this part as a United States citizen.

Coastwise trade includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.

Commandant means the Commandant of the United States Coast Guard.

Note: Submissions and correspondence made to the Commandant pursuant to this part should be addressed to Commandant (G–MVI–5), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

Documentation officer means the Coast Guard official who is authorized to process and approve applications made under this part, and record instruments authorized to be filed and recorded under this part.

Documented vessel means a vessel which is the subject of a valid Certificate of Documentation.

Endorsement means an entry which may be made on a Certificate of Documentation, and which, except for a recreational endorsement, is conclusive evidence that a vessel is entitled to engage in a specified trade.

Note: Rulings and interpretations concerning what activities constitute coastwise trade and the fisheries can be obtained from the U.S Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (Attn: Carrier Rulings Branch).

Exclusive Economic Zone (EEZ) means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983 (48 FR 10105, 3 CFR, 1983 Comp., p. 22).

Fisheries includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the Exclusive Economic Zone.

Forfeited vessel means a vessel:

(1) Which has been adjudged forfeited by a Federal District Court to the Federal Government of the United States for a breach of its laws; or

(2) Which has been forfeited under an administrative forfeiture action to the Federal Government of the United States for a breach of its laws; or

(3) Which has been seized by the Federal Government of the United States for a breach of its laws and which

has been sold at an interlocutory sale, the proceeds of which have been adjudged forfeited by a Federal District Court to the Federal Government of the United States. A vessel is considered forfeited within the meaning of this definition even if the proceeds, though adjudged forfeited to the United States, do not actually accrue to the United States.

Hull means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations. In the case of a submersible vessel, the term includes all structural members of the pressure envelope.

Manufacturer's Certificate of Origin means a certificate issued under the law or regulation of a State, evidencing transfer of a vessel from the manufacturer as defined in 33 CFR part 181 to another person.

New vessel means a vessel:

(1) The hull and superstructure of which are constructed entirely of new materials; or

(2) Which is constructed using structural parts of an existing vessel, which parts have been torn down so that they are no longer advanced to a degree which would commit them to use in the building of a vessel.

Ocean thermal energy conversion facility means any facility which is standing in or moored in or beyond the territorial sea of the United States as defined in 33 CFR 2.05–5, and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work.

Ocean thermal energy conversion plantship means any vessel which is standing in or moored in or beyond the territorial sea of the United States as defined in 33 CFR 2.05–5, and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work.

Officer in Charge, Marine Inspection (OCMI) means the Coast Guard official designated as such by the Commandant, under the superintendence and direction of a Coast Guard District Commander, who is in charge of an inspection zone in accordance with regulations set forth in 46 CFR part 1.

Person means an individual, corporation, partnership, association, joint venture, trust arrangement, the government of the United States, a State or political subdivision thereof, and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Port of documentation means a port which has been designated by the Commandant as a place which may serve as a port of record for vessel documentation purposes. A documentation office is located in each port of documentation. A list of designated ports of documentation may be found in appendix A to this part.

Port of record means the port of documentation at which the records for a vessel are kept.

Registration means a certificate of number issued pursuant to rules in 33 CFR part 173, a record under the maritime laws of a foreign country, or a certificate issued by a political subdivision of a foreign country.

Secretary means the Secretary of Transportation.

State means a State of the United States or a political subdivision thereof, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

Superstructure means the main deck and any other structural part above the main deck.

United States, when used in a geographic sense means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States, except that for purposes of § 67.19(d)(3) trust territories are not considered to be part of the United States.

Vessel includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. Vessel also includes ocean thermal energy conversion facilities and ocean thermal energy conservation plantships as defined in this section.

Wrecked vessel, under the provisions of 46 U.S.C. app. 14, means a vessel which:

(1) Has incurred substantial damage to its hull or superstructure as a result of natural or accidental causes which occurred in the United States or its adjacent waters; and

(2) Has undergone, in a shipyard in the United States or its possessions, repairs equaling three times the appraised salved value of the vessel.

§ 67.5 Vessels eligible for documentation.

Any vessel of at least five net tons wholly owned by a citizen or citizens of the United States is eligible for documentation under this part. This includes, but is not limited to, vessels used exclusively for recreational purposes and vessels used in foreign trade.

§ 67.7 Vessels requiring documentation.

Any vessel of at least five net tons which engages in the fisheries on the navigable waters of the United States or in the Exclusive Economic Zone, Great Lakes trade, or coastwise trade, unless exempt under § 67.9(c), must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.

§ 67.9 Vessels excluded from or exempt from documentation.

(a) A vessel of less than five net tons is excluded from documentation.

(b) A vessel which does not operate on the navigable waters of the United States or in the fisheries in the Exclusive Economic Zone is exempt from the requirement to have a Certificate of Documentation.

(c) A non-self-propelled vessel, qualified to engage in the coastwise trade is exempt from the requirement to be documented with a coastwise endorsement when engaged in coastwise trade:

(1) Within a harbor;

(2) On the rivers or lakes (except the Great Lakes) of the United States; or

(3) On the internal waters or canals of any State.

(d) A vessel exempt from the requirement to be documented by paragraph (b) or (c) of this section may be documented at the option of the owner, provided it meets the other requirements of this part.

§ 67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.

(a) Unless approved by the Maritime Administration—

(1) A documented vessel or a vessel last documented under the laws of the United States may not be placed under foreign registry or operated under the authority of a foreign country.

(2) A documented vessel or a vessel last documented under the laws of the United States owned by a citizen of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802), may not be sold, mortgaged, leased, chartered, delivered, or otherwise transferred to any person who is not a citizen of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802).

(b) The restrictions in paragraph (a)(2) of this section do not apply to a vessel that has been operated only as:

(1) A fishing vessel, fish processing vessel, or fish tender vessel as defined in 46 U.S.C. 2101;

(2) A recreational vessel; or

(3) Both.

Note: For purposes of carrying out its responsibilities under the provisions of this

part only, the Coast Guard will deem a vessel which has been documented exclusively with a fishery or recreational endorsement or both from the time it was first documented, or for a period of not less than one year prior to foreign transfer or registry, to qualify for the exemption granted in paragraph (b) of this section.

§ 67.12 Right of appeal.

Any person directly affected by a decision or action taken under this part by or on behalf of the Coast Guard may appeal therefrom in accordance with subpart 1.03 of this chapter.

§ 67.13 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division, 2100 Second Street SW., Washington, DC 20593–0001 and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the section affected is as follows:

U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22181

Federal Information Processing Standards Publication 55DC, Guideline: Codes For Named Populated Places, Primary County Divisions, And Other Locational Entities of the United States and Outlying Areas (1987)—67.119

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

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
Part 67	2115–0110
Part 68	2115–0110

Subpart B—Forms of Documentation; Endorsements; Eligibility of Vessel

§ 67.15 Form of document—all endorsements.

(a) The form of document is a Certificate of Documentation, form CG–1270.

(b) Upon application in accordance with subpart K of this part and determination of qualification by the documentation officer with whom the application is filed, a Certificate of Documentation may be issued with a registry, coastwise, Great Lakes, fishery, or recreational endorsement.

(c) A Certificate of Documentation may bear simultaneous endorsements for recreation and more than one trade, including operation under 46 CFR part 68.

Note: Where a vessel possesses a Certificate of Documentation bearing more than one endorsement, the actual use of the vessel determines the endorsement under which it is operating.

§ 67.17 Registry endorsement.

(a) A registry endorsement entitles a vessel to employment in the foreign trade; trade with Guam, American Samoa, Wake, Midway, or Kingman Reef; and any other employment for which a coastwise, Great Lakes, or fishery endorsement is not required.

(b) Any vessel eligible for documentation under § 67.5 is eligible for a registry endorsement.

(c) A vessel otherwise eligible for a registry endorsement for which the Maritime Administration has not given approval for unrestricted transfer pursuant to 46 CFR part 221 loses that eligibility during any period in which it is mortgaged to a person not identified in § 67.233(b).

§ 67.19 Coastwise or Great Lakes endorsement.

(a) A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade and any other employment for which a registry, fishery, or Great Lakes endorsement is not required.

(b) A Great Lakes endorsement entitles a vessel to employment in the Great Lakes trade and any other employment for which a registry, fishery, or coastwise endorsement is not required.

(c) If eligible for documentation and not restricted from coastwise or Great Lakes trade by paragraph (d) or (e) of this section, the following vessels are eligible for a coastwise or Great Lakes endorsement or both:

(1) Vessels built in the United States (§ 67.97);

(2) Forfeited vessel (§ 67.131);

(3) Vessels granted coastwise trading privileges by special legislation (§ 67.132);

(4) Wrecked vessels (§ 67.133);

(5) Captured vessels (§ 67.134); and

(6) Vessels purchased, chartered, or leased from the Secretary of Transportation by persons who are citizens of the United States (46 U.S.C. app. 808).

(d) A vessel otherwise eligible for a coastwise or Great Lakes endorsement under paragraph (c) of this section permanently loses that eligibility if:

(1) It is thereafter sold in whole or in part to an owner:

(i) Not a citizen as defined in subpart C of this part, or

(ii) Not a person permitted to document vessels pursuant to 46 CFR part 68;

(2) It is thereafter registered under the laws of a foreign country;

(3) It undergoes rebuilding as defined in § 67.177(a) outside of the United States; or

(4) It is a crude oil tanker of 20,000 deadweight tons or above, and after October 17, 1978, has segregated ballast tanks, a crude oil washing system, or an inert gas system installed outside of the United States as defined in § 67.3.

(e) A vessel otherwise eligible for a coastwise or Great Lakes endorsement under paragraph (c) of this section loses that eligibility, except as provided in paragraph (f) of this section, during any period in which it is:

(1) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b);

(2) Owned by a partnership which does not meet the citizenship requirements of § 67.35(a)(2); or

(2) Mortgaged to a person not identified in § 67.233(b).

(f) The restriction imposed by paragraph (e)(2) of this section does not apply to any vessel for which the Maritime Administration has given approval for unrestricted transfer pursuant to regulations set forth in 46 CFR part 221.

§ 67.21 Fishery endorsement.

(a) A fishery endorsement entitles a vessel to employment in the fisheries as defined in § 67.3, subject to Federal and State laws regulating the fisheries, and in any other employment for which a registry, coastwise, or Great Lakes endorsement is not required. A fishery

endorsement entitles a vessel to land its catch, wherever caught, in the United States.

(b) If eligible for documentation and not restricted from the fisheries by paragraph (c) of this section, the following vessels are eligible for a fishery endorsement:

(1) Vessels built in the United States (§ 67.97);

(2) Forfeited vessels (§ 67.131);

(3) Vessels granted fisheries privileges by special legislation (§ 67.132);

(4) Wrecked vessels (§ 67.133); and

(5) Captured vessels (§ 67.134).

(c) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section permanently loses that eligibility if it undergoes rebuilding as defined in § 67.177(a) outside of the United States.

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section and not protected by the savings provision in § 67.45, loses that eligibility during any period in which it is owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(a), or by a corporation which does not meet the citizenship requirements of § 67.39(d).

§ 67.23 Recreational endorsement.

(a) A recreational endorsement entitles a vessel to pleasure use only.

(b) Any vessel eligible for documentation under § 67.5 is eligible for a recreational endorsement.

Note: A vessel having a Certificate of Documentation endorsed only for recreation may be bareboat chartered only for recreational use. Guidance on the elements of a valid bareboat charter should be obtained through private legal counsel.

Subpart C—Citizenship Requirements for Vessel Documentation

§ 67.30 Requirement for citizen owner.

Certificates of Documentation may be issued under this part only to vessels which are wholly owned by United States citizens. Pursuant to extraordinary legislation at 46 U.S.C. app. 883–1 (Bowater Amendment) and 46 U.S.C. 12106(d) (Oil Pollution Act of 1990), Certificates of Documentation with limited endorsements may be issued in accordance with part 68 of this chapter to vessels owned by certain persons who are not citizens as defined in this part.

§ 67.31 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: Title to all classes of stock; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: Stock is subject to trust or fiduciary obligations in favor of non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power, or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(b) For the purpose of this section, control includes an absolute right to: Direct corporate or partnership business; limit the actions of or replace the chief executive officer, a majority of the board of directors, or any general partner; direct the transfer or operations of any vessel owned by the corporation or partnership; or otherwise exercise authority over the business of the corporation or partnership. Control does not include the right to simply participate in these activities or the right to receive a financial return, e.g., interest or the equivalent of interest on a loan or other financing obligations.

(c) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

§ 67.33 Individual.

An individual is a citizen if native-born, naturalized, or a derivative citizen of the United States, or otherwise qualifies as a United States citizen.

§ 67.35 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, at least 75 percent of the equity interest in the partnership is owned by citizens; or

(3) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

§ 67.37 Trust.

A trust arrangement is a citizen if each of its trustees and each beneficiary with an enforceable interest in the trust is a citizen.

§ 67.39 Corporation.

(a) For the purpose of obtaining a registry or a recreational endorsement, a corporation is a citizen if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the stock interest requirement of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of part 68 of this chapter.

(d) A corporation is a citizen for the purpose of obtaining a fishery endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

§ 67.41 Governmental entity.

A governmental entity is a citizen for the purpose of obtaining a vessel document if it is an entity of the Federal Government of the United States or of the government of a State as defined in § 67.3.

§ 67.43 Evidence of citizenship.

When received by the Coast Guard, a properly completed original Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) establishes a rebuttable presumption that the applicant is a United States citizen.

§ 67.45 Citizenship savings provision for fishing vessels.

An otherwise qualifying partnership or corporation that does not meet the requisite stock interest requirements for a fishery endorsement of §§ 67.35 or 67.39, respectively, may be eligible to obtain a fishery endorsement for a

vessel if, based on evidence submitted by the owner, it is determined that prior to July 28, 1987, the vessel:

(a) Was documented under 46 U.S.C. Chapter 121 and operating as a fishing, fish processing, or fish tender vessel in the navigable waters of the United States or the Exclusive Economic Zone; or

(b) Was contracted for purchase for use as a fishing, fish processing, or fish tender vessel in the navigable waters of the United States or the Exclusive Economic Zone, if the purchase is shown by the contract or similarly reliable evidence acceptable to the Secretary or the Secretary's delegate to have been made for the purpose of using the vessel in the fisheries.

§ 67.47 Requirement for Maritime Administration approval.

(a) The following transactions, among others, require approval of the Maritime Administration in accordance with 46 CFR part 221:

(1) Placement of the vessel under foreign registry;

(2) Operation of the vessel under the authority of a foreign country; and

(3) Sale or transfer of an interest in or control of the vessel from a citizen, as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802), to a person not a citizen within the meaning of section 2 of that act.

(b) A Certificate of Documentation may not be issued for a vessel which subsequent to the last issuance of a Certificate of Documentation has undergone any transaction listed in paragraph (a) of this section, even if the owner meets the citizenship requirements of this subpart, unless evidence is provided that the Maritime Administration approved the transaction.

(c) The restriction imposed by paragraph (b) of this section does not apply to a vessel identified in § 67.11(b).

Subpart D—Title Requirements for Vessel Documentation

§ 67.50 Requirement for title evidence.

The owner of a vessel must present title evidence in accordance with one of the methods specified in this subpart:

(a) When application is made for a coastwise or a Great Lakes endorsement for a vessel which has not previously been qualified for such endorsement;

(b) For initial documentation of a vessel;

(c) When the ownership of a documented vessel changes in whole or in part;

(d) When the general partners of a partnership owning a documented vessel change by addition, deletion, or substitution, without dissolution of the partnership; or

(e) When a vessel which has been deleted from documentation is returned to documentation and there has been an intervening change in ownership.

§ 67.53 Methods of establishing title.

Title to a vessel may be established through one of the following methods:

(a) *Simplified method without evidence of build.* The owner must produce a copy of the last registration of the vessel (State, Federal, or foreign) and evidence which establishes chain of title from that registration to the present owner.

(b) *Simplified method with evidence of build.* The owner must produce a copy of the last registration of the vessel (State, Federal, or foreign) and evidence which establishes chain of title from that registration to the present owner along with evidence of the facts of build in accordance with subpart F of this part.

(c) *Complete chain of title, without evidence of citizenship for each entity in that chain of title.* The owner must provide evidence which establishes:

(1) The facts of build in accordance with subpart F of this part; and

(2) A complete chain of title for the vessel from the person for whom the vessel was built to the present owner.

(d) *Complete chain of title, with evidence of citizenship for each entity in that chain of title.* The owner must provide evidence which establishes:

(1) The facts of build in accordance with subpart F of this part; and

(2) A complete chain of title for the vessel from the person for whom the vessel was built to the present owner, accompanied by competent and persuasive evidence establishing the citizenship of each entity in the chain of title.

§ 67.55 Requirement for removal from foreign registry.

The owner of a vessel must present evidence of removal of the vessel from foreign registry whenever:

(a) The owner applies for initial documentation of a vessel that has at any time been registered under the laws of a foreign country; or

(b) The owner applies for reentry into documentation of a vessel that had been registered under the laws of a foreign country since it was last documented under the laws of the United States.

§ 67.57 Extent of title evidence required for initial documentation.

(a) Vessels never registered under any system:

(1) Where a coastwise or Great Lakes endorsement is sought, the only title evidence required for a vessel being documented by the owner for whom it was built is the certification of the builder (form CG–1261) described in § 67.99. Any other applicant must present title evidence in accordance with § 67.53(d).

(2) Where a fishery endorsement is sought, the only title evidence required for a vessel being documented by the owner for whom it was built is the certification of the builder (form CG–1261) described in § 67.99. Any other applicant must present title evidence in accordance with either paragraph (c) or (d) of § 67.53.

(3) Where a registry or recreational endorsement is sought, the only title evidence required for a vessel being documented by the first owner of the vessel is the certification of the builder (form CG–1261) described in § 67.99, or a Manufacturer's Certificate of Origin. Any other applicant must also present title evidence in accordance with either paragraph (c)(2) or (d)(2) of § 67.53.

Note: Manufacturer's Certificates of Origin are sometimes used as shipping documents for vessels, and may recite as the first owner a person other than the person for which the vessel was built. Therefore, a chain of title which begins with a Certificate of Origin will be deemed incomplete.

(b) Vessels previously registered under the laws of a State or a foreign government:

(1) Where a coastwise or a Great Lakes endorsement is sought, title evidence must be presented in accordance with § 67.53(d).

(2) Where a fishery endorsement is sought, title evidence must be presented in accordance with paragraph (b), (c), or (d) of § 67.53.

(3) Where a registry or recreational endorsement is sought, title evidence must be presented in accordance with paragraph (a), (b), (c), or (d) of § 67.53.

§ 67.59 Extent of title evidence required for change in ownership of a documented vessel.

When the ownership of a documented vessel changes, in whole or in part, the applicant for documentation must present:

(a) Title evidence in accordance with subpart E of this part to reflect all ownership changes subsequent to the last issuance of a Certificate of Documentation; and

(b) Where a registry, fishery, or recreational endorsement is sought, evidence of the citizenship of all owners subsequent to the last owner for whom the vessel was documented except for a vessel:

(1) Identified in § 67.11(b); or

(2) For which the Maritime Administration has granted approval for transfer or sale under 46 CFR part 221.

(c) Where a coastwise or Great Lakes endorsement is sought, evidence establishing the citizenship of all owners subsequent to the last owner for whom the vessel was documented with a coastwise or Great Lakes endorsement, if such evidence is not already on file with the Coast Guard. If the vessel has never been documented with a coastwise or Great Lakes endorsement, evidence must be presented to establish the citizenship of each owner of the vessel for whom such evidence is not already on file with the Coast Guard.

§ 67.61 Extent of title evidence required for vessels returning to documentation.

(a) When the owner of a vessel which has been deleted from documentation applies to have the vessel returned to documentation, the owner must, except as provided in paragraphs (b) and (c) of this section, provide evidence establishing the complete chain of title from the last owner under documentation, and citizenship evidence for all owners in that chain of title.

(b) When a vessel is returned to documentation after having been under foreign registry, the owner must provide a copy of the last foreign registry, the evidence of removal from foreign registry required by § 67.55, and evidence establishing the complete chain of title from the last owner under foreign registry. No citizenship evidence need be provided for owners in that chain of title.

(c) The owner of a vessel identified in § 67.11(b) or for which the Maritime Administration has granted approval for transfer or sale, either by written order or by general approval in 46 CFR part 221, and which was under a State or Federal registration or titling system, must provide a copy of the last registration or title, the evidence of removal from foreign registry required by § 67.55, if applicable, and evidence establishing the complete chain of title from the last owner under such registry or title. No citizenship evidence need be provided for owners in that chain of title.

Note: Although vessels returned to documentation without a complete chain of title are not eligible for coastwise or Great Lakes endorsements, this does not preclude such an endorsement if the chain of title, with citizenship evidence, is completed at a later date.

§ 67.63 Extent of title evidence required for captured, forfeited, special legislation, and wrecked vessels.

(a) In the case of a captured or forfeited vessel, the owner must provide evidence establishing the chain of title from the judicial decree of capture or decree of forfeiture, or the evidence of administrative forfeiture described in § 67.131(b). Citizenship evidence for all owners in the chain of title is required only if a coastwise or Great Lakes endorsement is sought.

(b) In the case of a vessel which is the subject of special legislation or a wrecked vessel, the owner must provide:

(1) For initial documentation of a vessel or return to documentation of a vessel deleted from documentation, a copy of the last Federal, State, or foreign registration, the evidence of removal from foreign registry required by § 67.55, if applicable, and evidence establishing the chain of title from the last registration. If a coastwise or Great Lakes endorsement is sought, the owner must present citizenship evidence for all owners in the chain of title from the grant of special legislation or the determination by the Commandant that the vessel is eligible for documentation under 46 U.S.C. app. 14.

(2) For a documented vessel, the title evidence reflecting all ownership changes subsequent to the last documented owner of record. In addition, unless the vessel qualifies for exemption under § 67.11(b) or the vessel is the subject of Maritime Administration approval for unrestricted transfer, citizenship evidence must be presented for all owners in that chain of title.

Subpart E—Acceptable Title Evidence; Waiver

§ 67.70 Original owner.

The builder's certification described in § 67.99 serves as evidence of the original owner's title to a vessel.

§ 67.73 Transfers prior to documentation.

A transfer of vessel title prior to documentation may be evidenced by:

(a) Completion of the transfer information on the reverse of the builder's certification on form CG–1261;

(b) Completion of the transfer information on the reverse of the Manufacturer's Certificate of Origin; or

(c) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part.

§ 67.75 Transfers by sale or donation subsequent to documentation.

(a) Except as otherwise provided in this subpart, transfers of vessel title must be evidenced by a bill of sale which meets the criteria for filing and recording set forth in subpart P of this part. Except as otherwise provided in subpart O of this part, each bill of sale must be accompanied by a declaration of citizenship from the new owner, executed on the appropriate Maritime Administration form described in § 67.211.

(b) The bill of sale form used may be form CG–1340 or form CG–1356, as appropriate.

(c) An applicant for documentation who cannot produce required title evidence in the form of an instrument eligible for filing and recording in accordance with subpart P of this part may apply for a waiver of that requirement in accordance with the provisions of § 67.89.

§ 67.77 Passage of title by court action.

(a) When title to a vessel has passed by court action, that passage must be established by copies of the relevant court order(s) certified by an official of the court.

(b) When authority to transfer a vessel has been conferred by court action, that authority must be established by copies of the relevant court order(s) certified by an official of the court.

§ 67.79 Passage of title without court action following death of owner.

(a) When title to a vessel formerly owned in whole or in part by an individual now deceased passes without court action, an applicant for documentation must present:

(1) When title passes to a surviving joint tenant or tenants or to a tenant by the entirety, a copy of the death certificate, certified by an appropriate State official; or

(2) Where the laws of cognizant jurisdiction permit passage of title without court action, evidence of compliance with applicable State law.

(b) Passage of title subsequent to devolutions such as those described in paragraph (a) of this section, must be established in accordance with the remainder of this subpart.

§ 67.81 Passage of title in conjunction with a corporate merger or similar transaction.

When the title to a vessel has passed as the result of a corporate merger or similar transaction wherein the assets of one corporation have been transferred to another, the passage of title must be established by:

(a) Materials, such as a resolution of the board of directors or shareholders of the corporation which held title to the vessel before the transaction, which either unequivocally transfers all of the

assets of the corporation or which specifically identifies the vessel as being among the assets transferred; and

(b) In jurisdictions where there is an official recognition of corporate mergers and similar transactions, a copy of such official recognition certified by the cognizant official of that jurisdiction.

§ 67.83 Passage of title by extra-judicial repossession and sale.

When title to a documented vessel has passed by reason of an extra-judicial repossession and sale, such passage must be established by:

(a) A copy of the instrument under which foreclosure was made;

(b) An affidavit from the foreclosing party setting forth the reasons for foreclosure, the chronology of foreclosure, the statute(s) under which foreclosure was made, and the steps taken to comply with the relevant instrument and statute(s);

(c) Evidence of substantial compliance with the relevant instrument and statute(s); and

(d) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part from the foreclosing party as agent for the defaulting owner(s).

§ 67.85 Change in general partners of partnership.

When the general partners of a partnership owning a documented vessel change by addition, deletion, or substitution without dissolution of the partnership, the change must be established by a written statement from a surviving general partner detailing the nature of the change.

§ 67.87 Change of legal name of owner.

(a) When the name of a corporation which owns a documented vessel changes, the corporation must present certification from the appropriate governmental agency evidencing registration of the name change.

(b) When the name of an individual who owns a documented vessel changes for any reason, competent and persuasive evidence establishing the change must be provided.

§ 67.89 Waiver of production of a bill of sale eligible for filing and recording.

(a) When the evidence of title passage required by this subpart is a bill of sale which meets the criteria for filing and recording set forth in subpart P of this part, and the applicant is unable to produce a bill of sale meeting those criteria, the applicant may request that the documentation officer at the port where application for documentation, exchange, or redocumentation is made waive that requirement.

(b) No waiver of the requirement to produce a bill of sale eligible for filing and recording may be granted unless the applicant provides:

(1) A written statement detailing the reasons why an instrument meeting the filing and recording criteria of this part cannot be obtained; and

(2) Competent and persuasive evidence of the passage of title.

§ 67.91 Passage of title pursuant to operation of State law.

When title to a documented vessel has passed by operation of State law for reasons other than those specified in this subpart, such passage must be established by:

(a) A copy of the statute permitting transfer of title to the vessel and setting forth procedures to be followed in disposing of the vessel;

(b) An affidavit from the party acting against the vessel, setting forth the basis for selling the vessel, and the steps taken to comply with the requirements of the statute under which title passes;

(c) Evidence of substantial compliance with the relevant statute(s); and

(d) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part from the acting party as agent for the owner(s) of record.

Note: State law authorizing a marina to dispose of abandoned vessels is an example of passage of title by operation of law contemplated by § 67.91.

Subpart F—Build Requirements for Vessel Documentation

§ 67.95 Requirement for determination.

Evidence that a vessel was built in the United States must be on file for any vessel for which a coastwise, Great Lakes, or fishery endorsement is sought, unless the vessel is otherwise qualified for those endorsements under subpart J of this part.

§ 67.97 United States built.

To be considered built in the United States a vessel must meet both of the following criteria:

(a) All major components of its hull and superstructure are fabricated in the United States; and

(b) The vessel is assembled entirely in the United States.

§ 67.99 Evidence of build.

(a) Evidence of the facts of build may be either a completed original form CG-1261, or other original document containing the same information, executed by a person having personal knowledge of the facts of build because that person:

(1) Constructed the vessel;

(2) Supervised the actual construction of the vessel; or

(3) Is an officer or employee of the company which built the vessel and has examined the records of the company concerning the facts of build of the vessel.

(b) A vessel owner applying for documentation must file a separate certificate from each builder involved in the construction of the vessel.

(c) A Manufacturer's Certificate of Origin is not evidence of the facts of build.

§ 67.101 Waiver of evidence of build.

(a) A vessel owner applying for documentation unable to obtain the evidence of build required by § 67.99 may apply for a waiver of that requirement to the documentation officer at the port where application for documentation is made.

(b) No waiver of the requirement in § 67.99 to produce evidence of build may be granted unless the applicant provides:

(1) A written request for the waiver, explaining why the evidence required by § 67.99 cannot be furnished; and

(2) Competent and persuasive evidence of the facts of build.

Subpart G—Tonnage and Dimension Requirements for Vessel Documentation

§ 67.105 Requirement for determination.

The gross and net tonnage and dimensions of a vessel must be determined:

(a) For initial documentation;

(b) Whenever there is a change in the gross or net tonnage or dimensions of a documented vessel; or

(c) When the gross or net tonnage of a vessel returning to documentation has changed since the vessel was last documented.

§ 67.107 System of measurement; evidence.

(a) The gross and net tonnage and dimensions of a vessel for purposes of this part are determined in accordance with 46 CFR part 69.

(b) A Certificate of Measurement issued by an authorized official is the only acceptable evidence of the gross and net tonnage of a vessel measured in accordance with subpart B, C, or D of 46 CFR part 69. A Certificate of Measurement is not issued for vessels measured under subpart E of 46 CFR part 69 since the gross and net tonnage are determined as part of the documentation process.

Subpart H—Assignments and Designations Required for Vessel Documentation

§67.111 Assignment of official number.

(a) The owner of a vessel must submit an Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located, to apply for an official number for the vessel when:

(1) Application is made for initial documentation of the vessel; or

(2) An existing vessel has been severed, with two or more vessels resulting. In this case, the official number of the original vessel is retired and the owner of each resulting vessel must apply for designation of a new official number.

(b) Upon receipt of form CG–1258, the documentation officer at the port where application for documentation is made will have an official number assigned to the vessel and furnish it to the vessel owner.

§67.113 Managing owner designation; address; requirement to report change of address.

The owner of each vessel must designate a managing owner on the Application for Documentation, Exchange or Replacement of Document; or Redocumentation (CG–1258).

(a) The managing owner of a vessel owned by one person is the owner of the vessel.

(b) The managing owner of a vessel owned by more than one person must be one of the owners. The person designated as managing owner must have an address in the United States except where no owner of the vessel has an address in the United States.

(c) The managing owner of a vessel owned in a trust arrangement must be one of the trustees.

(d) The address of the managing owner must be as follows:

(1) For an individual, any residence of the managing owner.

(2) For a partnership, its address:

(i) In the State under whose laws it is organized; or

(ii) Of its principal place of business.

(3) For a corporation, its address:

(i) For service of process within the State of incorporation; or

(ii) Of its principal place of business.

(e) Whenever the address of the managing owner changes, the managing owner shall notify the documentation officer at the port of record of the vessel within 10 days.

§67.115 Assignment of port of record.

(a) A port of record is assigned to a vessel:

(1) Upon initial documentation;

(2) When there is a change in the ownership of the vessel, in whole or in part; or

(3) When the owner requests to change the port of record of the vessel in accordance with paragraph (c) of this section. The owner shall not be required to change the port of record of the vessel solely because of a change of address of the managing owner.

(b) The same port of record will be assigned to all vessels owned by the same owner(s).

(c) The port of record of the vessel is:

(1) Boston, MA, if the address of the managing owner is located within the Boston Marine Inspection Zone, the Portland, ME Marine Inspection Zone, or the Providence Marine Inspection Zone in the First Coast Guard District;

(2) New York, NY, if the address of the managing owner is located within the New York Marine Inspection Zone in the First Coast Guard District;

(3) St. Louis, MO, if the address of the managing owner is located in the Second Coast Guard District;

(4) Philadelphia, PA, if the address of the managing owner is located within the Philadelphia Marine Inspection Zone in the Fifth Coast Guard District;

(5) Norfolk, VA, if the address of the managing owner is within the Hampton Roads Marine Inspection Zone, the Baltimore Marine Inspection Zone, or the Wilmington Marine Inspection Zone in the Fifth Coast Guard District;

(6) Miami, FL, if the address of the managing owner is located in the Seventh Coast Guard District;

(7) New Orleans, LA, if the address of the managing owner is located in a State other than Texas or New Mexico within the Eighth Coast Guard District;

(8) Houston, TX, if the address of the managing owner is located in Texas or New Mexico within the Eighth Coast Guard District;

(9) Cleveland, OH, if the address of the managing owner is located in the Ninth Coast Guard District;

(10) Los Angeles, CA, if the address of the managing owner is located in the Los Angeles-Long Beach Marine Inspection Zone or the San Diego Marine Inspection Zone within the Eleventh Coast Guard District;

(11) San Francisco, CA, if the address of the managing owner is located within the San Francisco Marine Inspection Zone within the Eleventh Coast Guard District;

(12) Portland, OR, if the address of the managing owner is located in Oregon or Idaho within the Thirteenth Coast Guard District;

(13) Seattle, WA, if the address of the managing owner is located within the Fourteenth Coast Guard District, or in Washington or Montana within the Thirteenth Coast Guard District; or

(14) Juneau, AK, if the address of the managing owner is located in the Seventeenth Coast Guard District.

Note: Geographical boundaries for the Coast Guard Marine Inspection Zones and Coast Guard Districts referenced in this section can be found in 33 CFR part 3.

(d) For a vessel owned by a State, territory, or possession, any political subdivision of the same, or any agency of a State, territory, possession, or political subdivision, the port of record is the port of documentation serving the address in which the capital of the State, territory, or possession is located.

(e) For a vessel owned by the United States Government the port of record is Norfolk, VA.

(f) If the managing owner does not have an address within the United States the port of record may be any port of documentation.

§67.117 Vessel name designation.

(a) The owner of a vessel must designate a name for the vessel on the Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) submitted to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located:

(1) Upon application for initial documentation of the vessel; or

(2) When the owner elects to change the name of the vessel.

(b) The name designated:

(1) Must be composed of letters of the Latin alphabet or Arabic or Roman numerals;

(2) May not be identical, actually or phonetically, to any word or words used to solicit assistance at sea; and

(3) May not contain nor be phonetically identical to obscene, indecent, or profane language, or to racial or ethnic epithets.

(c) The name of a documented vessel may not be changed without the prior approval of the documentation officer at the port where application for name change is made.

(d) Until such time as the owner of a vessel elects to change the name of a vessel, the provisions of paragraph (b) of this section do not apply to vessels validly documented before January 1, 1994.

§ 67.119 Hailing port designation.

(a) Upon application for any Certificate of Documentation in accordance with subpart K of this part, the owner of a vessel must designate a hailing port to be marked upon the vessel.

(b) The hailing port must be a place in the United States included in the U.S. Department of Commerce's Federal Information Processing Standards Publication 55DC.

(c) The hailing port must include the State, territory, or possession in which it is located.

(d) The OCMI for the port at which application for documentation is made has final authority to settle disputes as to the propriety of the hailing port designated.

(e) Until such time as a port of record assignment is required in accordance with § 67.115, or the owner elects to designate a new hailing port, the provisions of this section do not apply to vessels which were issued a Certificate of Documentation before July 1, 1982.

Subpart I—Marking Requirements for Vessel Documentation

§ 67.120 General requirement.

No Certificate of Documentation issued under this part will be deemed valid for operation of the vessel until the vessel is marked in accordance with this subpart.

§ 67.121 Official number marking requirement.

The official number of the vessel, preceded by the abbreviation "NO." must be marked in block-type Arabic numerals not less than three inches in height on some clearly visible interior structural part of the hull. The number must be permanently affixed to the vessel so that alteration, removal, or replacement would be obvious. If the official number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some scarring of or damage to the surrounding hull area.

§ 67.123 Name and hailing port marking requirements.

(a) For vessels other than those covered in paragraphs (b) and (c) of this section, the name of the vessel must be marked on some clearly visible exterior part of the port and starboard bow and the stern of the vessel. The hailing port of the vessel must be marked on some clearly visible exterior part of the stern of the vessel.

(b) *Vessels with square bow.* For vessels having a square bow, the name of the vessel must be marked on some clearly visible exterior part of the bow in a manner to avoid obliteration. The name and hailing port must be marked on some clearly visible exterior part of the stern.

(c) *Recreational vessels.* For vessels documented exclusively for recreation, the name and hailing port must be marked together on some clearly visible exterior part of the hull.

(d) The markings required by paragraphs (a), (b), and (c) of this section, which may be made by the use of any means and materials which result in durable markings, must be made in clearly legible letters of the Latin alphabet or Arabic or Roman numerals not less than four inches in height.

§ 67.125 Disputes.

The OCMI for the zone in which the vessel is principally operated has final authority in any disputes concerning the permanence, durability, legibility, or placement of a vessel's markings.

Subpart J—Application for Special Qualifications for Vessel Documentation

§ 67.130 Submission of applications.

(a) All applications made under this subpart and all subsequent filings to effect documentation, except as provided in § 67.133(b), must be submitted to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located.

(b) Once a transaction under this subpart has been initiated at a documentation office, all subsequent filings for that transaction must be made at that same documentation office.

§ 67.131 Forfeited vessels.

In addition to any other submissions required by this part, the owner of a forfeited vessel applying for a Certificate of Documentation for that vessel must submit the following:

(a) Where the vessel has been adjudged forfeit, or the proceeds of the sale of the vessel have been adjudged forfeit to the Federal Government of the United States by a Federal District Court, a copy of the court order certified by an official of the court;

(b) Where the vessel was forfeited to the Federal Government of the United States under an administrative forfeiture action, an affidavit from an officer of the agency which performed the forfeiture who has personal knowledge of the particulars of the vessel's forfeiture or a Declaration of Forfeiture issued by the agency which performed the forfeiture.

§ 67.132 Special legislation.

(a) Vessels not otherwise entitled to be operated in the coastwise trade, Great Lakes trade, or in the fisheries may obtain these privileges as a result of special legislation by the Congress of the United States.

(b) In addition to any other submissions required by this part, the owner of a vessel which is entitled to engage in a specified trade because it is the subject of special legislation must include a copy of the legislation to establish the entitlement.

§ 67.133 Wrecked vessels.

(a) A vessel owner requesting a determination that the vessel is wrecked within the meaning of 46 U.S.C. app. 14 must submit the following to the Commandant:

(1) Competent and persuasive evidence of the occasion and location of the casualty. Coast Guard situation or investigation reports are acceptable as casualty evidence. Other competent and persuasive evidence may be accepted in the discretion of the Commandant.

(2) A writing setting forth the physical location of the vessel, containing a guarantee that the requesting party assumes full responsibility for all costs, liabilities, and other expenses that arise in conjunction with the services performed by the board of appraisers, and stating that at the time of documentation the vessel will be owned by a citizen of the United States.

(b) In addition to other submissions required by this part, a vessel owner applying for a Certificate of Documentation for a vessel accorded privileges by the Wrecked Vessel Statute (46 U.S.C. app. 14) must include a copy of the Commandant's determination that the vessel qualifies for documentation under the statute.

Note: The determination of the appraised salved value must be made by a board of three appraisers appointed by the Commandant. The board must determine that the repairs made upon the vessel are equal to three times the appraised salvage value. The determination of the appraised salvage value will include consideration of the fact that if the vessel is found in compliance with the Wrecked Vessel Statute it will attain coastwise and fishery privileges. The cost of the board must be borne by the applicant.

§ 67.134 Captured vessels.

In addition to other submissions required by this part, a vessel owner applying for a Certificate of Documentation for a vessel which qualifies as a captured vessel must include a copy of the court order stating that the vessel was lawfully captured and condemned as a prize.

Subpart K—Application for Documentation, Exchange or Replacement of Certificate of Documentation, or Return to Documentation; Mortgagee Consent; Validation

§ 67.141 Application procedure; all cases.

The owner of a vessel applying for an initial Certificate of Documentation, exchange or replacement of a Certificate of Documentation, or return of a vessel to documentation after deletion from documentation must:

(a) Submit the following to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located:

(1) Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258);

(2) Title evidence, if applicable;

(3) Mortgagee consent on form CG–4593, if applicable; and

(4) If the application is for replacement of a mutilated document or exchange of documentation, the outstanding Certificate of Documentation.

(b) Upon receipt of the Certificate of Documentation and prior to operation of the vessel, ensure that the vessel is marked in accordance with the requirements set forth in subpart I of this part.

Note: Issuance of endorsements on a Certificate of Documentation may be denied if the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard.

§ 67.143 Restriction on withdrawal of application.

A vessel owner making application pursuant to § 67.141 may not withdraw that application without mortgagee consent if a mortgage has been filed against the vessel. Consent of the mortgagee is evidenced by filing a properly completed original Consent of Mortgagee to Exchange of Certificate of Documentation or Withdrawal of Application for Documentation (form CG–4593).

§ 67.145 Restrictions on exchange; requirement and procedure for mortgagee consent.

(a) A Certificate of Documentation issued to a vessel which is the subject of an outstanding mortgage recorded pursuant to subpart Q of this part or predecessor regulations, may not be exchanged for a cause arising under §§ 67.167(a) or 67.167(b) (1) through (6) without the consent of the mortgagee, except as provided in paragraph (b) of this section.

(b) The provisions of paragraph (a) of this section do not apply to a vessel which is subject only to a mortgage filed or recorded before January 1, 1989, which had not attained preferred status as of that date.

(c) When the owner of a vessel applies for a Certificate of Documentation and the consent of the mortgagee is required under paragraph (a) of this section, the applicant must submit a properly completed original Application, Consent, and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation (form CG–4593) signed by or on behalf of the mortgagee to the documentation officer at the port where application for exchange is made.

(d) If an application for exchange is made to a documentation officer at a port of documentation other than the port of record, form CG–4593 must be accompanied by a certified copy of the vessel's Abstract of Title (form CG–1332) issued at the vessel's port of record not more than 15 days prior to the date on which the application is made.

§ 67.147 Exchange of Certificate of Documentation; special procedure for change of port of record.

When the owner of a documented vessel elects or is required to change the port of record of a vessel the owner must:

(a) Comply with the requirements of § 67.141;

(b) Comply with the provisions of § 67.145, if applicable; and

(c) In accordance with § 67.301, request that the documentation officer at the vessel's present port of record forward the vessel's General Index or Abstract of Title (form CG–1332) to the new port of record assigned for the vessel in accordance with § 67.115.

Note: In the case of a simultaneous change of owner and port of record, these procedures must be followed by the new owner of the vessel.

§ 67.149 Exchange of Certificate of Documentation; vessel at sea.

(a) When exchange of a Certificate of Documentation issued to a vessel is required pursuant to subpart L of this part and the vessel is at sea, the owner may affect the exchange while the vessel is still at sea by:

(1) Complying with the requirements of § 67.141; and

(2) complying with the requirements of § 67.145, if applicable.

Note: A Certificate of Documentation is issued upon compliance with the applicable requirements, however, the requirement to mark the vessel with its new name or hailing port in accordance with subpart I of this part, if applicable, is waived until the vessel reaches its first port of call, wherever that may be.

(b) The documentation officer prepares a new Certificate of Documentation and forwards it for delivery to the vessel's next port of call. If the port of call is in the United States, the Certificate is forwarded to the nearest U.S. Coast Guard Marine Safety Office. If the port of call is in a foreign country, the Certificate is forwarded to the nearest American Consulate. The new Certificate is delivered only upon surrender of the old Certificate, which is then forwarded to the port of record of the vessel.

§ 67.151 Replacement of Certificate of Documentation; special procedure for wrongfully withheld document.

When the owner of a documented vessel alleges that the Certificate of Documentation for that vessel is being wrongfully withheld by any person the owner must:

(a) Submit to the Commandant, via the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or at the documentation office nearest where the vessel is located, a statement setting forth the reasons for the allegation; and

(b) Upon the Commandant's finding that the Certificate is being wrongfully withheld, apply for replacement of the Certificate in accordance with the requirements of § 67.141.

Subpart L—Validity of Certificates of Documentation; Renewal of Endorsement; Requirement for Exchange, Replacement, Deletion, Cancellation

§ 67.161 Validity of Certificate of Documentation.

(a) Notwithstanding any other provision of this subpart, except as provided in paragraph (b) of this section, a Certificate of Documentation but no trade endorsement thereon, issued to a vessel which is the subject of an outstanding mortgage filed or recorded in accordance with subpart Q of this part or any predecessor regulations, remains valid for purposes of:

(1) 46 U.S.C. chapter 125;

(2) 46 U.S.C. chapter 313 for an instrument filed or recorded before the date of invalidation, and an assignment or a notice of claim of lien filed after that date;

(3) Sections 9 and 37(b) of the Shipping Act, 1916 (46 U.S.C. app. 808, 835(b)); and

(4) Section 902 of the Merchant Marine Act, 1936 (46 U.S.C. app. 1242).

(b) The provisions of paragraph (a) of this section do not apply to a vessel which is subject only to a mortgage filed or recorded before January 1, 1989, which had not attained preferred status as of that date.

§ 67.163 Renewal of endorsement.

(a) *Requirement for renewal of endorsement.* Endorsements on Certificates of Documentation are valid for one year. Prior to the expiration of that year, the owner of a vessel which is not exempt from the requirement for documentation under paragraph (c) of § 67.9 must apply for renewal of the endorsement(s) by complying with paragraph (b) of this section. The owner of a vessel exempt from the requirement for documentation under paragraph (c) of § 67.9 must either:

(1) Apply for renewal of the endorsement by complying with paragraph (b) of this section; or

(2) Place the Certificate of Documentation on deposit in accordance with § 67.165.

(b) *Renewal application.* The owner of a vessel must apply for renewal of each endorsement by executing an original Notice of Expiration (CG–1280) or Final Notice After Expiration (CG–1280–B) certifying that the information contained in the Certificate of Documentation and any endorsement(s) thereon remains accurate, and that the Certificate has not been lost, mutilated, or wrongfully withheld. The completed CG–1280 or CG–1280–B must be forwarded to the documentation officer at any port of documentation.

(c) *Requirement to affix decal.* The owner must affix the renewal decal to the Certificate of Documentation. The presence of a current renewal decal is evidence that the endorsement has been renewed.

Note: Renewal of endorsements on a Certificate of Documentation may be denied if the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard.

§ 67.165 Deposit of Certificate of Documentation.

(a) *Option for deposit in lieu of renewal of endorsement.* In lieu of renewing the endorsement(s) in accordance with § 67.163, the owner of a vessel which is exempt from the requirement for documentation under paragraph § 67.9(c) may deposit the vessel's outstanding Certificate of Documentation with the documentation officer at the vessel's port of record assigned in accordance with § 67.115.

(b) *Reporting requirement.* The owner of a vessel whose Certificate is on deposit in accordance with paragraph (a) of this section must make a written report to the documentation officer at the vessel's port of record when:

(1) Exchange of the Certificate is required upon the occurrence of one or more of the events described in § 67.167 (b), (c), or (d); or

(2) The vessel is subject to deletion from the roll of actively documented vessels upon the occurrence of one or more of the events described in § 67.171(a)(1) through (8).

(c) *Validity of document on deposit.* A Certificate of Documentation placed on deposit in accordance with paragraph (a) of this section is valid for the purposes of:

(1) 46 U.S.C. chapter 125;

(2) 46 U.S.C. chapter 313;

(3) Sections 9 and 37(b) of the Shipping Act, 1916 (46 U.S.C. app. 808, 835(b)); and

(4) Section 902 of the Merchant Marine Act, 1936 (46 U.S.C. app. 1242).

§ 67.167 Requirement for exchange of Certificate of Documentation.

(a) When application for exchange of the Certificate of Documentation is required upon the occurrence of one or more of the events described in paragraphs (b), (c), or (d) of this section, or the owner of the vessel chooses to apply for exchange of the Certificate pursuant to paragraph (e) of this section, the owner must send or deliver the Certificate to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located, and apply for an exchange of the Certificate in accordance with subpart K of this part.

(b) A Certificate of Documentation together with any endorsement(s) thereon becomes invalid immediately, except as provided in § 67.161, when:

(1) The ownership of the vessel changes in whole or in part;

(2) The general partners of a partnership change by addition, deletion, or substitution;

(3) The port of record of the vessel changes;

(4) The State of incorporation of any corporate owner of the vessel changes;

(5) The name of the vessel changes;

(6) The hailing port of the vessel changes; or

(7) The vessel is placed under the command of a person who is not a citizen of the United States.

(c) A Certificate of Documentation together with any endorsement(s) thereon becomes invalid immediately, except as provided in § 67.161 and in paragraph (f) of this section, if the vessel is not a sea, or upon the vessel's next arrival in port anywhere in the world if the vessel is at sea, when:

(1) The gross or net tonnages or dimensions of the vessel change;

(2) Any beneficiary with an enforceable interest in a trust arrangement owning a vessel changes by addition or substitution;

(3) The trustee of a trust arrangement owning a vessel changes by addition, substitution, or deletion;

(4) A tenant by the entirety owning any part of the vessel dies;

(5) The restrictions imposed on the vessel change by addition or substitution;

(6) The legal name of any owner of the vessel changes;

(7) A self-propelled vessel becomes non-self-propelled or a non-self-propelled vessel becomes self-propelled;

(8) The endorsements for the vessel change by addition, deletion, or substitution; or

(9) A substantive or clerical error made by the issuing documentation officer is discovered.

(d) Although a Certificate of Documentation and any endorsements thereon remain valid, the owner of a documented vessel must apply for exchange of the Certificate upon an election to designate a new managing owner of the vessel in accordance with § 67.113.

(e) Although a Certificate of Documentation and any endorsement(s) thereon remain valid, the owner may apply for exchange of the Certificate if:

(1) The restrictions imposed on the vessel change by deletion; or

(2) The vessel attains a special entitlement under subpart J of this part.

(f) A Certificate of Documentation which becomes invalid pursuant to paragraph (c) of this section remains valid for the purposes of filing a new mortgage or amendment, assignment, assumption, or subordination agreement for 30 days after the date it would otherwise have become invalid.

§ 67.169 Requirement for replacement of Certificate of Documentation.

(a) The owner of a documented vessel must make application in accordance with subpart K of this part for replacement of a Certificate of Documentation which is:

(1) Lost;

(2) Mutilated; or

(3) Wrongfully withheld from the vessel owner.

(b) When application for replacement of a Certificate of Documentation is required because the Certificate has been mutilated, the existing Certificate must be physically given up to the documentation officer to whom application is made.

§ 67.171 Deletion; requirement and procedure.

(a) A Certificate of Documentation together with any endorsement(s) thereon is invalid, except as provided in § 67.161, and the vessel is subject to deletion from the roll of actively documented vessels when:

(1) The vessel is placed under foreign flag;

(2) The vessel is sold or transferred in whole or in part to a person who is not a citizen of the United States within the meaning of subpart C of this part;

(3) Any owner of the vessel ceases to be a citizen of the United States within the meaning of subpart C of this part;

(4) The owner no longer elects to document the vessel;

(5) The vessel no longer measures at least five net tons;

(6) The vessel ceases to be capable of transportation by water;

(7) The owner fails to exchange the Certificate as required by § 67.167;

(8) The owner fails to maintain the markings required by subpart I of this part;

(9) The endorsements on the Certificate are revoked because the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard; or

(10) The owner fails to:

(i) Renew the endorsement(s) as required by § 67.163; or

(ii) Comply with the provisions of § 67.165.

(b) Where a cause for deletion arises for any reason under paragraphs (a) (1) through (6) of this section, the owner must send or deliver the original Certificate of Documentation to any documentation officer together with a statement setting forth the reason(s) deletion is required.

(c) When a Certificate of Documentation is required to be deleted because the vessel has been placed under foreign flag or has been sold or transferred in whole or in part to a non-citizen of the United States, the owner of that vessel must comply with the requirements of paragraph (b) of this section, and file:

(1) Evidence of the sale or transfer, if any; and

(2) Evidence that the Maritime Administration has consented to the sale or transfer, except for vessels identified in § 67.11(b) and vessels for which the Maritime Administration has granted approval for unrestricted sale or transfer pursuant to regulations set forth in 46 CFR part 221.

(d) A certificate evidencing deletion from U.S. documentation will be issued upon request of the vessel owner upon compliance with the applicable requirements of this subpart.

§ 67.173 Cancellation; requirement and procedure.

A Certificate of Documentation issued to a vessel together with any endorsement(s) thereon is invalid, except as provided in § 67.167, and subject to cancellation upon a determination by the Commandant or a documentation officer that the issuance of the Certificate was improper for any reason. When a Certificate is subject to cancellation, the owner of the vessel upon being notified of such requirement must send or deliver the Certificate to a documentation officer at any port of documentation. The vessel owner may submit an application for exchange in accordance with subpart K of this part to correct the error giving rise to cancellation. If the vessel for which the Certificate was cancelled was previously documented, it remains documented under the previous Certificate of Documentation, unless deleted under the provisions of § 67.171.

Note: Certificates of Documentation which have been canceled are retained at the last port of record of the vessel.

Subpart M—Miscellaneous Applications

§ 67.175 Application for new vessel determination.

(a) When a vessel has been constructed entirely of new materials, no application for a new vessel determination need be made under this section. Application for initial documentation must be made in accordance with subpart K of this part.

(b) When parts of an existing vessel have been used in the construction of a vessel and the owner wants a determination that the resulting vessel is new in accordance with this part, the owner must file with the Commandant;

(1) A builder's certification, as described in § 67.99;

(2) A written statement describing the extent to which materials from the existing vessel were used in the construction and the extent to which those materials were torn down; and

(3) Accurate sketches or blueprints of the hull and superstructure which must identify, where practicable, components of the old vessel.

§ 67.177 Required application for rebuilt determination.

(a) A vessel is rebuilt when any considerable part of its hull or superstructure is built upon or substantially altered.

(b) The owner of the vessel which has not previously permanently lost coastwise, Great Lakes, or fisheries privileges must file with the Commandant the items listed in paragraph (c) of this section if:

(1) The vessel is altered outside the United States in a manner which gives rise to a reasonable belief that the vessel is rebuilt; or

(2) A major component of the hull or superstructure not built in the United States is added to the vessel.

(c) The required submissions must consist of:

(1) A written statement outlining the work performed and naming the place where the work was performed; and

(2) Accurate sketches or blueprints describing the work performed.

Subpart N—[Reserved]

Subpart O—Filing and Recording of Instruments—General Provisions

§ 67.200 Instruments eligible for filing and recording.

Only the following listed instruments are eligible for filing and recording:

(a) Bills of sale and instruments in the nature of bills of sale;

(b) Deeds of gift;

(c) Mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof;

(d) Preferred mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof;

(e) Interlender agreements affecting mortgages, preferred mortgages, and related instruments; and

(f) Notices of claim of lien, assignments, amendments, and satisfactions and releases thereof.

§ 67.203 Restrictions on filing and recording.

(a) No instrument will be accepted for filing unless the vessel to which it pertains is the subject of:

(1) A valid Certificate of Documentation; or

(2) An application for initial documentation, exchange of Certificate of Documentation, return to documentation, or for deletion from documentation, which is in substantial compliance with the applicable regulations, submitted at the port where the filing is made.

(b) An instrument identified as eligible for filing and recording under § 67.200 may not be filed and recorded if it bears a material alteration.

(c) An instrument identified as eligible for filing and recording under § 67.200 (a) or (b) may not be filed and recorded if any vendee or transferee under the instrument is not a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, (46 U.S.C.

app. 802) unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument.

(d) The restriction imposed by paragraph (c) of this section does not apply to a bill of sale or deed of gift conveying an interest in a vessel which was neither documented nor last documented pursuant to these regulations or any predecessor regulations thereto at the time the instrument was executed, nor to an instrument conveying an interest in a vessel identified in § 67.11(b).

(e) An instrument identified as eligible for filing and recording under § 67.200(c) may not be filed or recorded if the mortgagee or assignee is not a person qualifying as a citizen of the United States as defined in the Shipping Act, 1916, as amended, (46 U.S.C. app. Chapter 23) or a trustee as defined in 46 U.S.C. 31328, unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument. This restriction does not apply to an instrument conveying an interest in a vessel identified in § 67.11(b).

(f) An instrument identified as eligible for filing and recording under § 67.200(d) may not be filed or recorded if the mortgagee or assignee is not a person described in 46 U.S.C. 31322(a)(1)(D). This restriction does not apply to an instrument conveying an interest in a vessel identified in § 67.11(b).

§ 67.205 Requirement for vessel identification.

(a) Every instrument presented for filing and recording must contain sufficient information to clearly identify the vessel(s) to which the instrument relates.

(b) Instruments pertaining to vessels which have been documented must contain the vessel's name and official number, or other unique identifier.

(c) Vessels which have never been documented must be identified by one of the following:

(1) The vessel's Hull Identification Number assigned in accordance with 33 CFR 181.25; or

(2) Other descriptive information, which clearly describes the vessel. Such information may include length, breadth, depth, year of build, name of manufacturer, and any numbers which may have been assigned in accordance with 33 CFR part 173.

§ 67.207 Requirement for date and acknowledgment.

(a) Every instrument presented for filing and recording must:

(1) Bear the date of its execution; and

(2) Contain an acknowledgment.

(b) No officer or employee of the Coast Guard is authorized to take such acknowledgments unless the instrument is executed on behalf of the Federal Government of the United States.

§ 67.209 Required number of copies.

All instruments presented for filing and recording must be presented in duplicate; at least one copy must bear original signatures.

§ 67.211 Requirement for citizenship declaration.

(a) Instruments in the nature of a bill of sale or deed of gift, mortgages, and assignments of mortgages conveying an interest in a documented vessel are ineligible for filing and recording unless accompanied by a declaration of citizenship, except as provided in paragraph (c) and (d) of this section.

(b) Citizenship declarations must be executed on the form prescribed by the Maritime Administration in 46 CFR part 221. These forms are available from all Coast Guard documentation offices and from the Vessel Transfer and Disposal Officer (MAR-745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(c) The requirement for presentation of a citizenship declaration does not apply to a transaction conveying an interest in a vessel:

(1) Described in 46 CFR 221.11(b)(1)(i) through (iv);

(2) To a person making application for documentation; or

(3) To an entity of the Federal Government of the United States or of a State or political subdivision thereof, or a corporate entity which is an agency of any such government or political subdivision.

(d) The requirement for presentation of a citizenship declaration is waived when the instrument(s) presented for filing effects a transfer for which:

(1) The Maritime Administration has given general approval in 46 CFR part 221; or

(2) Written approval of the Maritime Administrator has been obtained in accordance with 46 CFR part 221.

(e) If the transfer of interest is one which requires written approval of the Maritime Administrator in accordance with rules in 46 CFR part 221, evidence of that approval must be presented for filing with the instrument effecting the transfer of interest.

Note: If the grantee(s) of an ownership interest in a vessel described in paragraphs (c)(1) or (d) of this section do(es) not make application for documentation, a declaration of citizenship may be required in order to ensure that the vessel so conveyed retains any coastwise or Great Lakes privileges to which it may be entitled.

§ 67.213 Place of filing and recording.

(a) Instruments submitted for filing and recording at the same time that the vessel owner applies for issuance of or a change to a Certificate of Documentation must be submitted to the documentation officer where the application is made; mortgages filed in conjunction with such applications may be filed at the same port at any time before the Certificate is issued or changed. All other instruments must be submitted for filing and recording at the port of record of the vessel.

(b) All instruments are recorded at the port of record of the vessel(s) affected by the instrument.

(c) Where the port of record of a vessel is being changed, recording is effected at the new port of record.

§ 67.215 Date and time of filing.

(a) An instrument is deemed filed at the actual date and time at which the instrument is received by the documentation officer at the port of documentation where submitted for filing, except as provided in paragraph (b) of this section. Any materials submitted to supplement an instrument after the instrument is filed are deemed part of the original filing and relate back to the date and time of that filing.

(b) If filing of an instrument is subject to termination in accordance with § 67.217(a) and a new instrument is filed as a substitute for the original instrument, the filing of the original instrument will be terminated in accordance with § 67.217(c) and the substitute instrument will be considered a new filing. The substitute instrument will be deemed filed at the actual time and date it is received by the documentation officer at the port of documentation where the original instrument was filed.

§ 67.217 Termination of filing and disposition of instruments.

(a) The filing of an instrument is subject to termination if:

(1) It is determined that the instrument cannot be recorded because the instrument itself is not in substantial compliance with the applicable regulations in this part;

(2) The filing was not made in compliance with the requirements of § 67.213;

(3) The Application for Initial Issue, Exchange, or replacement of Certificate of Documentation; or Redocumentation (form CG-1258) submitted with the instrument(s) was not made in

substantial compliance with the applicable regulations of this part;

(4) The owner of the vessel submits an Application, Consent and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation (form CG–4593), with mortgagee consent, if applicable; or

(5) Another instrument is filed evidencing satisfaction or release of the subject instrument and the subject instrument is one described in subpart Q of this part.

(b) Ninety days prior to terminating the filing pursuant to a reason listed in paragraphs (a) (1), (2), or (3) of this section, the documentation officer at the port where the filing was made will send written notice detailing the reasons the filing is subject to termination to the following person(s) and any agent known to be acting on behalf of the same:

(1) The applicant for documentation, if a bill of sale, instrument in the nature of a bill of sale, or a deed of gift;

(2) The mortgagee or assignee, if a mortgage or assignment or amendment thereof;

(3) The claimant, if a notice of claim of lien; or

(4) The lender first named in an interlender agreement affecting a mortgage, preferred mortgage, or related instrument.

(c) If the reason(s) which subject the filing to termination remain uncorrected for a period of 90 days after the notice described in paragraph (b) of this section is sent, or upon receipt of the request for withdrawal described in paragraph (a)(4) of this section, or satisfaction or release as described in paragraph (a)(5) of this section, the instrument will be returned to either:

(1) The applicant for documentation, if a bill of sale, instrument in the nature of a bill of sale, or a deed of gift;

(2) The mortgagee or assignee, if a mortgage or assignment or amendment thereof;

(3) The claimant, if a notice of claim of lien;

(4) The lender first named in an interlender agreement affecting a mortgage, preferred mortgage, or related instrument; or

(5) An agent for any appropriate party, provided that the agent has filed with the Coast Guard a writing bearing the original signature of the appropriate party(ies) clearly identifying the instrument(s) being returned and stating that the instrument(s) may be returned to the agent.

Subpart P—Filing and Recording of Instruments—Bills of Sale and Related Instruments

§ 67.220 Requirements.

An instrument in the nature of a bill of sale or a deed of gift must:

(a) Meet all of the requirements of subpart O of this part;

(b) Be signed by or on behalf of all the seller(s) or donor(s); and

(c) Recite the following:

(1) The name(s) and address(es) of the seller(s) or donor(s) and the interest in the vessel held by the seller(s) or donor(s); and

(2) The name(s) and address(es) of the buyer(s) or donee(s) and the interest in the vessel held by each buyer or donee.

§ 67.223 Filing limitation.

An instrument presented for filing and recording under this subpart may be filed only in conjunction with an application for initial documentation or return to documentation of the vessel or with an application for a change to or deletion of the vessel's outstanding Certificate of Documentation.

Subpart Q—Filing and Recording of Instruments—Mortgages, Preferred Mortgages, and Related Instruments

§ 67.231 General requirements; optional application for filing and recording.

(a) A mortgage or related instrument presented for filing and recording must meet all of the requirements of subpart O of this part in addition to the pertinent section(s) of this subpart.

(b) All instruments supplemental to mortgages must recite information which clearly identifies the mortgage to which the supplemental instrument is applicable. Such information will normally consist of the book and page where that mortgage is recorded and the date and time of filing. If the submission of the supplemental instrument is contemporaneous with submission of the mortgage, the information should include the names of all parties to the mortgage, the date of the mortgage, and the amount of the mortgage.

(c) An Optional Application for Filing (CG–5542) may be attached to a mortgage or related instrument. If form CG–5542 is properly completed with all information required for indexing the instrument and the signature(s) specified thereon, the instrument to which it is attached will be filed and recorded with no further review.

§ 67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.

(a) A mortgage or assumption of mortgage which otherwise meets the requirements of this subpart is nonetheless not eligible for filing and recording if:

(1) The mortgagor or assuming party(ies) did not actually hold legal title to the interest in the vessel being mortgaged or covered by the assumption at the time of filing of the mortgage or assumption; or

(2) If the vessel(s) which the mortgage cover(s) is (are) not documented or not the subject of an application for documentation.

(b) Except as provided in paragraph (c) of this section, a mortgage submitted for filing and recording as a preferred mortgage or supplemental instrument thereto which otherwise meets the requirements of this subpart, is eligible for filing and recording only if it results in a mortgage interest being held by:

(1) A State;

(2) The United States Government;

(3) A federally insured depository institution which has not been disapproved by the Secretary;

(4) An individual who is a citizen of the United States;

(5) A person qualifying as a citizen of the United States as defined in 46 U.S.C. app. 802; or

(6) A person approved by the Secretary.

(c) The requirements of paragraph (b) of this section do not apply to the mortgagee of a vessel identified in § 67.11(b) or to any other vessel to which the Maritime Administration has given approval for unrestricted transfer pursuant to regulations in 46 CFR part 221.

Note: Disapproval of a federally insured depository institution as a preferred mortgagee under § 67.233(b)(3), or approval of a person as a preferred mortgagee under § 67.233(b)(6) is determined by the Maritime Administration pursuant to regulations in 46 CFR part 221.

§ 67.235 Requirements for mortgages.

(a) A mortgage presented for filing and recording must:

(1) Be signed by or on behalf of each mortgagor; and

(2) Recite the following:

(i) The name and address of each mortgagor and the interest in the vessel held by the mortgagor(s);

(ii) The name and address of each mortgagee and the interest in the vessel granted by the mortgage; and

(iii) The amount of the direct or contingent obligations that is or may become secured by the mortgage, excluding interest, expenses, and fees. The amount may be recited in one or more units of account as agreed to by the parties.

(b) A mortgage submitted for filing and recording as a preferred mortgage must cover the whole of a vessel.

(c) A mortgage which secures more than one vessel may, at the option of the parties, provide for separate discharge of such vessels.

§ 67.237 Requirements for assignments of mortgages.

An assignment of mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each assignor; and

(b) Recite the following:

(1) The name and address of each assignor and the interest in the mortgage held by the assignor(s); and

(2) The name and address of each assignee and the interest in the mortgage granted to the assignee(s).

§ 67.239 Requirements for assumptions of mortgages.

An assumption of mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each original mortgagor, each mortgagee, and each assuming party; and

(b) Recite the following:

(1) The name and address of each original mortgagor and the interest in the vessel mortgaged; and

(2) The name and address of each assuming party and the interest in the mortgage assumed.

§ 67.241 Requirements for amendments of or supplements to mortgages.

An amendment of or supplement to a mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each mortgagor and each mortgagee; and

(b) Recite the following:

(1) The name and address of each mortgagor and mortgagee; and

(2) The nature of the change effected by the instrument.

§ 67.243 Requirements for instruments subordinating mortgages.

An instrument subordinating a mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each mortgagee whose mortgage is being subordinated; and

(b) Recite the following:

(1) The name and address of each mortgagee whose mortgage is being subordinated; and

(2) The name and address of each party holding an interest in the instrument subordinating the mortgage.

§ 67.245 Requirements for interlender agreements.

An interlender agreement between multiple mortgagees must:

(a) Be signed by or on behalf of all mortgagees who are party to the interlender agreement; and

(b) Recite the names and addresses of all parties to the interlender agreement.

Subpart R—Filing and Recording of Instruments—Notices of Claim of Lien and Supplemental Instruments

§ 67.250 General requirements.

(a) A notice of claim of lien or supplemental instrument thereto submitted for filing and recording must meet all of the requirements of subpart O of this part.

(b) An instrument assigning or amending a notice of claim of lien must recite information which clearly identifies the notice of claim of lien being assigned or amended. Such information will normally consist of the book and page where the notice of claim is recorded and the date and time of filing. If the submission of the assignment or amendment is contemporaneous with submission of the notice of claim of lien, the information should include the name of each original claimant, the date of the notice of claim, and the amount of the claim and other information to adequately identify the notice of claim of lien being assigned or amended.

§ 67.253 Requirements for notices of claim of lien.

A notice of claim of lien must:

(a) Be signed by or on behalf of each claimant; and

(b) Recite the following:

(1) The name and address of each claimant;

(2) The nature of the lien claimed;

(3) The date on which the lien was established; and

(4) The amount of the lien claimed.

§ 67.255 Restrictions on filing and recording.

A notice of claim of lien is not entitled to filing and recording unless the vessel against which the lien is claimed is covered by a preferred mortgage filed or recorded in accordance with subpart Q of this part or predecessor regulations thereto and which is outstanding at the time the lien is filed and recorded.

§ 67.257 Requirements for assignments of notices of claim of lien.

An assignment of a notice of claim of lien must:

(a) Be signed by or on behalf of each original claimant or last assignee of record; and

(b) Recite the following:

(1) The name and address of each claimant; and

(2) The name and address of each assignee and the interest in the claim being assigned.

§ 67.259 Requirements for amendments to notice of claim of lien.

An amendment to notice of claim of lien presented for filing and recording must:

(a) Be signed by or on behalf of each original claimant or last assignee of record; and

(b) Recite the nature of the change being effected by the instrument.

Subpart S—Removal of Encumbrances

§ 67.261 General requirements.

The filing of an instrument against a vessel in accordance with subparts Q or R of this part may be terminated and, if recorded, removed from the record of that vessel by the filing of:

(a) A court order, affidavit, or Declaration of Forfeiture described in § 67.263; or

(b) A satisfaction or release instrument described in § 67.265 which meets the requirements of this part for filing and recording.

§ 67.263 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.

The encumbrances described in subparts Q and R of this part are removed from the record upon filing of:

(a) A copy of the order from a court of competent jurisdiction certified by an official of the court declaring title to the vessel to be free and clear, or declaring the encumbrance to be of no effect, or ordering the removal of the encumbrance from the record;

(b) A copy of the order from a Federal District Court in an *in rem* action certified by an official of the court requiring the free and clear sale of the vessel at a Marshal's sale and, where issued under local judicial procedures, a copy of the order confirming such sale certified by an official of the court;

(c) A copy of an order from a Federal District Court certified by an official of the court declaring the vessel itself or the proceeds of its sale to be forfeited to the Federal Government of the United States for a breach of its laws; or

(d) Where the vessel was forfeited under an administrative forfeiture action to the Federal Government of the United States, either an affidavit from an officer of the agency which performed the forfeiture, who has personal knowledge of the particulars of the vessel's forfeiture, or a Declaration of Forfeiture issued by the agency which performed the forfeiture.

§ 67.265 Requirements for instruments evidencing satisfaction or release.

An instrument satisfying or releasing a mortgage, a notice of claim of lien, or a preferred mortgage presented for filing and recording must:

(a) Meet all the requirements of subpart O of this part;

(b) Be signed by or on behalf of:

(1) Each mortgagee if a mortgage; or

(2) Each claimant if a notice of claim of lien; and

(c) Recite the following:

(1) The name of each mortgagor, if any, and the name of each mortgagee or claimant;

(2) The amount of the mortgage or claim of lien; and

(3) Information which clearly identifies the mortgage or claim of lien being satisfied or released. Such information will normally consist of the book and page where that mortgage or claim of lien is recorded. If the recording information cannot be provided because the satisfaction or release is being submitted prior to recording of the mortgage or claim of lien, the instrument must recite other information sufficient to clearly identify the encumbrance being satisfied or released.

Subpart T—General Index, Abstracts of Title, and Certificates of Ownership

§ 67.301 Forwarding of General Index.

Upon application by a vessel owner for change of port of record, the documentation officer at the existing port of record of the vessel will forward the General Index or Abstract of Title (form CG–1332) of the vessel to the new port of record.

§ 67.303 Issuance of Abstract of Title.

Any person may request the documentation officer at the vessel's port of record to issue a General Index or Abstract of Title (form CG–1332) for a vessel.

§ 67.305 Issuance of Certificate of Ownership.

Any person may request the documentation officer at the vessel's port of record to issue a Certificate of Ownership (form CG–1330) for a vessel.

Subpart U—Special Provisions

§ 67.311 Alteration of Certificate of Documentation.

Except for affixing a new address label in accordance with the direction of a documentation officer or a renewal decal issued in accordance with § 67.163, no person other than a documentation officer shall intentionally alter a Certificate of Documentation.

§ 67.313 Requirement to have Certificate of Documentation on board.

(a) The person in command of a documented vessel must have on board that vessel the original Certificate of Documentation currently in effect for that vessel.

(b) The requirement of paragraph (a) of this section does not apply:

(1) To non-self-propelled vessels not engaged in foreign trade;

(2) When the Certificate of Documentation has been submitted to a documentation officer for exchange in accordance with § 67.167 (d) or (e); or

(3) When the vessel is in storage or out of the water.

§ 67.315 Requirement to produce Certificate of Documentation.

(a) The person in command of a documented vessel must produce the original Certificate of Documentation currently in effect for that vessel upon the demand of any person acting in an official public capacity.

(b) The requirement of paragraph (a) of this section does not apply:

(1) To non-self-propelled vessels not engaged in foreign trade;

(2) When the Certificate of Documentation has been submitted to a documentation officer for exchange in accordance with § 67.167 (d) or (e); or

(3) When the vessel is in storage or out of the water.

§ 67.317 Requirement to renew endorsements on the Certificate of Documentation.

(a) Except as provided in paragraph (b) of this section, the owner of a documented vessel must annually renew each endorsement upon the current Certificate of Documentation for that vessel in accordance with § 67.163.

(b) The requirement of paragraph (a) of this section does not apply to Certificates of Documentation placed on deposit in accordance with § 67.165.

§ 67.319 Requirement to report change in vessel status and surrender Certificate of Documentation.

The owner of a documented vessel must immediately report any change in vessel status which causes any Certificate of Documentation to become invalid under subpart L of this part and which must be exchanged, replaced, deleted, or canceled, to a documentation officer at any port of documentation. The outstanding Certificate must be surrendered in accordance with the requirements of subparts K and L of this part.

§ 67.321 Requirement to report change of address of managing owner.

The owner of a documented vessel shall immediately report any change in the address of the managing owner.

§ 67.323 Operation without documentation.

No vessel which is required by § 67.7 to be documented may engage in unlimited coastwise trade, the Great Lakes trade, or the fisheries without being documented in accordance with the requirements of this part.

§ 67.325 Violation of endorsement.

A vessel may not be employed in any trade other than a trade endorsed upon the Certificate of Documentation issued for that vessel. A vessel documented exclusively for recreation may not be used for purposes other than pleasure.

§ 67.327 Operation under Certificate of Documentation with invalid endorsement.

Except for vessels identified in § 67.9, no vessel may be operated under a Certificate of Documentation with endorsements which have become invalid under subpart L of this part.

§ 67.329 Unauthorized name change.

The owner of a documented vessel may not change or allow the change of the name of that vessel without exchanging the vessel's Certificate of Documentation in accordance with subpart K of this part. The new name of the vessel must be marked on the vessel upon receipt of the new Certificate of Documentation.

§ 67.331 Improper markings.

The owner of a documented vessel shall not permit the operation of that vessel unless it is marked in accordance with subpart I of this part.

Subpart V—[Reserved]

Subpart W—[Reserved]

Subpart X—[Reserved]

Subpart Y—[Reserved]

§ 67.500 Applicability.

(a) This subpart specifics documentation services provided for vessels for which fees are applicable. Fees are contained in Table 67.550.

(b) There is no fee for the annual renewal of endorsements upon the Certificate of Documentation, unless renewal is late or renewal is at a port other than the port of record.

(c) There is no fee for replacement of a Certificate of Documentation due to a wrongful withholding.

(d) The Commandant (G–MVI) may waive collection of fees applicable

under this subpart for a service provided to a Federal agency when the fee would be directly paid with federally-appropriated funds by a Federal agency acting in its own behalf.

(e) Application fees under this subpart are not refundable.

§ 67.501 Application for Certificate of Documentation.

An application fee is charged for an initial Certificate of Documentation in accordance with subpart K of this part. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for the Certificate. The application fee does not include the fee under § 67.527 for filing and recording any required bills of sale or instruments in the nature of a bill of sale, or the application fee under § 67.519 for waivers in accordance with §§ 67.89 or 67.101.

§ 67.503 Application for exchange or replacement of a Certificate of Documentation.

(a) An application fee is charged for exchange or the simultaneous exchange and replacement of a Certificate of Documentation in accordance with subpart K of this part. Only a single application fee will be assessed when two or more reasons for exchange occur simultaneously. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for the exchange or replacement.

(b) The application fee for exchange or replacement does not apply to:

(1) Endorsement of a change in the owner's address;

(2) Exchange or replacement solely by reason of clerical error on the part of a documentation officer; or

(3) Deletion of a vessel from documentation.

§ 67.505 Application for return of vessel to documentation.

An application fee is charged for a return of a vessel to documentation after deletion in accordance with subpart K of this part. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for return to documentation.

§ 67.507 Application for replacement of lost or mutilated Certificate of Documentation.

An application fee is charged for replacement of a lost or mutilated Certificate of Documentation in accordance with subpart K of this part.

§ 67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.

An application fee is charged for approval of exchange of a Certificate of Documentation requiring mortgagee consent in accordance with subpart K of this part.

§ 67.511 Application for trade endorsement(s).

(a) *Coastwise or Great Lakes endorsement.* An application fee is charged for a coastwise or a Great Lakes endorsement, or both, in accordance with subpart B of this part.

(b) *Coastwise Bowaters endorsement.* An application fee is charged for a coastwise Bowaters endorsement in accordance with 46 CFR part 68.

(c) *Fishery endorsement.* An application fee is charged for a fishery endorsement in accordance with subpart B of this part.

(d) *Registry or recreational endorsement.* There is no application fee for a registry or recreational endorsement, or both.

(e) When multiple trade endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged.

§ 67.513 Application for evidence of deletion from documentation.

An application fee is charged for evidence of deletion from documentation in accordance with subpart L of this part.

§ 67.515 Application for renewal at port other than port of record.

An application fee is charged for renewal in accordance with subpart L of this part at a port other than the vessel's port of record.

§ 67.517 Application for late renewal.

An application fee is charged for a late renewal in accordance with subpart L of this part.

§ 67.519 Application for waivers.

An application fee is charged for waiver of original build evidence in accordance with subpart F of this part, or for waiver of bill of sale eligible for filing and recording in accordance with subpart E of this part. In cases where more than one waiver is required, each wavier application is subject to this fee.

§ 67.521 Application for new vessel determination.

An application fee is charged for a new vessel determination in accordance with subpart M of this part.

§ 67.523 Application for wrecked vessel determination.

An application fee is charged for a determination of whether a vessel is entitled to coastwise, Great Lakes, and fisheries privileges as a result of having been wrecked in waters adjacent to the United States and repaired in accordance with subpart J of this part. This fee is in addition to the cost associated with the vessel appraisals.

§ 67.525 Application for determination of rebuild.

An application fee is charged for a determination of whether a vessel has been rebuilt in accordance with subpart M of this part. This fee will be assessed for each request for either a preliminary or final determination submitted in writing by the vessel owner or the vessel owner's representative.

§ 67.527 Application for filing and recording bills of sale and instruments in the nature of a bill of sale.

An application fee is charged for filing and recording bills of sale and instruments in the nature of a bill of sale in accordance with subpart P of this part.

§ 67.529 Application for filing and recording mortgages and related instruments.

An application fee is charged for filing and recording mortgages and related instruments in accordance with subpart Q of this part.

§ 67.531 Application for filing and recording notices of claim of lien.

An application fee is charged for filing and recording notices of claim of lien in accordance with subpart R of this part.

§ 67.533 Application for Certificate of Compliance.

An application fee is charged for a Certificate of Compliance to be issued in accordance with regulations set forth in 46 CFR part 68.

§ 67.535 Issuance of Abstract of Title.

An issuance fee is charged for a General Index or Abstract of Title in accordance with subpart T of this part.

§ 67.537 Issuance of Certificate of Ownership.

An issuance fee is charged for a Certificate of Ownership in accordance with subpart T of this part. A supplemental issuance fee is charged for a Certificate of Ownership attachment for each additional vessel with the same ownership and encumbrance information.

§ 67.539 Copies of instruments and documents.

The fee charged for furnishing a copy of any instrument is calculated in accordance with 49 CFR 7.95.

§ 67.550 Fee table.

The fees charged under subpart Y are as set forth in Table 67.550.

TABLE 67.550.—FEES

Activity	Reference	Fee
Applications:		
Initial certificate of documentation	Subpart K	$133.00
Exchange of certificate of documentation	do	84.00
Return of vessel to documentation	do	84.00
Replacement of lost or mutilated certificate of documentation	do	50.00
Approval of exchange of certificate of documentation requiring mortgagee consent	do	24.00
Trade endorsement(s):		
Coastwise endorsement	Subpart B	29.00
Coastwise Bowaters endorsement	46 CFR part 68	29.00
Great Lakes endorsement	Subpart B	29.00
Fishery endorsement	do	12.00
Registry endorsement	do	none
Recreational endorsement	do	none
Note: When multiple trade endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged, resulting in a maximum endorsement fee of $29.00		
Evidence of deletion from documentation	Subpart L	15.00
Renewal at port other than port of record	Subpart L	15.00
Late renewal fee	do	5.00
Waivers:		
Original build evidence	Subpart F	15.00
Bill of sale eligible for filing and recording	Subpart E	15.00
Miscellaneous applications:		
Wrecked vessel determination	Subpart J	555.00
New vessel determination	Subpart M	166.00
Rebuild determination—preliminary or final	do	450.00
Filing and recording:		
Bills of sale and instruments in nature of bills of sale	Subpart P	[1]8.00
Mortgages and related instruments	Subpart Q	[1]4.00
Notice of claim of lien and related instruments	Subpart R	[1]8.00
Certificate of compliance:		
Certificate of compliance	46 CFR part 68	55.00
Miscellaneous:		
Abstract of Title	Subpart T	25.00
Certificate of ownership	do	125.00
Attachment for each additional vessel with same ownership and encumbrance data	do	10.00
Copy of instrument or document	[2]	[2]

[1] Per page.
[2] Fees will be calculated in accordance with 49 CFR 7.95.

APPENDIX A TO PART 67.—PORTS OF DOCUMENTATION

Regional port of documentation	Location	CG district served
Boston, MA	USCG Marine Safety Office, Boston, MA	First District: Boston, Portland, ME, Providence Marine Inspection Zones.
New York, NY	USCG Marine Inspection Office, New York, NY	First District: New York Marine Inspection Zone.
St. Louis, MO	USCG Marine Safety Office, St. Louis, MO	Second District: All.
Norfolk, VA	USCG Marine Safety Office, Hampton Roads, Norfolk, VA.	Fifth District: Hampton Roads, Baltimore, Wilmington Marine Inspection Zones.
Philadelphia, PA	USCG Marine Safety Office, Philadelphia, PA	Fifth District: Philadelphia, Marine Inspection Zone.
Miami, FL	USCG Marine Safety Office, Miami, FL	Seventh District: All.
New Orleans, LA	USCG Marine Safety Office, New Orleans, LA	Eighth District: All except Texas and New Mexico.
Houston, TX	USCG Marine Safety Office, Houston, TX	Eighth District: Texas and Mexico only.
Cleveland, OH	Commander, Ninth Coast Guard District (m)	Ninth District: All.
Los Angeles, CA	USCG Marine Safety Office, Long Beach, CA	Eleventh District: Los Angeles-Long Beach Marine Inspection Zone.
San Francisco, CA	USCG Marine Safety Office, San Francisco, CA	Eleventh District: San Francisco Marine Inspection Zone.
Portland, OR	USCG Marine Safety Office, Portland, OR	Thirteenth District: Oregon or Idaho.
Seattle, WA	USCG Marine Safety Office, Seattle, WA	Thirteenth District: Montana or Washington, Fourteenth District: All.
Juneau, AK	USCG Marine Safety Office, Juneau, AK	Seventeenth District: All.

Dated: November 4, 1993.

J. W. Kime,

Admiral, U.S. Coast Guard Commandant.

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federal register

Monday
November 15, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

Coastal Barrier Improvement Act; Completion of Boundary Modification Process; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act; Completion of Boundary Modification Process

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, through the Fish and Wildlife Service (Service), has completed consideration of State and local government requests for minor and technical modifications to the boundaries of Coastal Barrier Resource System (System) units. It has also complied with the requests of State and local governments, and qualified organizations, to add "otherwise protected areas" under their jurisdiction to the System. This is consistent with the provisions of Section 4(e) of the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101–591) and with the guidelines published in the **Federal Register** on June 6, 1991 (56 FR 26304–26312). The Service provided copies of correspondence requesting modifications and its responses to the Committee on Merchant Marine and Fisheries in the House of Representatives and to the Committee on the Environment and Public Works in the Senate.

The Service's responses to requests for modifications were also provided to the appropriate official in each State, county, or equivalent jurisdiction in which a System unit recommended for modification is located. The Service submitted its preliminary responses to requested boundary modifications on April 24, 1992. The appropriate officials were to respond no later than May 30, 1992.

In addition, this notice provides information on the modification of boundaries of two areas in North Carolina and one in Virginia, as required by section 303 of Public Law 102–440, October 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Kelsey, U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Department of the Interior, Washington, DC 20240, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4(e)(1)(B) of the Coastal Barrier Improvement Act of 1990 (CBIA) requires the Department of the Interior to revise maps of the Coastal Barrier Resources System (System) to depict accepted minor and technical boundary modifications and election of "otherwise protected areas" to the System. This process was to be completed by November 16, 1992, with publication of those changes in the **Federal Register**. As required, the Fish and Wildlife Service has provided written justification for denial of requested minor and technical modifications to the appropriate officials requesting modifications. Section 303 of Public Law 102–440 requires the Department of the Interior to revise the maps of VA–60P, NC–01P and NC–05P.

Copies of the revised maps have been filed with the Committee on Merchant Marine and Fisheries, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Environment and Public Works of the Senate. Copies of these same maps have been distributed to the Chief Executive Officer (or representative) of (a) each State and county (or equivalent jurisdiction) in which a revised map of a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved and (c) each appropriate Federal agency. Copies are also available for inspection through the U.S. Fish and Wildlife Service of the Department of the Interior and appropriate Regional Offices and Field Offices (see addresses in appendix A). Interested organizations and individuals may purchase System maps (including revised maps which are indicated in **bold type**) from the U.S. Geological Survey (see appendix B).

The prohibition on Federal assistance for new development activities, including Federal flood insurance, for new areas added to the System becomes effective on the date of publication of this notice. The boundary revisions to VA–60, NC–01 and NC–05P as required by Public Law 102–440 became effective on October 23, 1992.

Coastal Barrier Resources System Revised Maps

The Service has made the following modifications to units of the System and transferred "otherwise protected areas" to the System as requested.

MASSACHUSETTS

D01 Little Compton Ponds. This unit straddles the Massachusetts/Rhode Island boundary. Massachusetts has requested that the part of the unit in Massachusetts be renumbered as C35 and renamed Richmond/Cockeast Ponds. There is no boundary modification to this unit.

RHODE ISLAND

RI–02P Sapowet Point. This "otherwise protected area" is added to RI–02.

D02BP Prudence Island Complex. The Providence Point and Gull Point segments of this "otherwise protected area" are added to D02B.

RI–06P Rumstick Point. This "otherwise protected area" is added to D02B.

RI–12P East Matunick Beach. Part of this "otherwise protected area" is transferred to the System as RI–12; the balance will remain "otherwise protected".

D05P East Beach. Part of this "otherwise protected area" is transferred to D05; the balance will remain "otherwise protected".

D08/D08P Napatree. D08 overlaps the Connecticut/Rhode Island border. The Rhode Island portion of D08 was formerly included on the Connecticut map called D08/D08P Napatree. The Rhode Island portion of this unit has been made into a separate map called D08/D08P Napatree to distinguish it from the Connecticut portion. The Connecticut portion has been made into a separate map and redesignated as CT–00 Barn Island. The portions of D08 and D08P that were depicted on the map called RI–13P, D07, D08, & D08P Misquamicut Beach, Maschaug Ponds, and Napatree have been transferred to the Rhode Island map of Napatree. There is no boundary modification to this unit.

D09P Block Island. Part of this "otherwise protected area" is transferred to D09; the balance will remain "otherwise protected".

CONNECTICUT

D08P Napatree. This "otherwise protected area" is added to the Connecticut portion of unit D08, which has been redesignated as CT–00 and renamed Barn Island. A separate map has been made for the Rhode Island portion of D08 and is called D08/D08P Napatree.

CT–02P Bluff Point. This "otherwise protected area" is added to the System as CT–02, with the exception of the area owned by the Connecticut Department of Transportation, which will remain an "otherwise protected area".

E02 Goshen Cove. The small area between the two segments of the unit is added to clarify the boundary.

CT–09 Harbor View. The northwest boundary is modified to clearly

depict the break between development and non-development.

E05P Hammonasset Point. The state-owned "otherwise protected area" is added to E05. The area in private ownership will remain designated as E05P, an "otherwise protected area".

CT–10P Hammonasset Beach. This "otherwise protected area" is added to the System as CT–10 and redesignated as Tom's Creek.

E07P Milford Point. All of the state-owned "otherwise protected area" is added to E07. The area in private ownership will remain designated as E07P, an "otherwise protected area".

NEW YORK

NY–10P Lloyd Point. This "otherwise protected area" is added to the System as NY–10.

NY–12P Centerport Harbor. This "otherwise protected area" is added to the System as NY–12.

NY–13P Hobart Beach. This "otherwise protected area" is added to the System as NY–13.

NY–14P Crab Meadow. This "otherwise protected area" is added to the System as NY–14.

NY–15P Sunken Meadow. This "otherwise protected area" is added to the System as NY–15.

NY–16P Stony Brook Harbor. This "otherwise protected area" is added to the System as NY–16.

NY–17P Cedar Beach. That part of the "otherwise protected area", plus additional areas owned by the Village of Port Jefferson on the west and northwest sides of the unit, are added to the System as NY–17; the balance will remain an "otherwise protected area".

NY–18P Wading River. This "otherwise protected area" is added to the System as NY–18.

NY–19P Baiting Hollow. This "otherwise protected area" is added to the System as NY–19.

NY–25P Orient Beach. This "otherwise protected area" is added to the System as NY–25.

NY–34P East Creek. This "otherwise protected area" is added to the System as NY–34.

NY–35P Indian Island. This "otherwise protected area" is added to the System as NY–35.

NY–45P Shell Beach. This "otherwise protected area" is added to the System as NY–45.

NY–51P Northwest Harbor. That part of this "otherwise protected area" owned by the Town is added to the System as NY–51. The privately owned tract will remain in the "otherwise protected" category.

NY–53P Big Reed Pond. This "otherwise protected area" is added to the System as NY–53.

NY–54P Oyster Pond. This "otherwise protected area" is added to the System as NY–54.

NY–55P Montauk Point. This "otherwise protected area" is added to the System as NY–55.

NY–59P Fire Island. Those parts of this "otherwise protected area" under the jurisdiction of Nassau County and the Towns of Babylon and Hempstead are added to the System as NY–59. The remaining areas will remain in the "otherwise protected area" category.

F08AP Sammys Beach. This "otherwise protected area" is added to F08A.

F08BP Acabonack Harbor. This "otherwise protected area" is added to F08B.

F10P Napeague. This "otherwise protected area" is added to F10.

F13P That part of F13P under State jurisdiction is added to F13. The Town owned lands will remain in the "otherwise protected" category.

NY–72 North Pond. The south boundary is modified to clearly delineate the break between development and non-development.

NY–73 Deer Creek Marsh. The Town of Richland owned lands adjacent to this unit are added to the unit.

NY–74 Grindstone Creek. The State and Town of Richland owned lands adjacent to this unit are added to the unit.

NY–75 Butterfly Swamp. The northeast boundary is modified to clearly delineate the break between development and non-development.

NY–77 Snake Swamp. The Town of Richland owned lands adjacent to this unit are added to the unit.

NY–87 Big Sister Creek. Part of Bennett Beach owned by Erie County is added to the unit.

DELAWARE

DE–06 Silver Lake. The north boundary is modified to clearly delineate the break between development and non-development.

VIRGINIA

VA–60P Long Creek. The southern segment of this unit is modified by section 303 of Pub. L. 102–440. That part of the area remaining is designated VA–60.

NORTH CAROLINA

L01P Currituck Banks. The state-owned Currituck Banks National Estuarine Reserve is added to L01.

NC–01P Pine Island Bay. Section 303 of Pub. L. 102–440 modifies this area to only include lands owned by the Audubon Society. The unit is redesignated as NC–01.

NC–05P Roosevelt Natural Area. Section 303 of Pub. L. 102–440 modifies this area to only include lands owned by the State of North Carolina.

SOUTH CAROLINA

SC–01 Long Pond. Land owned by a qualified organization is added to this unit.

GEORGIA

N03 Little St. Simons Island. The south boundary of this unit is modified to correct a typographical error. All of Pelican Spit is in the unit.

FLORIDA

FL–03P Guana River. The boundary of this unit as shown at the southeast corner on map 1 was covered by the legend. The legend is repositioned to display the boundary. There is no boundary modification to this unit.

FL–35/FL–35P North Key Largo. A number of boundary modifications have been made to clarify boundaries between developed and non-developed areas and to correct mapping errors.

FL–37 Rodriquez Key. The north boundary is modified to include associated aquatic habitat that clearly depicts the break with the upland.

FL–39 Tavernier Key. The east boundary is modified to include associated aquatic habitat that clearly depicts the break with the upland.

FL–47P Key Deer/White Heron. A cartographical error depicted a small subdivision in the Doctor's Arm area of Big Pine Key as being a part of the National Wildlife Refuge. This error is corrected.

FL–35, FL–50, FL–52, FL–55, FL–57 These units have been overlaid with "screen" to clarify the areas in the System. There are no additional boundary modifications.

P17/P17P Lovers Key Complex. The line around the "otherwise protected area" is changed from solid to dotted to depict the area's status. There is no boundary modification to this unit.

P31A Four Mile Village. The north boundary is modified to correct a mistake on the map. The boundary remains the right-of-way along the south edge of U.S. Highway 98, as originally depicted on the 1982 map.

FL–98P Santa Rosa Island. The parallel seaward boundary is

removed to conform with other units in the System. There is no boundary modification to this unit.

FL–103P Perdido Key. The parallel seaward boundary is removed to conform with other units in the System. There is no boundary modification to this unit.

LOUISIANA

LA–08P Rockefeller. Part of the boundary of the "otherwise protected area" was incorrectly drawn as a solid line. The boundary has been correctly drawn as a dotted line. There is no boundary modification to this unit.

S07 Point Au Fer. A technical correction was made at the mouth of Blue Hammock Bayou in Fourleague Bay to make the unit boundary on this map align with the corresponding unit boundary on the adjoining map depicting this unit.

TEXAS

T12P Boca Chica. That part of the South Bay "otherwise protected area" under state jurisdiction is added to T12; the balance remains an "otherwise protected area".

PUERTO RICO

PR–79 Penon Brusi. The boundary is modified to remove the sewage treatment plant that was inadvertently included in the unit.

PR–87 Vacia Talega. The boundary is modified to remove the sewage treatment plant that was inadvertently included in the unit.

VIRGIN ISLANDS

VI–16 Newfound Bay. The balance of the bay is added to the unit to clarify the break between associated aquatic habitat and upland.

OHIO

All units have been renumbered to be consistent with the east-west numbering system used in other Great Lakes States.

OH–01 Arcola Creek. This is a new unit added to the System by a qualified organization.

OH–02 Mentor. The State owned-lands adjacent to this unit are added. This unit was formerly numbered OH–06.

OH–03 North Pond. A new unit added by the State.

OH–04 Old Woman Creek. A new unit added by the State.

OH–05 Sheldons Marsh. A new unit added by the State.

OH–06 Bay Point. This unit was formerly numbered OH–05. There is no boundary modification to this unit.

OH–07 Middle Bass Island. This unit was formerly numbered OH–03. There is no boundary modification to this unit.

OH–08 North Bass Island. This unit was formerly numbered OH–04. There is no boundary modification to this unit.

OH–09 Fox Marsh. This unit was formerly numbered OH–04A. There is no boundary modification to this unit.

OH–10 Toussaint River. This unit was formerly numbered OH–01. There is no boundary modification to this unit.

MICHIGAN

MI–04 Sturgeon Bar. The east boundary is modified to correct a mapping error.

Dated: October 19, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

Appendix A

Location of Maps Available for Review

U.S. Fish and Wildlife Service	States of
Regional Offices	
Regional Director, Region 2, U.S. Fish & Wildlife Service, 500 Gold Ave. SW., Albuquerque, New Mexico 87103, (505) 766–2914.	Texas.
Regional Director, Region 3, U.S. Fish & Wildlife Service, BHW Federal Building, 1 Federal Dr., Ft. Snelling, Minnesota 55111–4056, (612) 725–3536.	Ohio, Michigan, Wisconsin, Minnesota.
Regional Director, Region 4, U.S. Fish & Service, 75 Spring St. SW, Atlanta, Georgia 30303, (404) 331–3580.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, Virgin Islands.
Regional Director, Region 5, U.S. Fish & Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8200.	Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish & Wildlife Service, 611 E. 6th St., Suite 407, Austin, Texas 78701, (512) 482–5436.	Texas.
Field Supervisor, U.S. Fish & Wildlife Service, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068, (614) 469–6923.	Ohio.
Field Supervisor, U.S. Fish & Wildlife Service, 1405 S. Harrison Rd., East Lansing, Michigan 48823–5202, (517) 337–6650.	Michigan.
Field Supervisor, U.S. Fish & Wildlife Service, 1015 Challenger Ct, Green Bay, Wisconsin, 54311–8331, (414) 433–3803.	Wisconsin.
Field Supervisor, U.S. Fish & Wildlife Service, 4101 E. 80th St. Bloomington, Minnesota 55425–1665 (612) 725–3548.	Minnesota.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 33726 Raleigh, North Carolina 27636–3726, (919) 856–4520.	North Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412, (803) 727–4707.	South Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, 801 Gloucester St., Brunswick, Georgia 31520, (912) 265–9336.	Georgia.
Field Supervisor, U.S. Fish & Wildlife Service, 6620 S. Point Dr. South, #310 Jacksonville, Florida 32216, (904) 232–2580.	Florida: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, Florida 32961, (407) 562–3909.	Florida: Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1612 June Ave., Panama City, Florida, 32405–3721, (904) 769–0552.	Florida: Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia Counties.

U.S. Fish and Wildlife Service	States of
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Drawer 1190, Daphne, Alabama 36526, (205) 690–2181.	Alabama, Mississippi.
Field Supervisor, U.S. Fish & Wildlife Service, 825 Kaliste Saloom, #102, Lafayette, Louisiana 70508, (318) 262–6630.	Louisiana.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico, 00622, (809) 851–7297.	Puerto Rico, Virgin Islands.
Field Supervisor, U.S. Fish & Wildlife Service, 22 Bridge St., Concord, New Hampshire, 03301–4901, (603) 225–1411.	Maine, Massachusetts.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 307, Charlestown, Rhode Island 02813 (401) 364–9124.	Rhode Island, Connecticut, & Long Island, New York.
Field Supervisor, U.S. Fish & Wildlife Service, 3817 Luker Rd., Cortland, New York 13045, (607) 753–9334.	New York (except Long Island; see above).
Field Supervisor, U.S. Fish & Wildlife Service, 927 N. Main St., Bldg. D–1, Pleasantville, New Jersey 08232, (609) 646–9310.	New Jersey.
Field Supervisor, U.S. Fish & Wildlife Service, 1825 Virginia St., Annapolis, Maryland 21401, (410) 269–5448.	Delaware, Maryland.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 480, White Marsh, Virginia 23183, (804) 693–6694.	Virginia.

Appendix B

Map Order Form

Coastal Barrier Resources System Maps

This form may be used to order copies of some or all of the 625 Coastal Barrier Resources System (CBRS) maps adopted by Congress pursuant to the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591). Maps that have been modified are indicated in **bold type.**

The price of *EACH* paper print is $4.00 and includes reproduction, shipping, and handling costs. All maps are cataloged by State, County (Town or Parish), Unit number and Unit name. The maps are approximately 24 inches by 28 inches in size. Please indicate the number of maps of each unit you want to order on the appropriate space. Copies of an entire State may be obtained by checking the space next to the State name.

Requests for copies must be prepaid by check or money order (no cash or stamps) and directed to: U.S. Geological Survey, ESIC–CBRS, P.O. Box 25286, Denver, CO 80225. Make checks payable to: Department of Interior—USGS.

FOR PROMPT ACCURATE SHIPMENT, PLEASE PROVIDE YOUR MAILING ADDRESS:

Name _____
Company _____
Street Address _____
_____
City _____
State _____
Zip Code _____

Please include a telephone number where you can be reached weekdays between 8:00 a.m. and 4:00 p.m. Mountain Standard Time. Area Code (_____) Number _____

_____Information regarding your order or the availability of Coastal Barrier Resources Maps may be obtained by calling (303) 236–7476.

Unit number(s)	Unit name(s)
_____STATE OF MAINE (22 maps)	
Washington County	
_____ME–02	Birch Point—1.
_____A01	Lubec Barriers—2.
_____A01A	Baileys Mistake—3.
_____ME–03P & ME–04.	Grassy Point & Seal Cove—4.
_____A03	Jasper—5.
_____A03B, ME–06 & ME–07P.	Starboard, Bare Cove & Roque Bluffs—6.
_____A03C & ME–08	Popplestone Beach/Roque Island and Flake Point—7.
_____ME–01	Carrying Place Cove—8.
_____ME–09P	Petit Manan/Bois Bubert—9.
_____ME–10/ME–10P	Over Point—10.
Hancock County	
_____ME–11	Pond Island—11.
_____ME–12	Thrumcap—12.
Waldo County	
_____A05A	Seven Hundred Acre Island—13.
Knox County	
_____ME–14	Nash Point—14.
Sagadahoc County	
_____ME–15P	Little River—15.
_____ME–16/ME–16P, ME–17 & A05B.	Hunnewell Beach, Small Point Beach & Head Beach—16.
Cumberland County	
_____ME–18	Stover Point—17.
_____A05C	Jenks Landing/ Waldo Point—18.
_____ME–19/ME–19P, A06, & A07.	Crescent Beach, Cape Elizabeth, & Scarborough Beach—19.
York County	
_____A08 & ME–20P	Crescent Surf & Ogunquit Beach—20.
_____ME–23	Phillips Cove—21.
_____A09	Seapoint—22.
_____STATE OF MASSACHUSETTS (44 maps)	
Town of Salisbury	
_____MA–01P	Salisbury Beach—1.
Town of Newbury	
_____MA–02P	Plum Island—2.
Town of Ipswich	
_____C00 & MA–03	Clark Pond & Castle Neck (MA–03 also in Essex)—3.
Town of Gloucester	
_____MA–03, C01 & C01B.	Castle Neck, Wingersheek and Brace Cove—4.
_____C01A	Good Harbor Beach/Milk Island (Milk Island in Rockport)—5.
Towns of Manchester & Beverly	
_____MA–04	West Beach—6.
Town of Swampscott	
_____MA–06	Phillips Beach—7.
Town of Quincy	
_____MA–08P, MA–09P & MA–10P.	Snake Island (in Winthrop), Wollaston Beach & Merrymount Park—8.
Town of Boston	
_____C01C & MA–11	West Head Beach & Peddocks/ Rainsford Islands (also in Hull)—9.

Unit number(s)	Unit name(s)
Town of Scituate	
MA-12 & C02	Cohasset Harbor (also in Cohasset) & North Scituate—10.
Town of Marshfield	
C03 & C03A	Rivermoor (also in Scituate) & Rexhame—11.
Town of Plymouth	
MA-13 & C04	Duxbury Beach (also in Marshfield & Duxbury) & Plymouth Bay—12.
C06	Center Hill Complex—13.
Town of Sandwich	
MA-14P & C08	Town Neck & Scorton—14.
Town of Barnstable	
C0/C09P	Sandy Neck (also in Sandwich & Yarmouth)—15.
C14 & C15/C15P	Squaw Island and Centerville—16.
C16 & C17	Dead Neck & Popponesset Spit (also in Mashpee)—17.
Town of Dennis	
C09, MA-15P, MA-16 & C10.	Sandy Neck (in Yarmouth), Chapin Beach, Nobscusset, and Freemans Pond (also in Brewster)—18.
Town of Eastham	
C11, C11A/C11AP & MA-20P.	Namskaket Spits (in Brewster & Orleans), Boat Meadow & Nauset Beach/Monomoy (also in Orleans)—19.
Town of Truro	
MA-17AP, MA-17P, MA-18 & MA-18P.	Lieutenant Island (in Wellfleet), Griffin/Great Islands Complex (in Wellfleet), Pamet Harbor & Ballston Beach—20.
Town of Provincetown	
MA-19P	Provincetown (also in Truro) (1 of 2 maps)—21A.
MA-19P	Provincetown (2 of 2 maps)—21B.
Town of Chatham	
MA-20P	Nauset Beach/Monomoy (1 of 2 maps)—22A.
MA-20P	Nauset Beach/Monomoy (2 of 2 maps)—22B.
C12	Chatham Roads—23.
Town of Yarmouth	
MA-23P & C13/C13P.	Davis Beach (also in Dennis) & Lewis Bay (also in Barnstable)—24.
Town of Falmouth	
C18/C18P & C18A.	Waquoit Bay (also in Mashpee) & Falmouth Ponds—25.
C19 & MA-24	Black Beach & Naushon Island Complex (in Gosnold)—26.
Town of Gosnold	
MA-24	Naushon Island Complex—27.
C31 & MA-25P	Elizabeth Islands & Penikese Island—28.
Town of Nantucket	
C20 & C21	Coatue & Sesachacha Pond—29.
C22 & C23	Cisco Beach & Esther Island Complex—30.
C24 & C25	Tuckernuck Island & Muskeget Island—31.
Town of Edgartown	
MA-26, MA-27P, C26, C27, MA-28P & C28.	Harthaven (in Oak Bluffs), Edgartown Beach (in Oak Bluffs), Eel Pond Beach, Cape Poge, Norton Point & South Beach—32.
Town of Chilmark	
C28	South Beach (also in West Tisbury)—33.
C29/C29P & MA-29P.	Squibnocket Complex (also in Gayhead) & Nomans Land—34.
Towns of Tisbury & West Tisbury	
C29A & C29B	James Pond (in West Tisbury) & Mink Meadows (in Tisbury)—35.
Town of Bourne	
MA-30, MA-31, MA-32 & MA-33.	Herring Brook, Squeteague Harbor (in Falmouth), Bassetts Island & Phinneys Harbor—36.
Towns of Wareham, Marion & Mattapoisett	
C19A & MA-35	Buzzards Bay Complex & Planting Island (in Marion)—37.
Town of Fairhaven	
C19A & C31A	Buzzards Bay Complex (in Mattapoisett) & West Sconticut Neck—38.
C31B	Harbor View—39.
Town of Dartmouth	
MA-36, C32, MA-37P & C33.	Round Hill, Mishaum Point, Demarest Lloyd Park & Little Beach—40.
Town of Westport	
C33, C34/C34P & C35.	Little Beach (in Dartmouth), Horseneck Beach & Richmond/Cockeast Ponds—41.
Town of Swansea	
C34A	Cedar Cove—42.
RHODE ISLAND (15 maps)	
Town of Little Compton	
D01 & D01P	Little Compton Ponds & Tunipus Pond—1.
RI-01, D02 & RI-02.	Brown Point, Fogland Marsh (also in Tiverton), & Sapowet Point (in Tiverton)—2.
Town of Portsmouth	
RI-02A & RI-03P.	McCurry Point & Sandy Point—3.
D02B	Prudence Island Complex—4.
Town of Barrington & Warwick	
D02B/D02BP	Prudence Island Complex—5.
Town of Warwick & North Kingstown	
D02B	Prudence Island Complex—6.
Town of Middletown & Newport	
RI-04P, RI-05P, RI-06 & RI-07.	Sachuest Point, Easton Beach, Almy Pond & Hazards Beach—7.
Town of North Kingstown	
D02C	West Narragansett Bay Complex—8.

Unit number(s)	Unit name(s)
Towns of Jamestown & Narragansett	
_____RI–08/RI–08P, RI–09, & RI–10/RI–10P.	Fox Hill Marsh, Bonnet Shores, & Narragansett Beach (also in South Kingstown)—9.
Town of Narragansett	
_____RI–11/RI–11P & RI–12/RI–12P.	Seaweed Beach & East Matunick Beach (also in South Kingstown)—10.
Town of South Kingstown	
_____D03/D03P & D04	Card Ponds & Green Hill Beach—11.
Towns of Charlestown & Westerly	
_____D05/D05P & D06	East Beach & Quonochontaug Beach—12.
Town of Westerly	
_____RI–13P & D07 ...	Misquamicut Beach & Maschaug Ponds—13.
_____D08/D08P	Napatree—14.
Town of New Shoreham	
_____D09/D09P	Block Island—15.
_____CONNECTICUT (12 maps).	
Town of Stonington	
_____CT–00	Barn Island—1.
_____E01, E01A & CT–01.	Wilcox Beach, Ram Island & Mason Island—2.
Towns of Groton & Waterford	
_____CT–00/CT–02P & E02.	Bluff Point & Goshen Cove—3.
Towns of Waterford & East Lyme	
_____E03, E03A & CT–03.	Jordan Cove, Niantic Bay, & Old Black Point—4.
Towns of Old Lyme & Old Saybrook	
_____CT–04, CT–05, CT–06, CT–07 & E03B.	Hatchett Point, Little Pond, Mile Creek, Griswold Point, & Lynde Point—5.
Towns of Old Saybrook & Westbrook	
_____CT–08 & E04	Cold Spring Brook & Menunketesuck Island—6.
Towns of Clinton & Madison	
_____CT–09, E05/E05P, CT–10.	Harbor View, Hammonasset Point, Tom's Creek, & Seaview Beach—7.
Town of Branford	
_____CT–12 & CT–13 .	Lindsey Cove & Kelsey Island—8.
Towns of New Haven & West Haven	
_____CT–14P & CT–15P.	Nathan Hale Park & Morse Park—9.
Town of Milford	
_____E07/E07P	Milford Point—10.
Town of Bridgeport	
_____CT–18P & E08A	Long Beach & Fayerweather Island—11.
Towns of Westport & Norwalk	
_____E09/E09P	Norwalk Islands—12.
_____NEW YORK (49 MAPS)	
Nassau County	
_____NY–03 & NY–04P.	Sands Point & Prospect Point—1.
_____NY–05P, NY–06/NY–06P, & NY–07P.	Dosoris Pond, The Creek Beach, & Centre Island—2.
_____NY–59	Fire Island (1 of 8 maps) (See Suffolk County for maps 3 through 8)—3A.
_____NY–59/NY–59P .	Fire Island (2 of 8 maps) (See Suffolk County for maps 3 through 8)—3B.
Suffolk County	
_____NY–09P & NY–10.	Lloyd Beach & Lloyd Point—4.
_____NY–11/NY–11P, NY–12, NY–13, & F02.	Lloyd Harbor, Centerport Harbor, Hobart Beach & Eatons Neck—5.
_____NY–14	Crab Meadow—6.
_____NY–15 & NY–16	Sunken Meadow & Stony Brook Harbor—7.
_____F04	Crane Neck—8.
_____F05 & NY–17/NY–17P.	Old Field Beach & Cedar Beach—9.
_____NY–18 & NY–19	Wading River & Baiting Hollow—10.
_____NY–20P & NY–21P.	Luce Landing & Mattituck Inlet—11.
_____NY–22P	Goldsmith Inlet—12.
_____NY–23P	Truman Beach—13.
_____NY–24 & NY–25	Plum Island & Orient Beach—14.
_____NY–26, NY–27, NY–28, NY–29P, NY–30 & NY–31/NY–31P.	Pipes Cove, Conkling Point, Southold Bay, Cedar Beach Point, Hog Neck Bay & Little Creek—15.
_____NY–32 & NY–33	Downs Creek & Robins Island—16.
_____NY–34, NY–35, NY–36, NY–37, & NY–38.	East Creek, Indian Island, Flanders Bay, Red Creek Pond & Squire Pond—17.
_____NY–39 & NY–40/NY–40P.	Cow Neck & North Sea Harbor—18.
_____NY–41/NY–41P, NY–42, NY–43/NY–43P, NY–44, NY–45, NY–46, NY–47, F06, NY–48, NY–49 & NY–50.	Clam Island, Mill Creek, Short Beach, Gleason Point, Shell Beach, Crab Creek, Hay Beach Point, Shelter Island Barriers, Mashomack Point, Smith Cove & Fresh Pond—19.
_____NY–51/NY–51P, F08A, & NY–52.	Northwest Harbor, Sammys Beach, & Hog Creek—20.
_____F08B & F09	Acabonack Harbor & Gardiners Island Barriers—21.
_____F01	Fisher Island Barriers—22.
_____NY–53, NY–54 & NY–55.	Big Reed Pond, Oyster Pond, & Montauk Point—23.
_____F10	Napeague—24.
_____NY–56/NY–56P & NY–57.	Amagansett & Georgica/Wainscott Ponds—25.
_____NY–58 & F11	Sagaponack Pond & Mecox—26.
_____F12 & F13/F13P	Southampton Beach & Tiana Beach—27.
_____NY–59P	Fire Island (3 of 8 maps) (See Nassau County for Maps 1 & 2)—28A.
_____NY–59P	Fire Island (4 of 8 maps) (See Nassau County for maps 1 & 2)—28B.
_____NY–59P	Fire Island (5 of 8 maps) (See Nassau County for maps 1 & 2)—28C.

Unit number(s)	Unit name(s)
_____NY–59P	Fire Island (6 of 8 maps) (See Nassau County for maps 1 & 2)—28D.
_____NY–59/NY–59P .	Fire Island (7 of 8 maps) (See Nassau County for maps 1 & 2)—28E.
_____NY–59/NY–59P .	Fire Island (8 of 8 maps) (See Nassau County for maps 1 & 2)—28F.
Queens County	
_____NY–60P	Jamaica Bay (1 of 2 maps)—29A.
_____NY–60P	Jamica Bay (2 of 2 maps)—29B.
Jefferson County	
_____NY–61, NY–62, NY–63, NY–64 & NY–65.	Wilson Bay, Grenadier Island, Fox Island, The Isthmus & Point Peninsula—30.
_____NY–66 & NY–67	Hounsfield & Dutch John Bay—31.
_____NY–68 & NY–69	Sherwin Bay & Association Island—32.
Oswego County	
_____NY–72	North Pond—33.
_____NY–73 & NY–74	Deer Creek Marsh & Grindstone Creek—34.
_____NY–75	Butterfly Swamp—35.
_____NY–76	Walker—36.
_____NY–77	Snake Swamp—37.
Cayuga & Wayne Counties	
_____NY–78 & NY–79	Juniper Pond & Blind Sodus Bay (NY–79 in Wayne County)—38
Wayne County	
_____NY–82	Port Bay—39.
_____NY–84	Maxwell Bay—40.
Monroe County	
_____NY–86	Bogus Point—41.
Erie County	
_____NY–87	Big Sister Creek—42.
_____NEW JERSEY (16 maps)	
Middlesex & Monmouth Counties	
_____NJ–02, NJ–03P & NJ–04.	Seidler Beach, Cliffwood Beach & Conaskonk Point (NJ–03P & NJ–04 in Monmouth County)—1.
Monmouth County	
_____NJ–01P	Sand Hook—2.
_____NJ–04A	Navesink/Shrewsbury Complex—3.
Ocean County	
_____NJ–04B/NJ–04BP.	Metedeconk Neck—4.
_____NJ–05P	Island Beach (1 of 2 maps)—5A.
_____NJ–05P	Island Beach (2 of 2 maps)—5B.
_____NJ–06/NJ–06P ...	Cedar Bonnet Island—6.
Ocean, Atlantic & Burlington Counties	
_____NJ–07P	Brigantine (1 of 4 maps)—7A.
_____NJ–07P	Brigantine (2 of 4 maps)—7B.
_____NJ–07P	Brigantine (3 of 4 maps)—7C.
_____NJ–07P	Brigantine (4 of 4 maps)—7D.
Cape May County	
_____NJ–08P	Corson Inlet—8.
_____NJ–09/NJ–09P ...	Stone Harbor—9.
_____NJ–10P & NJ–11P.	Cape May & Highbee Beach—10.
_____NJ–12/NJ–12P & NJ–13.	Del Haven & Kimbles Beach—11.
Cape May & Cumberland Counties	
_____NJ–14/NJ–14P ...	Moores Beach—12.
_____DELAWARE (7 maps)	
Kent County	
_____DE–01/DE–01P .	Little Creek—1.
_____HOO/HOOP	Broadkill Beach (1 of 2 maps)—2A.
Sussex County	
_____HOO/HOOP	Broadkill Beach (2 of 2 maps)—2B.
_____DE–02P	Plum Beach Island—3.
_____DE–03P & DE–06.	Cape Henlopen & Silver Lake—4.
_____DE–07P & H01 ..	Delaware Seashore & North Bethany Beach—5.
_____DE–08P	Fenwick Island—6.
_____MARYLAND (25 maps)	
Worcester County	
_____MD–01P	Assateque Island (1 of 3 maps)—1A.
_____MD–01P	Assateque Island (2 of 3 maps)—1B.
_____MD–01P	Assateque Island (3 of 3 maps)—1C.
Somerset County	
_____MD–02 & MD–03	Fair Island & Sound Shore—2.
_____MD–04P	Cedar/Janes Island—3.
_____MD–04P, MD–06, MD–07P, & MD–08P.	Cedar/Janes Island, Joes Cove, Scott Point & Hazard Island—4.
_____MD–09P	St. Pierre Point—5.
_____MD–11 & MD–12	Little Deal Island & Deal Island—6.
_____MD–14/MD–14P, MD–15, & MD–16.	Franks Island, Long Point, & Stump Point (MD–16 in Wicomico County)—7.
_____MD–17P	Martin—8.
_____MD–18P	Marsh Island—9.
Dorchester County	
_____MD–19 & MD–20	Holland Island & Jenny Island—10.
_____MD–21P	Barren Island—11.
_____MD–22 & MD–24	Hooper Point & Covey Creek—12.
Talbot County	
_____MD–25, MD–26 & MD–27.	Castle Haven Point (in Dorchester County), Boone Creek & Benoni Point—13.
_____MD–28, MD–29 & MD–30.	Lowes Point, Rich Neck & Kent Point (in Queen Annes County)—14.
Queen Annes County	
_____MD–32 & MD–33	Stevensville & Wesley Church—15.
Kent County	
_____MD–34P & MD–35.	Eastern Neck Island & Wilson Pond—16.
Calvert County	
_____MD–37P & MD–38.	Flag Ponds & Cove Point Marsh—17.
St. Marys County	
_____MD–39, MD–40 & MD–41.	Drum Point (in Calvert County), Lewis Creek & Green Holly Pond—18.
_____MD–44	St. Clarence Creek—19.
_____MD–45, MD–46, MD–47 & MD–48P.	Deep Point, Point Look-In, Tanner Creek & Point Lookout—20.
_____MD–49 & MD–50	Bisco Creek & Chicken Cock Creek—21.
_____MD–51, MD–52, MD–53 & MD–54.	Piney Point Creek, McKay Cove, Blake Creek & Belvedere Creek—22.
_____Md–55P & MD–56.	St. Clements Island & St. Catherine Island—23.

Unit number(s)	Unit name(s)
VIRGINIA (39 maps)	
Accomack County	
VA-01P	Assateague Island (1 of 2 maps)—1A.
VA-01P	Assateague Island (2 of 2 maps)—1B.
VA-02P & VA-03P.	Assawoman Island & Metomkin Island—2.
VA-03P	Metomkin Island—3.
K03	Cedar Island—4.
VA-16 & VA-17	Scarborough Neck & Craddock Neck—5.
VA-18, VA-19 & VA-20P.	Hacks Neck, Parkers/Finneys Islands & Parkers Marsh—6.
VA-21 & VA-22	Beach Island & Russell Island—7.
VA-23	Simpson Bend—8.
VA-24	Drum Bay—9.
VA-25	Fox Islands—10.
VA-26	Cheeseman Island—11.
VA-27 & VA-28	Watts Island & Tangier Island—12.
Northampton County	
VA-04P	Parramore/Hog/Cobb Islands (also in Accomack County) (1 of 2 maps)—13A.
VA-04P	Parramore/Hog/Cobb Islands (2 of 2 maps)—13B.
VA-04P & K04	Parramore/Hog/Cobb Islands & Little Cobb Island—14.
VA-05P	Wreck Island—15.
VA-05P & VA-06P.	Wreck Island & Smith Island (1 of 2 maps)—16A.
VA-05P & VA-06P.	Wreck Island & Smith Island (2 of 2 maps)—16B.
VA-06P, K05 & K05P.	Smith Island & Fishermans Island—17.
VA-09 & VA-10	Elliotts Creek & Old Plantation Creek—18.
VA-11	Wescoat Point—19.
VA-12, VA-13, & VA-14.	Great Neck, Westerhouse Creek, & Shooting Point—20.
Westmoreland County	
VA-29	Elbow Point—21.
VA-30, VA-31, & VA-32.	White Point, Cabin Point, & Glebe Point—22.
VA-33	Sandy Point—23.
Northumberland County	
VA-34	Judith Sound—24.
VA-35, VA-36, & VA-37.	Cod Creek, Presley Creek, & Cordreys Beach—25.
VA-38 & VA-39P.	Marshalls Beach & Ginny Beach—26.
VA-40, VA-41, VA-42, VA-43, VA-44, & VA-45.	Gaskin Pond, Owens Pond, Chesapeake Beach, Fleet Point, Bussel Point & Harveys Creek—27.
VA-46, VA-47, VA-48 & VA-49.	Ingram Cove, Bluff Point Neck, Barnes Creek & North Point (in Lancaster County)—28.
Lancaster & Middlesex Counties	
VA-50, VA-51, VA-52, VA-53 & VA-54.	Windmill Point, Deep Hole Point, Sturgeon Creek, Jackson Creek & Stove Point—29.
Mathews County	
VA-55	Rigby Island/Bethal Beach—30.
VA-55 & VA-56	Rigby Island/Bethal Beach & New Point Comfort—31.
Gloucester County	
VA-57 & VA-58	Ware Neck & Severn River—32.
Poquoson & Hampton Cities	
VA-59P & VA-60/VA-60P.	Plum Island & Long Creek (in Hampton City)—33.
Virginia Beach City	
VA-61P	Cape Henry—34.
VA-62P	Back Bay (1 of 2 maps)—35A.
VA-62P	Back Bay (2 of 2 maps)—35B.
NORTH CAROLINA (31 maps)	
Currituck County	
L01	Currituck Banks—1.
L01/L01P	Currituck Banks—2.
NC-01	Pine Island Bay—3.
Dare County	
NC-02	Nags Head Woods—4.
NC-03P	Cape Hatteras (1 of 14 maps)—5A.
NC-03P	Cape Hatteras (2 of 14 maps)—5B.
NC-03P	Cape Hatteras (3 of 14 maps)—5C.
NC-03P	Cape Hatteras (4 of 14 maps)—5D.
NC-03P & L03	Cape Hatteras & Hatteras Island (5 of 14 maps)—5E.
NC-03P & L03	Cape Hatteras & Hatteras Island (6 of 14 maps)—5F.
NC-03P	Cape Hatteras (7 of 14 maps)—5G.
Hyde County	
NC-03P	Cape Hatteras (also in Dare County) (8 of 14 maps)—5H.
NC-03P	Cape Hatteras (9 of 14 maps)—5I.
NC-03P	Cape Hatteras (also in Carteret County) (10 of 14 maps)—5J.
Carteret County	
NC-03P	Cape Hatteras (11 of 14 maps)—5K.
NC-03P	Cape Hatteras (12 of 14 maps)—5L.
NC-03P	Cape Hatteras (13 of 14 maps)—5M.
NC-03P	Cape Hatteras (14 of 14 maps)—5N.
NC-03P & L03AP.	Cape Hatteras & Shackleford Banks—6.
L03AP & NC-04P.	Shackleford Banks & Fort Macon—7.
NC-05P	Roosevelt Natural Area—8.
Onslow County	
NC-06P	Hammocks Beach—9.
L05	Onslow Beach Complex (1 of 2 maps)—10A.
L05	Onslow Beach Complex (2 of 2 maps)—10B.
L06	Topsail—11.
Pender County	
L07	Lea Island Complex—12.
New Hanover County	
L08 & L09	Wrightsville Beach & Masonboro Island—13.
L09	Masonboro Island—14.
Brunswick County	
NC-07P	Cape Fear (also in New Hanover County) (1 of 2 maps)—15A.
NC-07P	Cape Fear (2 of 2 maps)—15B.
M01	Waites Island Complex (1 of 2 maps) (also in South Carolina)—16.

Unit number(s)	Unit name(s)
_____SOUTH CAROLINA (25 maps)	
Horry County	
_____M01	Waites Island Complex (2 of 2 maps) (also in North Carolina)—1.
_____SC–01	Long Pond—2.
Georgetown County	
_____SC–03	Huntington Beach—3.
_____M02	Litchfield Beach—4.
_____M03	Pawleys Inlet—5.
_____M04 & SC–04	Debidue Beach & North/South Islands—6.
_____SC–04	North/South Islands—7.
Charleston County	
_____SC–05P	Santee (also in Georgetown County) (1 of 2 maps)—8A.
_____SC–05P	Santee (2 of 2 maps)—8B.
_____SC–05P & SC–06P.	Santee & Cape Romain (1 of 2 maps)—9A.
_____SC–05P & SC–06P.	Santee & Cape Romain (2 of 2 maps)—9B.
_____SC–06P	Cape Romain (1 of 2 maps)—10A.
_____SC–06P	Cape Romain (2 of 2 maps)—10B.
_____SC–07P	Capers Island—11.
_____M05	Dewees Island—12.
_____M06	Morris Island Complex—13.
_____M07/M07P	Bird Key Complex—14.
_____M08	Captain Sams Inlet–15.
_____M09/M09P	Edisto Complex—16.
Colleton County	
_____M10	Otter Island—17.
Beaufort County	
_____M11	Harbor Island—18.
_____SC–09P	Hunting Island—19.
_____M12	St. Phillips Island (1 of 2 maps)—20A.
_____M12	St. Phillips Island (2 of 2 maps)—20B.
Beaufort & Jasper Counties	
_____M13 & SC–10P	Daufuski Island & Turtle Island (SC–10P in Jasper County)—21.
_____GEORGIA (18 maps)	
Chatham County	
_____N01	Little Tybee Island (1 of 2 maps)—1A.
_____N01	Little Tybee Island (2 of 2 maps)—1B.
_____N01A/N01AP	Wassaw Island—2.
_____GA–02P	Ossabaw Island (1 of 2 maps)—3A.
_____GA–02P	Ossabaw Island (also in Bryan County) (2 of 2 maps)—3B.
Liberty County	
_____GA–02P & GA–03P.	Ossabaw Island & St. Catherine Island (also in McIntosh County)—4.
McIntosh County	
_____GA–03P & GA–04P.	St. Catherine Island & Blackbeard/Sapelo Islands—5.
_____GA–04P	Blackbeard/Sapelo Islands (1 of 3 maps)—6A.
_____GA–04P	Blackbeard/Sapelo Islands (2 of 3 maps)—6B.
_____GA–04P	Blackbeard/Sapelo Islands (3 of 3 maps)—6C.
_____GA–04P & GA–05P.	Blackbeard/Sapelo Islands & Altamaha/Wolf Islands—7.
_____GA–05P	Altamaha/Wolf Islands—8.
Glynn County	
_____N03	Little St. Simons Island—9.
_____N04	Sea Island—10.
_____GA–06P	Jekyll Island—11.
Camden County	
_____N05 & N06/N06P	Little Cumberland Island & Cumberland Island—12.
_____N0/N06P	Cumberland Island (1 of 2 maps)—13A.
_____N0/N06P	Cumberland Island (2 of 2 maps)—13B.
_____FLORIDA–EAST COAST (53 maps).	
Nassau County	
_____FL–01P	Fort Clinch—1.
Duval County	
_____P02/P02P	Talbot Islands Complex (also in Nassau County)—2.
St. Johns County	
_____FL–03P	Guana River (1 of 3 maps)—3A.
_____FL–03P	Guana River (2 of 3 maps)—3B.
_____FL–03P	Guana River (3 of 3 maps)—3C.
_____P04A & P05/P05P.	Usinas Beach & Conch Island—4.
_____FL–05P	Butler Beach—5.
Flagler County	
_____P05A/P05AP & FL–06P.	Matanzas River (also in St. Johns County) & Washington Oaks—6.
Volusia County	
_____P07/P07P	Ormond-by-the-Sea (P07P also in Flagler County)—7.
_____P08	Ponce Inlet—8.
_____FL–07P	Canaveral (1 of 6 maps)—9A.
Brevard County	
_____FL–07P	Canaveral (also in Volusia County) (2 of 6 maps)—9B.
_____FL–07P	Canaveral (also in Volusia County) (3 of 6 maps)—9C.
_____FL–07P	Canaveral (4 of 6 maps)—9D.
_____FL–07P	Canaveral (5 of 6 maps)—9E.
_____FL–07P	Canaveral (6 of 6 maps)—9F.
_____FL–13P & P09A	Spessard Holland Park & Coconut Point—10.
Indian River County	
_____P10/P10P	Vero Beach (also in Brevard County)—11.
St. Lucie County	
_____P10A	Blue Hole (also in Indian River County)—12.
_____FL–14P	Pepper Beach—13.
_____P11	Hutchinson Island (1 of 2 maps)—14A.
_____P11	Hutchinson Island (2 of 2 maps)—14B.
Martin County	
_____P11AP & P11A	Joes Point & Frank B. McGilvrey—15.
_____P12/P12P	Hobe Sound—16.
Palm Beach County	
_____FL–15, FL–16P & FL–17P.	Blowing Rocks (in Martin County), Jupiter Beach & Carlin—17.
_____FL–18P	Macarthur Beach—18.
Broward County	
_____FL–19P	Birch Park—19.
_____FL–20P & P14A	Lloyd Beach & North Beach—20.

Unit number(s)	Unit name(s)
Dade County	
_____FL–21P	Haulover Beach—21.
_____FL–22P, FL–23P & FL–34P.	Virginia Beach/Crandon Park, Cape Florida & Biscayne Bay—22.
_____FL–34/FL–34P ...	Biscayne Bay—23.
_____FL–34P	Biscayne Bay (1 of 3 maps)—24A.
_____FL–34P	Biscayne Bay (2 of 3 maps)—24B.
_____FL–34P	Biscayne Bay (3 of 3 maps)—24C.
Monroe County	
_____FL–34P & FL–35	Biscayne Bay & North Key Largo—25.
_____FL–34P & FL–35/FL–35P.	Biscayne Bay & North Key Largo—26.
_____FL–35	North Key Largo—27.
_____FL–35/FL–35P & FL–36P.	North Key Largo & El Radabob Key—28.
_____FL–36P & FL–37	El Radabob Key & Rodriquez Key—29.
_____FL–39 & FL–40 .	Tavernier Key & Snake Creek—30.
_____FL–41P	Lignumvitae/Shell Keys—31.
_____FL–42P	Long Key—32.
_____FL–43 & FL–44 ..	Channel Key & Toms Harbor Keys—33.
_____FL–45	Deer/Long Point Keys—34.
_____FL–46	Boot Key—35.
_____FL–47P, FL–48P & FL–50.	Key Deer/White Heron, Bahia Honda Key & No Name Key—36.
_____FL–51	Newfound Harbor Keys—37.
_____FL–47P & FL–52	Key Deer/White Heron & Little Knockemdown/Torch Keys Complex—38.
_____FL–53	Budd Keys—39.
_____FL–47P, FL–54 & FL–55.	Key Deer/White Heron, Sugarloaf Sound & Saddlebunch Keys—40.
_____FL–47P, FL–55, & FL–57.	Key Deer/White Heron, Saddlebunch Keys, & Cow Key—41.
_____FL–47P, FL–59P & FL–60P.	Key Deer/White Heron, Fort Taylor & Key West NWR—42.
_____FL–61P	Tortugas—43.

Unit number(s)	Unit name(s)
_____FLORIDA—WEST COAST (55 maps)	
Collier County	
_____P15 & FL–63P ...	Cape Romano & Tigertail—1.
_____P16	Keewaydin Island (1 of 2 maps)—2A.
_____P16	Keewaydin Island (2 of 2 maps)—2B.
_____FL–64P	Clam Pass—3.
_____FL–65P	Wiggins Pass—4.
Lee County	
_____P17/P17P	Lovers Key Complex—5.
_____P17A & FL–67 ...	Bodwitch Point & Bunch Beach—6.
_____P18P	Sanibel Island Complex—7.
_____P18/P18P	Sanibel Island Complex—8.
_____P19/P19P	North Captiva Island—9.
_____P20/P20P	Cayo Costa—10.
_____FL–70P	Gasparilla Island—11.
Charlotte County	
_____P21/P21P	Bocilla Island—12.
Sarasota County	
_____P21A/P21AP	Manasota Key—13.
_____FL–71P	Venice Inlet—14.
_____P22	Casey Key—15.
_____FL–72P	Lido Key—16.
Manatee County	
_____P23/P23P	Longboat Key—17.
_____FL–73P, FL–78 & FL–82.	De Soto, Rattlesnake Key & Bishop Harbor—18.
_____FL–80P	Passage Key—19.
Hillsborough County	
_____FL–81/FL–81P ...	Egmont Key—20.
_____FL–83	Cockroach Bay—21.
Pinellas County	
_____P24/P24P	The Reefs—22.
_____FL–85P	Sand Key—23.
_____P24A & FL–86P .	Mandalay Point & Caladesi/Honeymoon Islands—24.
_____FL–87P	Anclote Key (also in Pasco County)—25.
Levy County	
_____P25/P25P	Cedar Keys (1 of 2 maps)—26A.
_____P25/P25P	Cedar Keys (2 of 2 maps)—26B.
Dixie County	
_____P26	Pepperfish Keys—27.

Unit number(s)	Unit name(s)
Franklin County	
_____P27A	Ochlockonee Complex (also in Wakulla County)—28.
_____FL–89	Peninsula Point—29.
_____P28	Dog Island—30.
_____FL–90P	St. George Island—31.
_____FL–90/FL–90P ...	St. George Island—32.
_____FL–90P & FL–91P.	St. George Island & St. Vincent Island—33.
_____FL–91P	St. Vincent Island—34.
Gulf County	
_____FL–92	Indian Peninsula—35.
_____P30/P30P	Cape San Blas (1 of 2 maps)—36A.
_____P30/P30P	Cape San Blas (2 of 2 maps)—36B.
Bay County	
_____P31	St. Andrew Complex (1 of 2 maps)—37A.
_____P31	St. Andrew Complex (2 of 2 maps)—37B.
_____P31/P31P	St. Andrew Complex—38.
_____FL–93P	Phillips Inlet—39.
Walton County	
_____FL–94	Deer Lake Complex—40.
_____FL–95P &FL–96	Grayton Beach & Draper Lake—41.
_____P31A	Four Mile Village—42.
_____P32	Moreno Point (also in Okaloosa County)—43.
Escambia County	
_____FL–98P	Santa Rosa Island—44.
_____FL–98/FL–98P ...	Santa Rosa Island—45.
_____FL–98P & FL–103P.	Santa Rosa Island & Perdido Key—46.
_____FL–103P	Perdido Key—47.
Santa Rosa County	
_____FL–97	Navarre Beach—48.
_____FL–99	Tom King—49.
_____FL–98P & FL–100.	Santa Rosa Island (also in Escambia County) & Town Point—50.
_____FL–98P, FL–101 & FL–102.	Santa Rosa Island, Garcon Point & Basin Bayou—51.
_____ALABAMA (9 maps)	
Baldwin County	
_____AL–01P & AL–02P.	Perdido Key & Gulf Park—1.

Unit number(s)	Unit name(s)
_____AL–02P	Gulf Park—2.
_____AL–03, AL–04P & Q01P.	Skunk Bayou, Cypress Point & Mobile Point—3.
_____Q01/Q01P	Mobile Point (1 of 2 maps)—4A.
_____Q01/Q01P	Mobile Point (2 of 2 maps)—4B.
Mobile County	
_____Q01P, Q01A, & AL–05P.	Mobile Point (in Baldwin County), Pelican Island & Alligator Lake—5.
_____Q02/Q02P	Dauphin Island—6.
_____Q02	Dauphin Island (1 of 2 maps)—7A.
_____Q02	Dauphin Island (2 of 2 maps)—7B.
_____MISSISSIPPI (10 maps)	
Jackson County	
_____MS–01P	Gulf Islands (1 of 4 maps)—1A.
_____MS–01P	Gulf Islands (2 of 4 maps)—1B.
_____MS–01P	Gulf Islands (3 of 4 maps)—1C.
_____MS–01P	Gulf Islands (also in Harrison County) (4 of 4 maps)—1D.
_____R01	Round Island—2.
_____R01A	Belle Fountaine Point—3.
Harrison County	
_____MS–01P	Gulf Islands—4.
_____MS–02 & R02	Marsh Point (in Jackson County) & Deer Island—5.
_____R03	Cat Island—6.
Hancock County	
_____MS–04	Heron Bay Point—7.
_____LOUISIANA (52 maps)	
St. Bernard Parish	
_____LA–01	Isle au Pitre—1.
_____LA–02	Grand Island—2.
_____LA–03P	Chandeleur Islands (1 of 7 maps)—3A.
_____LA–03P	Chandeleur Islands (2 of 7 maps)—3B.
_____LA–03P	Chandeleur Islands (3 of 7 maps)—3C.
_____LA–03P	Chandeleur Islands (4 of 7 maps)—3D.
_____LA–03P	Chandeleur Islands (also in Plaquemines Parish 5 of 7 maps)—3E.
_____LA–03P	Chandeleur Islands (6 of 7 maps)—3F.
_____LA–03P	Chandeleur Islands (7 of 7 maps)—3G.
Plaquemines Parish	
_____SO1	Bastian Bay Complex (1 of 2 maps)—4A.
_____SO1	Bastian Bay Complex (2 of 2 maps)—4B.
_____SO1 & SO1A	Bastian Bay Complex & Bay Joe Wise Complex—5.
_____SO1A	Bay Joe Wise Complex—6.
Plaquemines & Jefferson Parishes	
_____SO2 & LA-04P ...	Grand Terre Islands & Grand Isle (SO2 in Plaquemines Parish)—7.
Lafourche Parish	
_____SO3	Caminada (Also in Jefferson Parish) (1 of 3 maps)—8A.
_____SO3	Caminada (2 of 3 maps)—8B.
_____SO3	Caminada (3 of 3 maps)—8C.
_____SO4	Timbalier Bay—9.
_____SO5	Timbalier Islands (1 of 3 maps)—10A.
_____SO5	Timbalier Islands (also in Terrebonne Parish) (2 of 3 maps)—10B.
Terrebonne Parish	
_____SO5	Timbalier Islands (3 of 3 maps)—10C.
_____SO6	Isles Dernieres (1 of 3 maps)—11A.
_____SO6	Isles Dernieres (2 of 3 maps)—11B.
_____SO6	Isles Dernieres (3 of 3 maps)—11C.
_____SO7	Point au Fer (1 of 4 maps)—12A.
_____SO7	Point au Fer (2 of 4 maps)—12B.
_____SO7	Point au Fer (3 of 4 maps)—12C.
_____SO7	Point au Fer (4 of 4 maps)—12D.
Iberia Parish	
_____LA–05P	Marsh Island/ Rainey (1 of 7 maps)—13A.
_____LA–05P	Marsh Island/ Rainey (2 of 7 maps)—13B.
_____LA05P	Marsh Island/ Rainey (3 of 7 maps)—13C.
_____LA–05P	Marsh Island/ Rainey (4 of 7 maps)—13D.
_____LA–05P	Marsh Island/ Rainey (5 of 7 maps)—13E.
_____LA–05P	Marsh Island/ Rainey (also in Vermilion Parish) (6 of 7 maps)—13F.
Vermilion Parish	
_____LA–05P	Marsh Island/ Rainey (7 of 7 maps)—13G.
_____LA–05P, SO8, & LA–07.	Marsh Island/ Rainey, Cheniere au Tigre & Freshwater Bayou—14.
_____LA–07	Freshwater Bayou (1 of 2 maps)—15A.
_____LA–07	Freshwater Bayou (2 of 2 maps)—15B.
_____SO9	Rollover—16.
Cameron Parish	
_____LA–08P	Rockefeller (also in Vermilion Parish) (1 of 3 maps)—17A.
_____LA–08P	Rockefeller (2 of 3 maps)—17B.
_____LA–08P	Rockefeller (3 of 3 maps)—17C.
_____LA–08P & S10 ...	Rockefeller & Mermentau River—18.
_____S10	Mermentau River—19.
_____LA–09	Cameron (1 of 2 maps)—20A.
_____LA–09	Cameron (2 of 2 maps)—20B.
_____LA–10	Calcasieu Pass (1 of 2 maps)—21A.
_____LA–10	Calcasieu Pass (2 of 2 maps)—21B.
_____S11	Sabine (1 of 4 maps)—22A.
_____S11	Sabine (2 of 4 maps)—22B.
_____S11	Sabine (3 of 4 maps)—22C.
_____S11	Sabine (4 of 4 maps)—22D.
_____TEXAS (54 maps)	
Jefferson County	
_____T01P	Sea Rim—1.
_____T01/T01P	Sea Rim—2.
_____TX–02P	McFaddin (1 of 2 maps)—3A.
_____TX–02P	McFaddin (2 of 2 maps)—3B.
_____TX–02P & T02A	McFaddin & High Island (also in Chambers County)—4.
Galveston County	
_____T02A	High Island—5.
_____T03A	Bolivar Peninsula—6.

Unit number(s)	Unit name(s)
_____T03A/T03AP	Bolivar Peninsula—7.
_____TTX–04/TX04P ..	Swan Lake—8.
_____TX–05P	Galveston Island—9.
Brazoria County	
_____T04/T04P	Follets Island (1 of 2 maps)—10A.
_____T04/T04P	Follets Island (2 of 2 maps)—10B.
_____T05/T05P	Brazos River Complex—11.
_____T05/T05P & T06P.	Brazos River Complex & Sargent Beach (in Matagorda County)—12.
Matagorda County	
_____T06/T06P	Sargent Beach—13.
_____T07/T07P	Matagorda Peninsula (1 of 6 maps)—14A.
_____T07/T07P	Matagorda Peninsula (2 of 6 maps)—14B.
_____T07/T07P	Matagorda Peninsula (3 of 6 maps)—14C.
_____T07/T07P	Matagorda Peninsula (4 of 6 maps)—14D.
_____T07/T07P	Matagorda Peninsula (5 of 6 maps)—14E.
_____T07/T07P	Matagorda Peninsula (6 of 6 maps)—14F.
_____T07	Matagorda Peninsula—15.
_____TX–09	Coon Island Bay—16.
_____TX–10	Shell Beach—17.
Calhoun County	
_____TX–06P	Matagorda Island (1 of 4 maps)—18A.
_____TX–06P	Matagorda Island (2 of 4 maps)—18B.
_____TX–06P	Matagorda Island (3 of 4 maps)—18C.
_____TX–06P	Matagorda Island (4 of 4 maps)—18D.
_____TX–06P & T08 ...	Matagorda Island & San Jose Island Complex—19.
_____TX–06P & T08/T08P.	Matagorda Island & San Jose Island Complex (also in Aransas County)—20.
Aransas County	
_____TX–08/T08P	San Jose Island Complex (also in Calhoun County) (1 of 5 maps—21A.
_____TX–08/T08P	San Jose Island Complex (2 of 5 maps—21B.
_____TX–08/T08P	San Jose Island Complex (3 of 5 maps—21C.
_____TX–08/T08P	San Jose Island Complex (4 of 5 maps—21D.
_____TX–08/T08P	San Jose Island Complex (5 of 5 maps—21E.
Nueces County	
_____TX–15P	Mustang Island—22.
_____TX–17/TX–17P ..	Shamrock Island—23.
Kleberg County	
_____TX–16P & T10/T10P.	Four Mile Hill (in Nueces County) & North Padre Island—24.
_____T10P	North Padre Island (1 of 7 maps)—25A.
_____T10P	North Padre Island (also in Kennedy County) (2 of 7 maps)—25B.
_____T10P	North Padre Island (3 of 7 maps)—25C.
_____T10P	North Padre Island (4 of 7 maps)—25D.
_____T10P	North Padre Island (5 of 7 maps)—25E.
_____T10P	North Padre Island (6 of 7 maps)—25F.
_____T10P	North Padre Island (7 of 7 maps)—25G.
_____TX–19 & TX–21 ..	Starvation Point & Kleberg Point—26.
Willacy County	
_____T10P & T11/T11P.	North Padre Island & South Padre Island—27.
_____T11P	South Padre Island—28.
Cameron County	
_____T11	South Padre Island (also in Willacy County)—29.
_____T11/T11P	South Padre Island (also in Willacy County) (1 of 3 maps)—30A.
_____T11/T11P	South Padre Island (2 of 3 maps)—30B.
_____T11P/T11P	South Padre Island (3 of 3 maps)—30C.
_____T11/T11P & TX–22P.	South Padre Island & Andy Bowie—31.
_____T12/T12P	Boca Chica—32.
_____PUERTO RICO (32 maps)	
Municipio de Rio Grande	
_____PR–02, PR–03 & PR–04P.	Ensenada Comezon, Rio Mameyes & Punta la Bandera (in Luquillo Mun.)—1.
Municipio de Fajardo	
_____PR–05, PR–06, PR–07, PR–08P & PR–08AP.	Luquillo Spit (in Luquillo Mun.), Juan Martin Spit (in Luquillo Mun.), Laguna Aquas Prietas, Cabo San Juan & La Cordillera—2.
_____PR–08A/PR–08AP.	La Cordillera—3.
_____PR–09P & PR–10.	Rio Fajardo & Punta Barrancas—4.
Municipio de Culebra	
_____PR–12P, PR–13P, PR–14P, PR–15P & PR–16P.	Playa Flamenco, Playa Brava, Playa Larga, Isla Culebrita & Puerto del Manglar—5.
Isla de Vieques	
_____PR–17P	Ensenada Sombe—6.
Municipio de Naguabo	
_____PR–18P	Cayo Algodones—7.
Municipio de Yabucoa	
_____PR–39	Puerto Yabucoa—8.
Municipio de Maunabo	
_____PR–40 & PR–41	Punta Tuna & Rio Maunabo—9.
Municipio de Patillas	
_____PR–42 & PR–43/PR–43P.	Punta Viento & Punta Guilarte—10.
Municipio de Guayama	
_____PR–44 & PR–45/PR–45P.	Las Mareas & Bahia de Jobos—11.
Municipio de Salinas	
_____PR–45P & PR–46.	Bahiua de Jobos & Cayos de Barca/Ratones Complex—12.
_____PR–47, PR–48P & PR–49P.	Arenal, Arrecife Media Luna, & Punta Aguila (in Santa Isabel Mun.)—13.

Unit number(s)	Unit name(s)
Municipio de Juana Diaz	
_____PR–50, PR–50P, PR–51 & PR–52.	Chardon (in Santa Isabel Mun.), Cayo Berberia, Rio Descalabrado & Punta Pastillo—14.
Municipio de Ponce	
_____PR–53, PR–54, PR–55, & PR–56.	Bajio de Marea (in Juana Diaz Mun.), Rio Jacaguas, Isla del Frio & Punta Cabullones—15.
_____PR–57/PR–57P & PR–58P.	Punta Cucharas & Bahia de Tallaboa (in Penuelas Mun.)—16.
Municipio de Guanica	
_____PR–59, PR–60P & PR–61.	Punta Ballena (also in Yauco Mun.), Punta Jacinto & Ensenada las Pardas—17.
_____PR–62P, PR–63P & PR–64P.	Punta Manglillo, Cayo don Luis & Bahia Montalva (also in Lajas Mun.)—18.
Municipio de Cabo Rojo	
_____PR–65P	Islas Cueva/ Guayacan (also in Lajas Mun.)—19.
_____PR–65P & PR–66/PR–66P.	Islas Cueva/ Guayacan & Cabo Rojo—20.
_____PR–67P, PR–68, PR–69 & PR–70.	Bahia de Boqueron, Boca Prieta, Punta Carenero & Belvedere—21.
Municipio de Mayaquez	
_____PR–72	Rio Guanajibo—22.
Municipio de Aquadilla	
_____PR–75/PR–75P .	Espinar—23.
Municipio de Isabela	
_____PR–76 & PR–77	Punta Agujereada (in Agudilla Mun.), & Bajura—24.
_____PR–78	Coto—25.
Municipios de Camuy & de Hatillo	
_____PR–79 & PR–80	Penon Brusi & Punta Maracayo—26.
Municipio de Arecibo	
_____PR–81	Puerto de Arecibo—27.
Municipio de Manati	
_____PR–82P	Punta Manati—28.
_____PR–83 & PR–84	Tortuguero (Also in Vega Baja Mun.) & Punta Garza (in Vega Baja Mun.)—29.
Municipio de Toa Baja	
_____PR–86P	Punta Salinas—30.
Municipio de Loiza	
_____PR–87P	Punta Vacia Talega—31.
_____PR–87	Punta Vacia Talega (also in Carolina Mun.)—32.
_____U.S. VIRGIN ISLANDS (7 maps)	
St. Croix	
_____VI–01, VI–02, VI–03, VI–08 & VI–09.	Rust Up Twist, Salt River Bay, Altona Lagoon, Canegarden Bay & Krause Lagoon—1.
_____VI–04/VI–04P, VI–05, VI–06 & VI–07.	Southgage Pond, Coakley Bay, Robin Bay & Great Pond—2.
_____VI–10 & VI–11/ VI–11P.	Long Point & Westend Saltpond—3.
St. John	
_____VI–12P, VI–13P, VI–14P, VI–22P, VI–23P, VI–24P, & VI–25.	Cinnamon Bay, Maho Bay, Francis Bay, Great Lameshur Bay, Europa Bay, Reef Bay, & Fish Bay—4.
_____VI–15P, VI–16, VI–17, VI–18, VI–19P, VI–20P, & VI–21P.	Leinster Bay, Newfound Bay, Pond Bay, Lagoon Point, Ram Head, Kiddel Bay & Grootpan Bay—5.
St. Thomas	
_____VI–26, VI–27, VI–28 & VI–29.	Sprat Point, Limestone Bay, Perseverance Bay & Magens Bay—6.
_____VI–30, VI–31, VI–32, VI–33, VI–34 & VI–35P.	Mandal Bay, Smith Bay, Vessup Bay, Great Bay, Jersey Bay & Buck Island—7.
_____OHIO (7 maps)	
Lake County	
_____OH–01	Arcola Creek—1.
_____OH–02	Mentor—2.
Erie County	
_____OH–03	North Pond—3.
_____OH–04 & OH–05	Old Woman Creek & Sheldons March—4.
Ottawa County	
_____OH–06	Bay point—5.
_____OH–07, OH–08 & OH–09.	Middle Bass Island, North Bass Island & Fox Marsh—6.
_____OH–10	Toussaint River—7.
_____MICHIGAN (37 maps)	
Monroe County	
_____MI–02	Toledo Beach—1.
_____MI–03	Enrico Fermi—2.
Wayne County	
_____MI–04	Sturgeon Bar—3.
Huron County	
_____MI–05	Huron City—4.
_____MI–06 & MI–07 ..	Alaska Bay & Pointe aux Barques—5.
Arenac County	
_____MI–08	Charity Island—6.
Alpena County	
_____MI–13	Squaw Bay—7.
_____MI–14	Whitefish Bay—8.
Presque Isle County	
_____MI–17	Swan Lake—9.
Benzie County	
_____MI–20	Lower Herring Lake—10.
Manistee County	
_____MI–21	Arcadia Lake—11.
Muskegon County	
_____MI–22	Sadony Bayou—12.
Menominee County	
_____MI–24	Deadmans Point—13.
Delta County	
_____MI–25	Squaw Point—14.
Schoolcraft County	
_____MI–28 & MI–29 ..	Goadreaus Harbor & Seul Choix—15.
Mackinac County	
_____MI–31	Fox Point—16.
_____MI–32	McNeil Creek—17.
_____MI–33, MI–34, & MI–35.	Millecoquins Point, East Mile Creek & Mattix Creek—18.
_____MI–36 & MI–37 ..	Borgstrom Creek & Davenport Creek—19.
_____MI–38 & MI–39 ..	Hudson & Epoufette—20.
_____MI–40	Green Island—21.
_____MI–41	Big St. Martin Island—22.
_____MI–42	Bass Cove Lake—23.
_____MI–43	Whitefish Point—24.
_____MI–44	Albany Island—25.
Chippewa County	
_____MI–45	St. Vital Bay—26.
_____MI–46	Espanore Lake—27.
_____MI–49, MI–51 & MI–52.	Shelldrake, Marsh Lake, & Superior—28.
_____MI–53	Vermilion—29.

Unit number(s)	Unit name(s)
Luce County	
_____MI–55	Little Two Hearted River—30.
Alger County	
_____MI–59	Laughing Whitefish River—31.
Marquette County	
_____MI–62	Saux Head—32.
_____MI–63 & MI–64 ..	Iron River & Squaw Beach—33.
_____MI–65	Salmon Trout Bay—34.
Baraga County	
_____MI–66	Lightfoot Bay—35.
Keweenaw County	
_____MI–71	Jacobs Creek—36.
_____MI–74	Gratiot River—37.
_____WISCONSIN (5 maps)	
Manitowoc County	
_____WI–01	Two Creeks—1.
Brown County	
_____WI–02	Point au Sable—2.
Marinette County	
_____WI–03 & WI–04 .	Peshtigo Point & Dyers Slough—3.
Bayfield County	
_____WI–05	Bark Bay—4.
_____WI–06 &WI–07 ..	Herbster & Flag River—5.
_____MINNESOTA (1 map)	
St. Louis County	
_____MN–01	Minnesota Point—1.

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federal register

Monday
November 15, 1993

Part V

Securities and Exchange Commission

17 CFR Part 210, et al.

Adoption of Final Amendments To Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers; and Simplification of Registration and Reporting Requirements for Foreign Companies etc.; Rule and Proposed Rulemaking

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240

[33-7026; 34-33135; FR 41; International Series Release No. 605; File No. S7-16-91]

RIN 3235-AD96

Adoption of Final Amendments to Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is publishing final amendments relating to the age of financial statements of foreign private issuers that register securities for sale under the Securities Act of 1933. The amendments revise the requirements which govern the age of financial statements in registration statements to conform such requirements to the financial statement updating requirements of the home jurisdictions of a substantial majority of foreign issuers. Such conformity is intended to reduce the impediments to foreign issuers making securities offerings in the United States.

EFFECTIVE DATE: These amendments are effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Wayne E. Carnall, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Richard M. Kosnik, Associate Director, Division of Corporation Finance at (202) 272-7735.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 3-19(b)[1], 3-19(c)[2] and 3-19(f)[3] of Regulation S-X,[4] and Rule 15d-2[5] under the Securities Exchange Act of 1934 ("Exchange Act"),[6] Forms F-2[7] and F-3[8] under the Securities Act of 1933 ("Securities Act"),[9] and Item 512(a)(4) of Regulation S-K.[10]

I. Amendments of Rules Applicable to Age of Financial Statements and Updating Requirements

The Commission is adopting amendments that relate to the age of financial statements included in registration statements by foreign private issuers at the time of effectiveness and to financial statement updating requirements for such issuers. The amendments will streamline the registration and reporting obligations of foreign companies by accommodating updating of financial statements through use of semi-annual reports more common under foreign reporting regimes.

Registration statements that are filed with the Commission by foreign private issuers are subject to Commission rules that govern the form and content of the financial statements. Rule 3-19 of Regulation S-X sets forth the requirements with respect to the age of financial statements of foreign private issuers included in filings. Until the Commission's action today, Rules 3-19 (b) and (c) taken together have required that on the effective date of a Securities Act registration statement:

(1) Financial statements in the filing must be as of a date within six months of the effective date, and

(2) the audited year end financial statements must be included in the filing if the effective date falls more than five months after the registrant's fiscal year end.

The periodic reporting requirements of many foreign jurisdictions do not require quarterly reporting. Even where interim as well as annual reporting is required, interim reporting periods frequently are longer than that prescribed in the U.S. In recognition of foreign reporting requirements, the Commission's interim reporting requirements for foreign private issuers under the Exchange Act are limited to requiring information on Form 6-K only to the extent it is otherwise provided to shareholders, exchanges or others.

Nonetheless, despite the Commission's determination not to impose any interim periodic reporting requirement on foreign private issuers, the effect of the Commission's age of financial statement provisions has been that a foreign private issuer must provide interim financial information more frequently than semi-annually if it wishes to conduct continuous offerings without interruption and to avoid delays in commencing a registered offering.

To improve foreign issuers' access to the U.S. public market without requiring them to produce quarterly financial information, the Commission is amending its age of financial statement requirements. The rules, as amended today, require foreign issuers to provide audited fiscal year financial statements within six months following the end of the fiscal year; unaudited interim financial statements are required only to the extent necessary to bring the most recent financial statements included in a filing to a date within ten months of effectiveness. Under this system, a foreign issuer can have uninterrupted access to the U.S. public market by providing within four months following the end of its fiscal year either its audited financial statements for that year or unaudited interim financial statements as of the end of the third quarter of that year.

On June 5, 1991, the Commission proposed for comment certain amendments to rules applicable to age of financial statements included in registration statements.[11] All eight commenters expressed general support for the proposals. One commenter, however, recommended retaining the requirement to include audited annual financial statements for the most recent year in a registration made effective more than five months after fiscal year-end. The rule adopted today retains the proposal's six month timetable for audited financial statements, since this tracks the existing schedule used for periodic reporting under the Exchange Act. Nonetheless, the proposal has been modified in response to this commenter's concern for more current information; the rule as adopted requires the most recent financial statements to be not older than 10 months, rather than 12 months as proposed. Thus, the amendment will enable registration statements of foreign private issuers to go effective with audited financial statements as old as 18 months (as compared to 17 months under the rule presently applicable to foreign issuers), with the most recent interim statements as old as 10 months (as compared to 6 months under the present rule and 12 months under the original proposal).

Another commenter suggested that the proposed amendments to Rule 3-19 could be read to conflict with the requirement of Section 10(a)(3) of the Securities Act, which requires a prospectus used more than nine months after the effective date of a registration statement to contain information as of a date not more than 16 months prior to such use. Item 512(a)(4) of Regulation S-K requires a foreign private issuer to update its financial statements included in a prospectus used nine months after effectiveness of a registration statement when they no longer meet the requirements of Rule 3-19. Other information included in the prospectus must be updated at the same time.

[1] 17 CFR 210.3-19(b).
[2] 17 CFR 210.3-19(c)
[3] 17 CFR 210.3-19(f).
[4] 17 CFR part 210.
[5] 17 CFR 240.15d-2.
[6] 15 U.S.C. 78a *et seq.*
[7] 17 CFR 239.32.
[8] 17 CFR 239.33.
[9] 15 U.S.C. 77a *et seq.*
[10] 17 CFR 229.512(a)(4).

[11] Securities Act Release No. 6895 (June 5, 1991) [56 FR 27562].

These specific requirements apply in lieu of the more general updating requirements of Section 10(a)(3), which are not necessary or appropriate where the requirements of Item 512 and of Rule 3–19 are met. Item 512(a)(4) is being amended to clarify this point.

II. Amendment to Requirement To Reconcile Financial Information Otherwise Provided

Rule 3–19(f) requires interim financial information that is made available to shareholders, exchanges or others on a more frequent basis than that required by Rules 3–19 (b) and (c) to be included in any registration statement filed with the Commission. The rule has required this additional information to be reconciled to U.S. generally accepted accounting principles (GAAP). The amendments provide that such additional information need not be reconciled to U.S. GAAP if adequate narrative disclosures are provided. Specifically, if a registration statement includes reconciled financial statements as of a date which complies with Rules 3–19 (b) and (c), more current financial information which is included in the filing need not be reconciled to U.S. GAAP provided that any material variation in accounting underlying the more recent information which was not previously disclosed and quantified in the reconciliations of earlier periods is described and the quantified effects of the material variation are disclosed. The Commission has determined to adopt the amendments as proposed.

III. Other Amendments Relating to Financial Statement Updating

Other amendments are being adopted to:

(1) Clarify language in Forms F–2 and F–3 to reflect current staff practice of allowing incorporation of interim financial statements filed on Form 6–K; and

(2) Amend Rule 15d–2 to permit foreign private issuer registrants to file special year end financial statement reports (subsequent to the effectiveness of a registration statement that did not contain the audited financial statements for the most recent year end) by the later of 90 days following the effective date or six months following the registrant's fiscal year end. This amends the current rule to recognize that foreign issuers are allowed up to six months following the end of the fiscal year within which to file their annual report including audited year end financial statements. The Commission has determined to adopt the amendments as proposed.

IV. Cost-Benefit Analysis

The Commission is not aware of any costs that will result from the amendments to rules and forms relating to the age of financial statements of foreign private issuers, but as foreign issuers will be able to avoid expenses associated with more frequent financial statement updating and reconciliation, benefits are expected to result for such issuers. U.S. issuers are unaffected by these proposed amendments. The commentators did not address specifically the costs and benefits of the proposed amendments, but generally were in favor of the proposals and indicated that the proposals would be beneficial for foreign registrants.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the amendments will not have a significant impact on a substantial number of small entities. Members of the public who wish to obtain a copy of the Regulatory Flexibility Certification should contact Wayne E. Carnall, (202) 272–2553, Office of the Chief Accountant, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Effective Date

The amendments to Rule 3–19 and related rules and forms shall be effective immediately upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, inter alia, "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

List of Subjects in 17 CFR Parts 210, 229, 239 and 240

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

* * * * *

2. By amending § 210.3–19 by revising paragraphs (b), (c) and (f) to read as follows:

§ 210.3–19 Special provisions as to financial statements for foreign private issuers.

* * * * *

(b) If the filing, other than an annual report on Form 20–F, (§ 249.220f of this chapter) is made effective within six full months after the end of the registrant's fiscal year and if the audited balance sheet for the most recent fiscal year is not available, the audited balance sheets in the filing may be as of the end of the two preceding fiscal years; *Provided,* That on the effective date the filing shall include a balance sheet, which may be unaudited, as of an interim date within ten months of the effective date (except as permitted in paragraph (e) of this section).

(c) If the filing is made effective after six full months subsequent to the end of the most recent fiscal year, the filing shall include the audited financial statements described in paragraph (a) of this section. In addition, if the effective date of the filing is later than ten full months after the end of the most recent fiscal year, the filing shall also include a balance sheet, which may be unaudited, as of an interim date within ten months of the effective date (except as permitted in paragraph (e) of this section).

* * * * *

(f) Notwithstanding the above provisions of this section, if a foreign private issuer prepares and discloses to its shareholders or otherwise makes public, pursuant to applicable foreign laws or regulations or stock exchange requirements or otherwise, interim financial information relating to revenues and income that is more current than the financial statements included in the filing in order to comply with the other provisions of this section, such information also shall be included

in the filing and shall be accompanied by:

(1) A description of material variations in the accounting principles, practices and methods used in preparing the financial statements from the principles, practices and methods accepted in the United States; and

(2) Quantification of any material variations that are not quantified with respect to their occurrence in the annual or interim financial statements included in the filing.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By revising paragraph (a)(4) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by § 210.3–19 of this chapter at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *Provided,* That the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78*w*(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

6. By amending Form F–2 (§ 239.32) by revising paragraph (b)(2) of Item 11 preceding the Instructions to read as follows:

Note.—The text of Form F–2 is not and the amendment will not be included in the Code of Federal Regulations.

FORM F–2

* * * * *

Item 11. Material Changes.

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference and delivery of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

7. By amending Form F–3 (§ 239.33) by revising paragraph (b)(2) of Item 11 preceding the Instructions to read as follows:

Note.—The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

FORM F–3

* * * * *

Item 11. Material Changes.

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80–29, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

9. By amending § 240.15d–2 to add one sentence to the end of paragraph (a) to read as follows:

§ 240.15d–2. Special financial report.

(a) * * * If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or six months following the end of the registrant's latest full fiscal year.

* * * * *

By the Commission.

Dated: November 3, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27562 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

[Release Nos. 33-7029; 34-33139; International Series Release No. 608; File No. S7-30-93]

RIN 3235-AF83

Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing today to streamline registration and reporting requirements for foreign companies by: Expanding the universe of foreign issuers eligible to use short-form and full shelf registration under the Securities Act of 1933 (the "Securities Act"); streamlining financial statement reconciliation and financial schedules requirements; providing a new safe harbor for company announcements regarding exempt offerings or unregistered offshore offerings; and expanding safe harbor protection for analyst reports with respect to sizable foreign companies publicly traded offshore.

DATES: Comments should be received on or before January 31, 1994.

ADDRESSES: Comment letters should refer to File Number S7-30-93 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein or Sandra Folsom Kinsey, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance or with respect to accounting proposals, Wayne E. Carnall, (202) 272-2553, Office of the Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: As described in detail below, the Commission is proposing amendments to the following rules and forms under the Securities Act of 1933: [1] Form F-1,[2] Form F-2,[3] Form F-3,[4] Form F-4,[5] Rule 135,[6] Rule 139,[7] Rule 457,[8] Rule 462,[9] Rule 475a,[10] Rule 477,[11] Rule 902 of Regulation S,[12] Rule 502(c) of Regulation D [13] and Item 512 of Regulation S-K.[14] In addition, the Commission is proposing new Rule 135c [15] under the Securities Act and is proposing to amend Form 20-F [16] under the Securities Exchange Act of 1934 (the "Exchange Act").[17]

I. Introduction

In this and a series of companion releases, the Commission today is proposing a number of initiatives, and adopting others, designed to streamline the registration and reporting process for foreign companies accessing the U.S. public markets, further accommodate foreign market making and trading practices in connection with both registered and Rule 144A offerings,[18] and extend the availability of the U.S. and Canadian multijurisdictional disclosure systems to more companies.[19] Those actions include adoption of amendments to the rules governing the updating of financial statements used in offering documents.[20] These amendments are intended to reduce problems for foreign companies that do not publicly report quarterly financial statements.

Today's initiatives are based on the Commission's experience dealing with issues raised in connection with foreign issuers' participation in the U.S. public and private securities markets, and reflect in many instances accommodations previously made to help an individual foreign issuer's entry into the U.S. market. In the last three years, more than 350 foreign companies have registered approximately $95 billion of securities with the Commission. In the last year and a half, approximately 140 foreign companies have entered the U.S. public market for the first time, bringing the total number of foreign companies reporting with the Commission to 559, representing 40 countries. Since the adoption of Rule 144A in April 1990, 184 foreign companies have raised capital in Rule 144A transactions, including 12 companies that later made their initial entry into the U.S. public market.

The initiatives continue the ongoing efforts of the Commission to ease the transition into the U.S. disclosure system, enhance the efficiencies of the registration and reporting processes and lower costs of compliance for foreign companies, where consistent with investor protection.

II. Expanded Availability of Short-Form and Shelf Registration

The Commission is proposing to revise its registration forms to extend to foreign issuers the benefits of short-form and shelf registration to the same extent available to domestic companies.[21]

A. Short-Form Registration Statements

Currently, a foreign private issuer may use short-form registration on Form F-3 for all offerings and have the full benefits of shelf registration only if it has voting securities with at least a $300 million public float and a 36-month reporting history with the Commission. Under the proposals made today, the public float threshold would be reduced to $75 million [22] and the reporting history requirement to 12 months.[23] These are the same eligibility criteria recently adopted for domestic companies.

The proposed $75 million public float criterion would extend the benefits of Form F-3 to a larger class of foreign issuers whose trading markets and size, as well as analyst following, indicate a sufficient market following to justify use of short-form and shelf registration.[24] The number of currently reporting foreign issuers that would satisfy the public float requirement of Form F-3 would increase by one-third.

When the Commission set the $300 million public float test for foreign issuers more than a decade ago, it noted that commenters supported the use of similar types of eligibility criteria for short-form registration by domestic and foreign issuers but recommended larger numerical tests for foreign issuers.[25] In

[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 239.31.

[3] 17 CFR 239.32.

[4] 17 CFR 239.33.

[5] 17 CFR 239.34.

[6] 17 CFR 230.135.

[7] 17 CFR 230.139.

[8] 17 CFR 230.457.

[9] 17 CFR 230.462.

[10] 17 CFR 230.475a.

[11] 17 CFR 230.477.

[12] 17 CFR 230.902.

[13] 17 CFR 230.502(c).

[14] 17 CFR 229.512.

[15] See proposed 17 CFR 230.135c.

[16] 17 CFR 249.220f.

[17] 15 U.S.C. 78a et seq.

[18] See Securities Act Release Nos. 7027 and 7028 (November 3, 1993).

[19] See Securities Act Release No. 7025 (November 3, 1993).

[20] See Securities Act Release No. 7026 (November 3, 1993).

[21] See Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970].

[22] See General Instruction I.A.4. to Form F-3.

[23] See General Instruction I.A.2. to Form F-3.

[24] The public float test specified in Form F-2 is proposed to be revised to $75 million as well.

[25] See Securities Act Release No. 6360 (November 30, 1981) [46 FR 58505]; Securities Act Release No. 6437 (November 19, 1982) [47 FR 54764].

response, the Commission adopted a public float standard twice that required for domestic issuers. Subsequent Commission experience with foreign issuers, as well as the internationalization of securities markets, indicates that foreign issuers with a public float of $75 million or more have a degree of analyst following in their world-wide markets comparable to similarly-sized domestic companies. Thus, the same float test is proposed for foreign issuers on Form F–3 as for domestic issuers on Form S–3. Comment is requested concerning whether the proposed $75 million public float standard is appropriate or whether a higher level would be preferable. If a higher level is recommended, a specific level and the reasons for recommending it should be set forth.

As proposed, the reporting history requirement for Form F–3 would be reduced to 12 months, paralleling the domestic issuer requirement. Proposed Form F–3 would not require that an annual or interim report have been filed or submitted to the Commission prior to first use of the Form.[26] Although the proposal would require that a foreign issuer have been subject to the Exchange Act reporting requirements for 12 months prior to using Form F–3, it is conceivable that in some cases an issuer would not have been required to file any reports during those 12 months.[27] Foreign issuers, unlike domestic companies, are required to submit under Form 6–K only those interim reports that the issuer: (i) makes or is required to make public in its home country, (ii) publicly files or is required to file publicly with a stock exchange on which its securities are traded, or (iii) distributes or is required to distribute to its securityholders. Moreover, unlike domestic companies using Form S–3, foreign companies registering on Form F–3 are not required to incorporate all their interim reports on Form 6–K, but may choose which reports are incorporated.

Comment is requested as to whether the requirement that the issuer be a reporting company for 12 months should be supplemented with a requirement that an annual report have been filed, or a requirement that either an annual report or a semi-annual report have been filed. Should a longer period as a reporting company be required to assure that at least one annual report will have been filed prior to the use of Form F–3?

B. Shelf Registration

The expanded eligibility for short-form registration in turn would allow more foreign companies the full benefits of shelf registration.[28] Issuers eligible to register securities for primary offerings using short-form registration are able to offer those securities on a delayed or continuous basis under the Commission shelf registration procedures.[29] Shelf registration provides companies with financing flexibility and efficiency because they are able to complete their securities registration prior to any planned sales and periodically sell the securities, in one or more offerings, without further Commission clearance. Thus, through expanded Form F–3 eligibility, foreign issuers would be allowed the same flexibility and efficiency that domestic issuers have through Form S–3 eligibility.

In addition, the new unallocated shelf registration process recently introduced for domestic companies is proposed to be extended to foreign companies on the same basis. The unallocated shelf process would permit foreign private issuers registering on Form F–3 to use one registration statement to register debt, equity and other securities, without specifying the amount of each class of securities to be offered.[30] Since the introduction of the unallocated shelf registration 12 months ago, more than $65 billion of securities has been registered by domestic companies using unallocated shelf registration. Comment is requested as to the appropriateness of the expansion of shelf registration and whether there is any need to limit or condition its availability.

C. Investment Grade Non-Convertible Preferred Stock

Currently, foreign issuers may use short-form registration for investment grade non-convertible debt securities, without regard to the size of their voting stock public float.[31] Form F–3 is proposed to be amended to provide the same treatment for non-convertible investment grade preferred stock.[32] These provisions parallel those applied to domestic companies. Comment is requested on the appropriateness of the proposed change.

The proposals also would clarify in Forms F–2 and F–3 that the investment grade status of the securities covered by the registration statement is measured at the time of the sale to investors. Thus, the rating need not be obtained at the time of the filing of the registration statement.[33] If the rating that is received after the registration statement is effective falls below investment grade, and the eligibility requirements for the Form are no longer satisfied without an investment grade rating, the registrant would be required to file a new registration statement or a post-effective amendment. The new registration statement or post-effective amendment would have to provide any requisite additional disclosure, before a takedown is made to sell securities off the shelf.[34]

D. Majority-Owned Subsidiaries

Two revisions are proposed to expand the availability of short-form registration for majority-owned subsidiaries of foreign companies, and mirror the treatment of domestic companies. As proposed, a majority-owned subsidiary would be able to register non-convertible investment grade preferred stock on Form F–3 on the basis of its

[26] See proposed revisions to Item 12 of Form F–3, General Instruction B to Form F–4 and Items 10–14 and 17 of Form F–4. In the absence of an annual report, Form F–3 issuers would be required to incorporate information from their latest Exchange Act or Securities Act registration statement.

[27] Domestic issuers are permitted to use Form S–3 after being subject to reporting requirements for 12 months, regardless of whether they have filed an annual report. Quarterly reports would have been required to be filed, however, by such issuers and would automatically be incorporated by reference into the Form S–3 registration statement.

[28] See proposed revisions to Item 512(a)(1) of Regulation S–K (§ 229.512(a)(1)) that would codify prior staff interpretations that allow foreign issuers to incorporate Exchange Act reports in order to update shelf registration statements to the same extent as domestic issuers. See also proposed revisions to Item 512(a)(4) that allow Form F–3 issuers to incorporate Exchange Act reports in order to update financial statements and other information for shelf offerings in accordance with Rule 3–19 of Regulation S-X (§ 210.3–19) and Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)).

[29] Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

[30] See proposed General Instruction II.C. to Form F–3, proposed General Instruction H. to Form F–4 and proposed revisions to Rule 457 under the Securities Act. Of course, foreign issuers registering on Form F–3 based on the investment grade rating of the securities could not register non-investment grade securities on the same unallocated shelf registration statement unless the issuer satisfies the public float test.

[31] To qualify as investment grade, a security must be so rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F)).

[32] Corresponding changes are proposed to the provisions of Form F–2 that currently allow for registration of non-convertible investment grade debt securities (but not preferred securities) without regard to public float or reporting history. See General Instruction I.B.2. to Form F–2.

[33] See Instruction 3 to the Signatures of Forms F–2 and F–3.

[34] For example, if a non-investment grade rating is received, and the financial statements contained in the registration statement were reconciled in accordance with Item 17 of Form 20–F, a filing to include financial statements reconciled to Item 18 of Form 20–F would be required. Further, if the issuer is not eligible to use Form F–3 without the investment grade rating, the issuer may also be ineligible to use shelf registration. See Rule 415 under the Securities Act (§ 230.415).

parent company's eligibility.[35] In addition, a majority-owned subsidiary would be able to use Form F–2 or F–3 to offer non-convertible preferred stock if its parent met the eligibility requirements and fully and unconditionally guaranteed the payment obligations on the subsidiary's securities.[36] Comment is requested on the appropriateness of the proposed change.

E. Secondary Offerings, Rights Offerings, Dividend or Interest Reinvestment Plans, Convertible Securities and Warrants[37]

Under existing rules, a foreign private issuer may use short-form registration for secondary offerings and certain rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants only if its voting securities meet a public float test.[38] The Commission is proposing to eliminate the public float requirements for registration in connection with such offerings, as none applies to domestic issuers. Comment is solicited on the appropriateness of the proposed change with respect to each type of offering. Should a public float test or additional criteria be required with respect to any or all of such offerings?

Domestic issuers that do not meet the Form S–3 public float test, however, are required to have delivered information to security holders in the 12 months prior to registering on Form S–3 for rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants.[39] Under the current proposals, foreign issuers would be able to use Form F–3 for such offerings without satisfying such a condition. The information that is required to have been delivered by domestic issuers to satisfy that condition is contained in the issuer's proxy statement and annual report to securityholders prepared and delivered pursuant to proxy requirements.[40] Foreign private issuers, which are exempt from such proxy requirements, would not have had reason to deliver such information to their securityholders.

Comment is requested concerning whether a similar information delivery condition should be applied to foreign issuers, or foreign issuers with a public float below $75 million. For example, should such issuers' use of the Form be conditioned upon their delivery to the securityholders to which the offering relates, in the 12 months preceding the offering, a copy of the issuer's most recent annual report or registration statement filed with the Commission?

III. Streamlining Reconciliation Requirements

A. Acceptance of Cash Flow Statements Prepared in Accordance with International Accounting Standards

Foreign private issuers currently are required to provide either a statement of cash flows prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") or information that is substantially similar to U.S. GAAP in a separate statement of cash flows or in a footnote to the registrant's financial statements. Under the proposals, the Commission would accept without reconciliation a cash flow statement prepared in accordance with International Accounting Standards No. 7, "Cash Flow Statements," as amended ("IAS 7").

IAS 7 was amended in October 1992, as part of the International Accounting Standards Committee's Improvement Project. While there are differences between a cash flow statement prepared in accordance with IAS 7 and one prepared in accordance with U.S. GAAP, most of the differences relate to classification and are readily apparent. The remaining differences would not significantly impact an investor's understanding of cash flows. As the informational content of a cash flow statement prepared in accordance with IAS 7 would not be significantly different from a cash flow statement prepared in accordance with U.S. GAAP, the Commission believes statements prepared in accordance with IAS 7 should provide an investor with adequate information regarding cash flows without the need for additional information or modification.

Foreign private issuers electing to provide IAS 7 cash flow statements would be required to do so for all periods required to be reconciled or presented in accordance with U.S. GAAP. Issuers whose cash flow statement complies with IAS 7 or U.S. GAAP would include a statement to that effect in the auditors report or the notes to the financial statements. Comment is requested regarding the appropriateness of relying on the International Accounting Standard, as well as whether a cash flow statement prepared in accordance with IAS 7 should be supplemented with additional disclosure. Comment also is requested as to whether there is a need for the Financial Accounting Standards Board to reconsider FAS 95, "Cash Flow Statements" to conform with IAS 7.

B. Transitional Reconciliation Requirements

Currently foreign private issuers are required to reconcile their financial statements and five-year selected financial information to U.S. GAAP if presented in accordance with a foreign jurisdiction's generally accepted accounting principles. Providing five years of reconciled financial information has been one of the principal costs for foreign companies in entering the U.S. public market. On a case-by-case basis, accommodation has been provided with respect to such information for the earlier years. The Commission is proposing to codify with broader application its transitional accommodations and permit first-time registrants with the Commission to reconcile the required financial statements[41] and selected financial data for only the two most recently completed fiscal years and any interim periods required in the registration statement.[42]

The proposals do not change the requirements with respect to the primary financial statements to be included in the filings, i.e. two years of balance sheet and three years income and cash flow statements, and separate financial statements of significant acquirees or significant investees. Likewise, the requirement to include

[35] See General Instruction I.A.6.(ii) to Form F–3. Currently only non-convertible investment grade debt may be registered on Form F–3 by majority-owned subsidiaries on that basis.

[36] See General Instruction I.A.6.(iii) to Form F–3 and General Instruction I.G. to Form F–2. Currently only guaranteed debt may be registered on Forms F–2 and F–3 by majority-owned subsidiaries on that basis.

[37] Proposals with respect to these types of offerings that were published for comment by the Commission in Securities Act Release No. 6896 (June 5, 1991) [56 FR 27564] continue to be considered in light of public comment and issues raised by foreign disclosure practices.

[38] See General Instructions I.B.3. and I.B.4. to Form F–3. In addition, the proposed revisions would provide immediate effectiveness of registration statements relating to dividend or interest reinvestment plans. See proposed revisions to General Instruction III. to Form F–3 and Rule 462 under the Securities Act (§ 230.462). Conforming revisions to Rules 475a and 477 under the Securities Act (§§ 230.475a and 230.477) also are being proposed. See also Rule 405 under the Securities Act (§ 230.405) which defines "dividend or interest reinvestment plan."

[39] See General Instruction I.B.4. of Form S–3.

[40] See Rule 14a–3(b) under the Exchange Act (§ 240.14a–3(b)).

[41] Where financial statements of an acquired business or significant investee must also be furnished, the proposed amendments would eliminate the requirement to reconcile the earliest of the three years if that information was not previously included in a filing with the Commission.

[42] Reconciliation of interim information is not required for periodic reporting purposes under the Exchange Act.

five years of selected financial data would remain unchanged.

In each subsequent year, on a prospective basis, an additional year of reconciliation would be required. Thus, for example, a foreign company with a calendar year-end entering the U.S. market in November 1994 would be required to provide reconciled information with respect to 1993 and 1992 and interim periods. In its annual report for 1994 and any registration statements made after the filing of the 1994 annual report and prior to the filing of the 1995 annual report, the reconciled data would be provided for three years, i.e., 1992, 1993 and 1994, and interim periods if applicable. Comment is requested as to the appropriateness of the proposed accommodation. Should reconciliation continue to be required for the third year of the income and cash flow statements? Should other disclosures relating to earlier years be required in lieu of the reconciled amounts?

Changes to the foreign issuer registration forms also are proposed to allow the simpler reconciliation pursuant to Item 17 of Form 20–F for all offerings of investment grade securities (whether debt or preferred stock) regardless of the registration form used by the foreign private issuer.[43] Foreign issuers currently are able to provide reconciliation in accordance with Item 17 only if debt securities are being registered. Although only Form F–3 currently contemplates Item 17 reconciliation for offerings of investment grade debt securities, extension of Item 17 reconciliation for investment grade debt securities to the other foreign private issuer registration forms would be a codification of staff practice.

C. Reconciliation of Financial Statements of Significant Equity Investees and Significant Acquirees

Both domestic and foreign companies are required to furnish audited financial statements of significant acquired businesses. Audited financial statements are required if the acquired business is significant at a level of 10%,[44] using tests based on the size of the registrant's investment in the business, the total assets of the business, and the business' pre-tax income relative to amounts reported in the registrant's most recent audited financial statements as calculated on a U.S. GAAP basis. Subject to the same tests for significance, separate audited financial statements of less-than-majority-owned investees ("equity investees") are required for each fiscal year that those entities exceed the significance level of 20%.

Based on its experience in dealing with foreign registrants and the particular difficulty of obtaining reconciling information for smaller acquisitions and equity investees, the Commission is proposing to forego requiring reconciliation of these entities' separate financial statements, unless they exceed a higher significance level. Under the proposal, financial statements of the acquiree would not have to be reconciled unless the acquiree exceeds the 30% significance level based on the registrant's investment, assets and pre-tax income.[45] Similarly, financial statements of significant equity investees would not have to be reconciled unless the investee exceeds the 30% significance level, but using only the investment and pre-tax income tests for significance.[46] Comment is requested regarding the criteria to measure significance for purposes of providing a reconciliation to U.S. GAAP. Should the threshold of 30% be increased, for example to 40%, or decreased, or should the requirement for reconciliation of acquisitions and investees be eliminated? Should different methods of measuring significance be used? Should different tests of significance be applicable to acquisitions and investees? Should the registrant's proportionate share of total assets also be a criterion in measuring significance of an equity investee for purposes of reconciliation? Should the registrant be required to quantify separately in its U.S. GAAP reconciliation those material reconciling items that affect the registrant's investment in the investee?

D. Accommodation With Respect to Pro Rata Consolidation

Generally accepted accounting principles in some countries allow pro rata consolidation for certain joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP. Net income and shareholders' equity are not affected by an issuer's use of pro rata consolidation rather than the equity method. There may, however, be significant differences in line item amounts reported in the balance sheet and statements of income and cash flows as a result of the method chosen. Substantial reconciling information is often necessary if a registrant uses pro rata consolidation in circumstances that would not be permitted under U.S. GAAP.

The Commission proposes to streamline the reconciliation of these differences with respect to foreign private issuers that account for an investment in a joint venture using pro rata consolidation. Such an issuer generally would provide summarized financial information of the current assets/liabilities, noncurrent assets/liabilities, net sales, gross profit and net income relating to its pro rata interest in the joint venture.[47] Separate financial statements of a joint venture accounted for using the pro rata method are not proposed to be required. Comment is requested as to the appropriateness of the proposed accommodation and whether the proposed rule should be limited to certain types of joint ventures, for example, registrants that hold an undivided interest in the assets of a joint venture, or if the proposed rule should be available to all types of joint ventures. In addition, comment is requested as to whether the summarized information should be expanded to provide any information on cash flow of the joint venture.

E. Elimination of Certain Financial Statement Schedules

Currently, foreign private issuers are required to furnish supplemental financial schedules as part of the reconciling information. The Commission is proposing to eliminate the requirements to furnish the following financial schedules:

(1) Rule 12–02—Marketable Securities—Other Investments
(2) Rule 12–03—Amounts Receivable from Related Parties and Underwriters, Promoters, and Employees Other Than Related Parties
(3) Rule 12–05—Indebtedness of and to Related Parties—Not Current
(4) Rule 12–06—Property, Plant and Equipment
(5) Rule 12–07—Accumulated Depreciation, Depletion and Amortization of Property, Plant and Equipment

[43] See General Instruction I.B.2. to Form F–3, General Instruction I.D. to Form F–2, Item 11(c) of Form F–1 and proposed Instruction 2 thereto, Instructions to Item 11(a) of Form F–4, Item 12(b)(2) and 12(b)(3)(vii) of Form F–4, Instructions to Item 13(a) of Form F–4 and Item 14(h) of Form F–4.

[44] The number of years depends on level of significance: 1 year at 10%, 2 years at 20% and 3 years at 40%.

[45] Reconciliation to U.S. GAAP would continue to be required for pro forma financial information depicting the effects of a registrant's acquisition of a business.

[46] See Rule 1–02(v) of Regulation S–X (17 CFR § 210.1–02(v)). The reconciliation of the registrant's primary financial statements to U.S. GAAP will continue to encompass reconciliation of the registrant's investment in the investee.

[47] These are the same captions as required by Rule 1–02(aa) of Regulation S–X (17 CFR § 210.1–02(aa)).

(6) Rule 12–08—Guarantees of Securities of Other Issuers

The schedules are prepared using the accounting standards of the primary financial statements, but typically are not required for reporting in a foreign issuer's home jurisdiction. The Commission believes the incremental cost of the preparation and audit of the schedules proposed to be eliminated is not warranted in light of the information provided in these schedules.

The Commission requests comment as to whether any of the schedules proposed to be eliminated are necessary and therefore should continue to be required. Are there additional schedules that could be foregone without adversely affecting investors' interests?

IV. Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

A. Company Announcements of Unregistered Offerings

The growing number of cross-border and offshore offerings and private placements following the adoption in 1990 of Regulation S [48] and Rule 144A [49] under the Securities Act has resulted in repeated requests for guidance in dealing with companies' need to keep investors informed of material developments, including securities offerings, and the limitations on general solicitation and directed selling efforts in private placements and offshore offerings under Regulation S. To address these concerns, the Commission is proposing a new safe harbor for issuers' announcements of offerings not registered or required to be registered under the Securities Act.[50] The new safe harbor parallels the safe harbor currently provided for similar announcements in connection with registered offerings under Rule 135 under the Securities Act.[51] The proposed safe harbor would be available to both domestic and foreign issuers.

The new safe harbor would limit the information permitted in the announcement to the information currently allowed in the safe harbor for announcements with respect to registered offerings. In addition, the announcement would be required to contain a legend stating that the securities are not registered and may not be sold in the United States absent registration or an applicable exemption from the registration requirements. The proposed safe harbor would not be available if the announcement is being used for the purpose of conditioning the market in the United States for the securities being offered. Under the proposal, to rely on the safe harbor, a reporting company would have to file or submit the announcement with the Commission under Form 8–K or 6–K, as applicable. Non-reporting issuers claiming the Rule 12g3–2(b) exemption under the Exchange Act that rely on the safe harbor would submit the announcement to the Commission pursuant to that rule.

Comment is solicited on the appropriateness of the safe harbor. Is there information that should be deleted or added to that which is proposed to be permitted? Are there conditions to the safe harbor that should be added or subtracted from those proposed? Should the safe harbor be limited to entities with a public trading market (either in the U.S. or abroad) prior to the announcement? Should all or some (e.g., real estate and oil and gas) offerings of partnership interests be excluded? Should the safe harbor apply to offerings under Regulation D under the Securities Act?[52] Should the private placements covered be limited to offerings to qualified institutional buyers as defined in the Rule 144A under the Securities Act?[53]

B. Broker-Dealer Research Reports

Rule 139 under the Securities Act provides safe harbor protection from the registration requirements of that Act with respect to the distribution by broker-dealers of information, opinions or recommendations concerning reporting companies in the process of registration. The conditions for relying on the safe harbor protection are more streamlined where issuers are eligible to use Form F–3 based on the company's voting securities public float or offering of investment grade securities. Because of the steady stream of corporate information available in the marketplace with respect to such companies, the likelihood of market conditioning abuses arising from the existence of broker-dealer research reports have been judged by the Commission to be minimized.[54] With respect to debt offerings, the Commission has determined that fungibility of an issuer's investment grade securities with similarly rated securities of other issuers makes it unlikely that there will be the sort of conditioning and manipulation of the markets which Section 5 was intended to prevent.[55]

Because of the reporting history required for Form F–3 eligibility, broker-dealers publishing research reports on certain sizeable foreign issuers have been foreclosed from the simpler conditions of the safe harbor and have been required to satisfy the more restrictive conditions to rely on the safe harbor. Yet foreign issuers with a public float of $75 million, whose securities have traded for a year on offshore securities markets, would appear likely to have a market following of the type that justifies safe harbor protection under the simpler conditions. Likewise, the reporting history would not appear an essential prerequisite to reliance on the simpler conditions in the case of investment grade securities offerings.

The safe harbor therefore is proposed to be revised to provide an alternative offshore trading history test for offerings by reporting companies that would be eligible for Form F–3 but for the 12-month reporting history condition.[56] Under the proposal, broker-dealers would be able to rely upon the simpler conditions of the safe harbor with respect to such issuers if such issuers have had securities listed or quoted on a designated offshore securities market [57] for at least 12 months. As in the case of Form F–3 eligible issuers, the research reports covered by the revised safe harbor would be those distributed with reasonable regularity in the normal course of business. Comment is solicited as to the appropriateness of the proposed change to Rule 139. Are there conditions to reliance on the safe harbor for foreign issuers that should be added or subtracted?

V. Age of Financial Statements and Updating Requirements

Concurrent with these proposals, in a companion release the Commission is adopting amendments that facilitate registration of securities by foreign

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[48] 17 CFR 230.901–230.904 and Preliminary Notes.

[49] 17 CFR 230.144A.

[50] See proposed Rule 135c (§ 230.135c) and proposed revisions to Rule 902(b) of Regulation S (§ 230.902(b)) and Rule 502(c) of Regulation D (§ 230.502(c)). Rule 902(b) would provide that announcements made pursuant to either Rule 135 or proposed Rule 135c would not constitute "directed selling efforts" for purposes of Regulation S. Rule 502(c) would except Rule 135c announcements from the prohibition on general solicitation or general advertising.

[51] Rule 135 under the Securities Act (§ 230.135). Rule 135 also is proposed to be amended to conform to the proposed new safe harbor so as to allow statements or legends required by foreign law to be included in such notices.

[52] 17 CFR 230.501–230.508 and Preliminary Notes.

[53] 17 CFR 230.144A.

[54] See Securities Act Release No. 6492 (Oct. 6, 1983) [48 FR 46801].

[55] *Id.*

[56] See proposed revisions to Rule 139 (17 CFR 230.139).

[57] "Designated offshore securities market" is defined in Rule 902(a) of Regulation S (§ 230.902(a)).

private issuers by revising requirements relating to the age and updating of financial statements used in offering documents. The revisions have been changed from those proposed, in response to public comment, to eliminate the potential that financial statements in the offering document may not be updated for as long as 12 months.[58] The rule will permit foreign issuers to provide audited fiscal year financial statements within six months following the end of the fiscal year. Unaudited interim financial statements would be required to the extent necessary to bring the most recent financial statements included in a filing to a date within ten months of effectiveness.

In addition, the revisions adopted today provide, as proposed, that interim information contained in offering documents that is more current than that required by Commission rules need no longer be reconciled to U.S. GAAP if narrative disclosures of the differences in accounting principles are provided.

VI. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposed amendments to Forms F–1, F–2, F–3 and F–4, Rules 135, 139, 457, 462, 475a and 477 under the Securities Act, Item 512 of Regulation S-K, Rule 902 of Regulation S, Rule 502(c) of Regulation D and Form 20–F under the Exchange Act, and the proposal of new Rule 135c under the Securities Act, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated with such proposals.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[59] regarding the proposed rules. The IRFA notes that the proposed amendments to rules and forms are intended to provide foreign private issuers greater flexibility and efficiency in accessing the public securities markets. The proposed new rule is intended to provide issuers greater certainty in determining whether announcements of certain exempt or unregistered offerings would constitute "offers" for purposes of Section 5 of the Securities Act. The proposed amendments and rule would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed amendments and rule consistent with their objectives and the Commission's statutory authority were found.

It is expected that the overall effect of the proposed amendments to rules and forms will provide foreign private issuers greater flexibility and increased efficiency in raising capital from the public securities markets. One expected result of adoption of the proposed amendments to rules and forms would be that offerings by foreign companies may increase, which could be expected to increase ease of investment for small U.S. entities acting as investors. While small U.S. entities raising capital in the United States could experience some increase in competition for capital from foreign entities making offerings under the revised forms and rules, that effect would not be expected to be significant for a substantial number of small U.S. entities in view of the small increase in total competition that may result. In addition, small U.S. entities acting as financial intermediaries, such as investment banks, could be affected by an increased number of offerings being made in the United States.

Small U.S. entities that distribute information, opinions or recommendations concerning foreign private issuers could be affected by the expansion of the safe harbor to a larger group of foreign issuers. To the extent small U.S. entities are affected by the proposed expansion of the Rule 139 safe harbor, however, they are expected to benefit from the increased certainty regarding the circumstances under which such information may be distributed and the larger pool of issuers with respect to which such information may be distributed. The effects of the revisions to rules and forms, in any case, are not expected to be significant for a substantial number of small entities in the United States.

Proposed new Rule 135c is not limited to foreign private issuers, but instead provides a safe harbor for all issuers disclosing information regarding such issuers' exempt or unregistered sales of securities. This proposed rule could have a significant effect on small U.S. entities that are reporting under the Exchange Act, although it is not possible to estimate how many small U.S. entities could be affected by the proposed rule. To the extent small U.S. entities are affected by the proposed rule, however, it is expected that they would benefit from the increased certainty regarding the circumstances under which disclosure of an exempt or unregistered sale of securities may be made and from the creation of a safe harbor that did not exist previously. A copy of the IRFA may be obtained from Sandra Folsom Kinsey, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–9, Washington, DC 20549, (202) 272–3246.

VIII. General Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are the subject of this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–30–93.

IX. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, and sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 229, 230, 239 and 249

Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. By revising the proviso following paragraph (a)(1)(iii) and revising paragraph (a)(4) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is

[58] See Securities Act Release No. 7026 (November 3, 1993).

[59] 5 U.S.C. 603 (1988).

on Form S–3 (§ 239.13 of this chapter), Form S–8 (§ 239.16b of this chapter) or Form F–3 (§ 239.33 of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

* * * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by § 210.3–19 of this chapter at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *provided* that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F–3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or § 210.3–19 of this chapter if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F–3.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

4. The authority citations following §§ 230.139 and 230.477 are removed.

5. By revising paragraph (a)(6) of § 230.135 to read as follows:

§ 230.135 Notice of certain proposed offerings.

(a) * * *

(6) Any statement or legend required by State or foreign law or administrative authority.

* * * * *

6. By adding § 230.135c to read as follows:

§ 230.135c Notice of certain proposed unregistered offerings.

(a) For the purposes only of Section 5 of the Act, a notice given by an issuer that it proposes to make an offering of securities not registered or required to be registered under the Act shall not be deemed to offer any securities for sale if:

(1) Such notice is not used for the purpose of conditioning the market in the United States for any of the securities to be offered;

(2) Such notice states that the securities to be offered will not be registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements; and

(3) Such notice contains no more than the following additional information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities proposed to be offered, the amount of the offering, if any, to be made by selling security holders, the anticipated time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;

(iii) In the case of a rights offering to security holders of the issuer, the class of securities the holders of which will be entitled to subscribe to the securities proposed to be offered, the subscription ratio, the proposed record date, the approximate date upon which the rights are proposed to be issued, the proposed term or expiration date of the rights and the approximate subscription price, or any of the foregoing;

(iv) In the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered, the basis upon which the exchange may be made, or any of the foregoing;

(v) In the case of an offering to employees of the issuer or to employees of any affiliate of the issuer, the name of the employer and class or classes of employees to whom the securities are proposed to be offered, the offering price or basis of the offering and the period during which the offering is to be made or any of the foregoing; and

(vi) Any statement or legend required by State or foreign law or administrative authority.

(b) Any notice contemplated by this section may take the form of a news release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8–K (§ 249.308 of this chapter) on file with the Commission, in a Form 6–K (§ 249.306 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3–2(b) of this chapter, in a submission made pursuant to that Section to the Commission.

(d) The issuer, if reporting pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, shall file any notice contemplated by this section with the Commission under cover of Form 8–K (§ 249.308 of this chapter) or furnish such notice under Form 6–K (§ 249.306 of this chapter), as applicable, and, if relying on § 240.12g3–2(b) of this chapter, shall furnish such notice pursuant to the provisions of that exemptive Section.

7. By redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to § 230.139 to read as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

* * * * *

(a)(1) * * *

(a)(2) The registrant is a foreign private issuer that meets all the registrant requirements of Form F–3 (§ 239.33 of this chapter), other than the reporting history provision of paragraph (A)(2)(a) of General Instruction I of such form, and meets the minimum float or investment grade securities provisions of either paragraph B.1. or B.2. of General Instruction I. of such form, and the registrant's securities have been traded for a period of at least 12 months on a designated offshore securities market, as defined in § 230.902(a), and such information, opinion or recommendation is contained in a publication which is distributed with

reasonable regularity in the normal course of business.

* * * * *

8. By revising paragraph (o) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer eligible to use Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) is registering securities pursuant to General Instruction I.B.1. or I.B.2. to Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter), as applicable, to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), or pursuant to General Instruction H. to Form S–4 (§ 239.25 of this chapter) or General Instruction F. to Form F–4 (§ 239.34 of this chapter), as applicable, in connection with a business combination transaction pursuant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table.

9. By revising § 230.462 to read as follows:

§ 230.462 Effective Date of a Registration Statement Filed on Form S–8, and on Certain Forms S–3 and F–3.

A registration statement on Form S–8 (§ 239.16b of this chapter) and a registration statement on Form S–3 (§ 239.13 of this chapter) or on Form F–3 (§ 239.33 of this chapter) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

10. By revising § 230.475a to read as follows:

§ 230.475a Certain pre-effective amendments deemed filed with the consent of the Commission.

Amendments to a registration statement on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

11. By revising paragraph (b) of § 230.477 to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of a registration statement filed on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

* * * * *

12. By revising paragraph (c) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with § 230.135c shall not be deemed to constitute general solicitation or general advertising for purposes of this section.

* * * * *

13. By adding paragraph (b)(7) to § 230.902 to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed selling efforts.* * * *

* * * * *

(7) Notwithstanding paragraph (b)(1) of this section, publication by an issuer of a notice in accordance with § 230.135 or § 230.135c shall not be deemed "directed selling efforts."

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

14. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

15. By revising paragraph (c) of Item 11 and Instructions to Item 11 of Form F–1 (§ 239.31) to read as follows:

Note: For F–1 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–1

* * * * *

Item 11. Information With Respect to the Registrant

* * * * *

(c) Information required by Item 17 of Form 20–F may be furnished in lieu of the information specified by Item 18 thereof if the only securities being registered are non-convertible securities that are "investment grade securities," as defined below, or the only securities to be registered are to be offered: (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

Instructions

1. Attention is directed to Section 10(a)(3) of the Securities Act.

2. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

16. By revising paragraph (b)(2), Instruction 2 to paragraph (b), and paragraph (d) of § 239.32; revising General Instruction I.B.2. and Instruction 2 thereto, and revising General Instruction I.D. of Form F–2 (§ 239.32) to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b)(1) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined in instructions to paragraph (b) of this section, are being registered; and

(ii) The registrant has filed at least one Form 20–F (§ 249.220f of this chapter), Form 40–F (§ 249.240f of this chapter) or Form 10–K (§ 249.310 of this chapter) that is the latest required to have been filed.

Instructions to Paragraph (b)

1. * * *

2. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in § 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

(d) The financial statements included in this registration statement comply with Item 18 of Form 20–F (§ 249.220f of this chapter); *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined in instructions to paragraph (b) of this section, such financial statements comply with either Item 17 or Item 18 of Form 20–F (§ 249.220f of this chapter).

* * * * *

Note: Form F–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–2

* * * * *

B.1. * * *

2. The provisions of this paragraph B.1.a. do not apply to any registrant if: (i) the aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined below, are being registered and (ii) the registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed.

Instructions

1. * * *

2. A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

D. The financial statements included in this registration statement comply with Item 18 of Form 20–F; *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined above, such financial statements comply with either Item 17 or Item 18 of Form 20–F.

* * * * *

17. By revising the text of paragraph (g) preceding the note of § 239.32 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(g) If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

* * * * *

18. By amending Form F–2 (§ 239.32) by revising the first sentence of paragraph G. of General Instruction I., revising paragraph (b)(2) of Item 11, revising paragraph (b) of Item 17, and revising Instruction 3 to the Signatures to read as follows:

Note: Form F–2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form F–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–2

* * * * *

G. If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

* * * * *

Item 11. Material Changes.

(a) * * *

(b)(1) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference and delivery of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 17. Undertakings.

(a) * * *

(b) The registration statement shall contain an undertaking substantially as follows:

The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to which the prospectus is sent or given: the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K; and any filing on Form 10–Q, Form 8–K or Form 6–K incorporated by reference into the prospectus.

* * * * *

SIGNATURES

* * * * *

Instructions

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating under General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

* * * * *

19. By amending § 239.33 by revising the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2), removing paragraph (a)(4) and the Instruction thereto, redesignating paragraphs (a)(5), (a)(6) and (a)(7) as paragraphs (a)(4), (a)(5) and (a)(6), revising newly designated paragraph (a)(5) and the first sentence of the Note following newly designated paragraph (a)(5)(iii); and amending Form F–3 by revising the introductory text of General Instruction I.A. and General Instructions I.A.1. and I.A.2., removing General Instruction I.A.4. and the Instruction immediately following, redesignating General Instructions I.A.5., I.A.6. and I.A.7. as General Instructions I.A.4., I.A.5. and I.A.6., republishing the introductory text and revising paragraphs (ii) and (iii) of newly redesignated General Instruction I.A.5. and the first sentence of the Note following newly redesignated General Instruction I.A.5.(iii) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) *Registrant requirements.* Except as set forth in this paragraph (a), all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to

section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act.

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) § 240.12b–25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this chapter.

* * * * *

(5) *Majority-owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this form if:

(i) The registrant-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(ii) The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Offerings of Certain Debt or Preferred Securities) are met; or

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

Note: In the situation described in paragraph (a)(6)(iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. * * *

* * * * *

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

Except as set forth below, all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

1. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to Section 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act.

2. The registrant: (a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

* * * * *

4. * * *

5. *Majority-owned Subsidiaries*

If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(i) * * *

(ii) the parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Offerings of Certain Debt or Preferred Securities) are met; or

(iii) the parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

Note: In the situation described in (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

* * *

* * * * *

20. By revising paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) and adding an Instruction to paragraph (b)(1) of § 239.33; and by revising the General Instructions I.B.1., I.B.2., I.B.3. and I.B.4. of Form F–3 (§ 239.33) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

Instruction to Paragraph (b)(1)

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash if such securities are *investment grade securities.* A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in § 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter).

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). In addition, Form F–3 (§ 239.33) may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and*

conversions or warrants. Securities to be offered:

(i) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or

(ii) Pursuant to a dividend or interest reinvestment plan; or

(iii) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; *Provided,* if the aggregate market value of the voting stock held by non-affiliates of the issuer is not $75 million or more, the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, within the twelve calendar months immediately preceding the filing of the registration statement, the issuer's latest Form 20–F (§ 249.220f of this chapter), Form 10–K (§ 249.310 of this chapter), Form 40–F (§ 249.240f of this chapter), or Form 10 (§ 249.210 of this chapter) filed pursuant to the Exchange Act or, if no such annual report or Exchange Act registration statement has been filed with the Commission, the prospectus of the issuer's latest Securities Act registration statement filed with the Commission. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants

Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F.

Instruction

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. Primary Offerings of Non-convertible Investment Grade Securities

Non-convertible securities to be offered for cash if such securities are "investment grade securities." A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F.

3. Transactions Involving Secondary Offerings

Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

4. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants

Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; *Provided,* if the aggregate market value of the voting stock held by non-affiliates of the issuer is not $75 million or more, the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, within the twelve calendar months immediately preceding the filing of the registration statement, the issuer's latest Form 20–F, Form 10–K, Form 40–F, or Form 10 filed pursuant to the Exchange Act or, if no such annual report or Exchange Act registration statement has been filed with the Commission, the prospectus of the issuer's latest Securities Act registration statement filed with the Commission. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

* * * * *

21. By adding paragraph C. to General Instruction II. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

22. By revising the first sentence of General Instruction III. of Form F–3 (§ 239.33) and removing the second and third sentences of General Instruction III. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form F–3 solely with respect to securities offered pursuant to dividend or interest reinvestment plans shall become effective automatically upon filing (Rule 456, § 230.456 of this chapter) pursuant to the provisions of Section 8(a) of the Act (Rule 462, § 230.462 of this chapter). * * *

* * * * *

23. By amending Item 11 of Form F–3 (§ 239.33) by revising paragraph (a), paragraph (b)(1) introductory text and paragraph (b)(2) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which certified financial statements are included in this registration statement in accordance with Item 12 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act and incorporated by reference pursuant to Item 12 of this Form.

(b)(1) Include in the prospectus, if not included in documents incorporated by reference into the prospectus pursuant to Item 12 or a prospectus previously filed pursuant to Rule 424(b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or a Form 8–K filed during either of the two preceding years:

(i) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

24. By amending Item 12 of Form F–3 (§ 239.33) by revising paragraphs (a), (b) and (c) to read as follows:

Note: Forms F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 12. Incorporation of Certain Information by Reference.

(a) The registrant's latest Form 20–F, Form 40–F, Form 10–K or Form 10 filed pursuant to the Exchange Act shall be incorporated by reference. If no such annual report or registration statement has been filed by the registrant, the registrant's most recent prospectus filed pursuant to Rule 424 (b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act shall be incorporated by reference. Any report on Form 10–Q or Form 8–K filed since the date of filing of the annual report, registration statement or prospectus incorporated by reference also shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction

* * * * *

(b) The prospectus shall also state that all subsequent annual reports filed on Form 20–F, Form 40–F or Form 10–K, and all subsequent filings on Forms 10–Q and 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

(c) The registrant may incorporate by reference any Form 6–K meeting the requirements of this Form. If the registrant intends to incorporate any Form 6–K subsequently submitted to the Commission, the prospectus shall state that the registrant may incorporate such Forms 6–K by identifying in such Forms that they are being incorporated by reference into this Form.

Instructions

* * * * *

25. By revising Instruction 3. to the Signatures of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

SIGNATURES

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

26. By amending Form F–4 (§ 239.34) by revising General Instruction B.1.(a) and B.1.(a)(ii)C., adding paragraph 3. to General Instruction D., revising paragraphs (a), (b) and (c) of Item 10, revising the introductory text and paragraphs (a)(1), (a)(2) and Instruction 1 following paragraph (a)(3) of Item 11 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

B. Information with Respect to the Registrant.

1. * * *

(a) Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements for use of Form F–3 (§ 239.33 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form F–3") for this offering of securities:

(i) * * *

(ii) One of the following is met:

* * * * *

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.A.5. of Form F–3 is met.

* * * * *

D. Application of General Rules and Regulations.

* * * * *

3. Where two or more classes of securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table") if the securities are being registered by an issuer eligible to use Form F–3. In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

Item 10. Information with Respect to Certain Form F–3 Registrants.

* * * * *

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 11 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference in accordance with Item 11 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X

(§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F, 40–F or 10–K (in which case the prospectus shall disclose that such form has been so amended), or in a Form 6–K, Form 10–Q or Form 8–K; and

(c) Include in the prospectus, if not incorporated by reference from the documents filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424 (b) or (c) under the Securities Act (§ 230.424 of this chapter) or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 6–K filed during either of the two preceding fiscal years:

* * * * *

Item 11. Incorporation of Certain Information by Reference.

If the registrant furnishes information in accordance with the provisions of Item 10 of this Form:

(a) * * *

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; or, if no such annual report has been filed, the registrant's most recent registration statement on Form 20–F, Form 10 or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or the registrant's most recent prospectus filed pursuant to Rule 424 (b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act;

(2) All reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report or registration statement incorporated pursuant to Item 11(a)(1) of this Form; and

* * * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3.

* * * * *

27. By amending Form F–4 (§ 239.34) by revising the second sentence of the introductory text of Item 12, revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), paragraphs (a)(3) and (a)(4), the introductory text of paragraph (b), the first sentence of paragraph (b)(2), and paragraph (b)(3)(vii) of Item 12 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 12. Information with Respect to F–2 or F–3 Registrants.

* * * *However*, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 of this Form reflect: (1) * * *

(a) If the registrant elects to deliver this prospectus together with the annual report or registration statement incorporated by reference pursuant to Item 13, or a complete and legible facsimile thereof:

(1) Indicate that the prospectus is accompanied by such annual report or registration statement.

(2) If the financial statements incorporated by reference pursuant to Item 13 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, provide the information required by Rule 10–01 of Regulation S–X and Item 9 of Form 20–F by one of the following means: * * *

(3) If not reflected in the registrant's annual report or registration statement incorporated by reference in accordance with Item 13 of this Form, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 13 of this Form and that have not been described in a report on Form 6–K, Form 10–Q or Form 8–K delivered with the prospectus in accordance with paragraph (2)(ii) of this Item.

(5) * * *

(b) If the registrant elects not to deliver its annual report or registration statement incorporated by reference pursuant to Item 13 to the securityholders of the company to be acquired:

(1) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2. * * *

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form); and

* * * * *

28. By amending Form F–4 (§ 239.34) by revising Item 13, revising the introductory text of Item 14 and revising paragraph (h) of Item 14 to read as follows and revising the phrase "Section 13(a) or 15(d) of the Exchange Act, or" to read "Section 13(a) or 15(d) of the Exchange Act, and" in paragraph (a) of Item 17:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 13. Incorporation of Certain Information by Reference.

If the registrant furnishes information in accordance with the provisions of Item 12 of this Form, incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (a) and, if applicable, (b) below:

(a) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; or, if no such annual report has been filed, the registrant's most recent registration statement on Form 20–F, Form 10 or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or the registrant's most recent prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act; and

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report or registration statement incorporated pursuant to Item 13(a) of this Form.

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2.

2. Where common equity securities are being issued, the information required by

Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F or in a Form 6–K, Form 10–Q or Form 8–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information meeting the requirements of Form F–2. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

Item 14. Information with Respect to Foreign Registrants Other Than F–2 or F–3 Registrants.

If the foreign registrant does not meet the requirements for use of Form F–2 or F–3, or otherwise elects to comply with this Item in lieu of Items 10 and 11 or Items 12 and 13, furnish the following information:

* * * * *

(h) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–1, as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form); and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

29. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

30. By amending Form 20–F (§ 249.220f) by adding one sentence to the end of Instruction 7 to Item 8; and in Item 17 by revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), in newly redesignated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as (c)(2)(iv), adding paragraphs (c)(2)(iii), (c)(2)(v), (c)(2)(vi) and (c)(2)(vii), and adding Instruction (4) to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 8. Selected Financial Data.

* * * * *

Instructions.

* * * * *

7. * * * Selected financial data on a basis reconciled to U.S. generally accepted accounting principles need be provided only for (i) those periods for which the primary annual financial statements have been required to be reconciled in a filing made under the Securities Act or Exchange Act, and (ii) any interim periods.

* * * * *

Item 17. Financial Statements.

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' certificates that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the United States or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vi) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vii) For a registrant that prepares its financial statements using a comprehensive body of accounting principles other than those generally accepted in the United States that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP, the quantification of variations may omit such effects. In lieu thereof, the registrant shall provide the summarized financial information relating to its pro rata interest in the joint venture using the captions specified in § 210.1–02(aa) of this chapter.

* * * * *

Instructions:

* * * * *

(4) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect should be included in the financial statements or independent accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the report of the independent accountants should identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flows statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement should be indicated.

31. By amending Item 18 of Form 20–F (§ 249.220f) by revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), in newly redesignated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(iv) and adding paragraphs (c)(2)(iii), (c)(3)(v), (c)(3)(vi) and (c)(3)(vii), and adding Instruction 3 to the Instructions to Item 18 to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 18. Financial Statements.

* * * * *

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' certificates that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this

chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the U.S. or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vi) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vii) For a registrant that prepares its financial statements using a comprehensive body of accounting principles other than those generally accepted in the United States that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP, the quantification of variations may omit such effects. In lieu thereof, the registrant shall provide the summarized financial information relating to its pro rata interest in the joint venture using the captions specified in § 210.1–02(aa) of this chapter.

* * * * *

Instructions.

* * * * *

(3) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect should be included in the financial statements or independent accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the report of the independent accountants should identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flow statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement should be indicated.

* * * * *

November 3, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27557 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–P

federal register

Monday
November 15, 1993

Part VI

Securities and Exchange Commission

17 CFR Part 240

Distributions of Securities of Certain Foreign Issuers; Distributions of Foreign Securities to Qualified Institutional Buyers; Statement of Policy and Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33-7027; 34-33137; International Series Release No. 606]

Application of Rules 10b-6, 10b-7, and 10b-8 During Distributions of Securities of Certain Foreign Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Statement of policy.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing a Statement of Policy announcing the Commission's position that, upon proper written request, class exemptions from Rules 10b-6, 10b-7, and 10b-8 (collectively, "Trading Practices Rules") under the Securities Exchange Act of 1934 ("Exchange Act") would be available during distributions in the United States by issuers located in foreign jurisdictions. The exemptions would be subject to substantially similar principles, terms, and conditions that applied to the exemptions issued on October 6, 1993 in connection with distributions of certain German securities. These exemptions would permit transactions in foreign countries that otherwise would be prohibited by the Trading Practices Rules during distributions of foreign securities in the United States.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, Assistant Director; David A. Hebner, Branch Chief; or Laurie E. Petrell, Attorney-Adviser, Office of Trading Practices, Division of Market Regulation, at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rules 10b-6, 10b-7, and 10b-8

Rules 10b-6,[1] 10b-7,[2] and 10b-8[3] under the Exchange Act[4] are anti-manipulation rules designed to prevent persons with an interest in a securities distribution from conditioning the market for the offered security during the distribution. Rule 10b-6 generally prohibits those persons who participate in a distribution of securities (including issuers and underwriters and their "affiliated purchasers") from bidding for, purchasing, or inducing others to purchase the security being distributed and certain other related securities until they have completed their participation in the distribution, unless such activity is excepted by[5] or exempted from[6] the rule.

Rule 10b-7 under the Exchange Act governs the stabilization of a security's price to facilitate an offering, and places limitations on the price at which stabilizing bids may be entered. Rule 10b-8 under the Exchange Act governs a distribution of securities through rights, and places restrictions on the prices at which rights may be purchased and on the prices that the securities being distributed may be offered or sold.

B. Application of the Trading Practices Rules to Multinational Distributions

The principal trading markets for foreign securities generally are located outside the United States. Trading in those markets could have the manipulative effect upon distributions in the United States that the Trading Practices Rules are designed to prevent. As a result, since shortly after the Trading Practices Rules' adoption in 1955, the Commission has taken the position that, with respect to distributions of foreign securities occurring in the United States, the Trading Practices Rules apply to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions.[7]

As the securities markets of the world have become increasingly interconnected, and in particular as multinational offerings of securities have become more common, it has become apparent that application of the Trading Practices Rules to transactions effected abroad often conflicts with customs and market practices in those other jurisdictions. In addition, the Trading Practices Rules may impose compliance burdens and costs on foreign issuers, foreign underwriters, and the affiliated purchasers of these persons.

The Commission has attempted to ameliorate these effects by granting exemptions on both an individual transaction[8] and a class basis.[9] These exemptions reflect a balancing of the need to protect United States ("U.S.") investors from the abuses that the Trading Practices Rules are designed to address against the costs associated with applying the Trading Practices Rules abroad. The Commission has structured conditional exemptions from these rules' prohibitions that accommodate foreign trading practices in situations where the risks of manipulative effects in the United States from trading activities abroad is very low and the Commission is able to obtain access to information about overseas transactions.

II. Class Exemptions From the Trading Practices Rules for Distributions of Securities of Certain German Issuers

On October 6, 1993, the Division issued a letter, pursuant to delegated authority, granting class exemptions from the Trading Practices Rules with respect to distributions in the United States of actively-traded securities of very substantial German issuers ("Germany Exemptions").[10] The Germany Exemptions incorporate and expand the approach utilized by the Commission in granting exemptions from the Trading Practices Rules in other international contexts by distinguishing among transactions effected in the United States, in Germany, and in other jurisdictions where the offered security trades. The Germany Exemptions reflect the Commission's assessment that the risks of potential manipulative effects from transactions in the principal foreign market substantially are diminished through limiting the exemptions to actively-traded securities of very highly capitalized German issuers, informing

[1] 17 CFR 240.10b-6.
[2] 17 CFR 240.10b-7.
[3] 17 CFR 240.10b-8.
[4] 15 U.S.C. 78a et seq

[5] Rule 10b-6 contains thirteen exceptions to its general prohibitions that are intended to permit an orderly distribution of securities or to limit disruptions in the market for the securities being distributed.

[6] Paragraph (i) of Rule 10b-6 provides the Commission with authority to exempt a transaction or transactions, either unconditionally or on specified terms and conditions, from the rule as not constituting a manipulative or deceptive device or contrivance. 17 CFR 240.10b-6(i). The Commission has delegated the authority to grant requests for exemptions from Rules 10b-6, 10b-7, and 10b-8 to the Director ("Director") of the Division of Market Regulation ("Division"), to be performed by the Director or by such person or persons as may be delegated from time to time by the Chairman of the Commission. See 17 CFR 200.30-3(a)(6).

[7] See, e.g., Letters regarding Royal Dutch Petroleum Company (December 23, 1957); Phillips N.V. (May 5, 1962); Standard Oil Company (New Jersey) (February 6, 1970); and S.S. Kresge & Co. (April 14, 1972).

[8] See, e.g., Letter regarding British Airways PLC (May 19, 1993), (Current Binder) Fed. Sec. L. Rep. (CCH) ¶ 76,653 (granting exemptions from Rules 10b-6, 10b-7, and 10b-8 during a rights offering by a United Kingdom issuer).

[9] For example, the Division, acting pursuant to delegated authority, recently consolidated and expanded class exemptions from Rules 10b-6 and 10b-7 to permit "passive market making" on the London Stock Exchange ("LSE") by LSE market makers affiliated with underwriters of securities being distributed in the United States. Letter regarding Distributions of SEAQ and SEAQ International Securities (July 12, 1993) ("1993 LSE Letter") (available on LEXIS).

[10] Letter regarding Distributions of Certain German Securities (October 6, 1993), Securities Exchange Act Release No. 33022 (October 14, 1993), 58 FR 53220 ("Germany Exemptions Release") (available on LEXIS).

U.S. investors about the range of potential German market activities by distribution participants, and including conditions enabling the Commission to obtain transaction information about those activities.

III. Statement of Policy

The Commission believes that the same principles that serve as a basis for granting the Germany Exemptions may be equally applicable with respect to distributions of other foreign issuers, and thus similar accommodations for other jurisdictions may be appropriate. Therefore, the Commission is issuing this Statement of Policy announcing that, upon proper written request, exemptions for actively-traded and widely-followed securities of highly capitalized issuers from other countries would be granted, subject to substantially similar terms and conditions.

The Commission seeks to accommodate customary market practices in such an issuer's home market by providing class exemptions from the Trading Practices Rules to permit all distribution participants and their affiliated purchasers to effect transactions in that market during the distribution in the United States. The exemptions would be subject to terms and conditions regarding security eligibility criteria, notice, disclosure, recordkeeping, and transaction reporting obligations as described below. Similarly, unconditional exemptions from the Trading Practices Rules would be available for transactions effected in securities markets that account for less than 10% of published world-wide trading volume in the security being distributed ("Secondary Markets"). The Trading Practices Rules would continue to apply to transactions conducted in the United States, and, unless another exemption were available, to transactions effected in securities markets that account for 10% or more of published world-wide trading volume in the security being distributed ("Significant Markets"). Although the Commission believes that it is appropriate to facilitate distributions of foreign securities in the United States by providing exemptions from these anti-manipulation rules, it is important to highlight that such accommodation would in no way affect the continued application of the general anti-fraud and anti-manipulation provisions of the federal securities laws.[11]

[11] E.g., Exchange Act sections 9(a) and 10(b), 15 U.S.C. 78i(a) and 78j(b), and 17 CFR 240.10b-5. See also Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a).

IV. Exemption Requests

A. Market Information

Persons interested in obtaining a class exemption should make a written exemption request to the Division and provide background information on market practices in the issuer's home market, including:

(1) The methods used to distribute securities;[12]

(2) A description of the exchange and over-the-counter trading markets that exist in such jurisdiction, including requirements governing quotation and transaction reporting and dissemination, and information on market surveillance practices conducted by home market securities regulators;

(3) A description of customary trading practices by distribution participants during distributions (noting in particular any trading restrictions that would be applicable during securities distributions);

(4) A description of the securities laws, rules, or regulations in such jurisdiction governing fraudulent and manipulative practices, including information on the obligations of the appropriate regulators to enforce such provisions;

(5) A description of the recordkeeping obligations for transactions effected in the jurisdiction;

(6) A description of the consequences of the application of the Trading Practices Rules to the market for the security being distributed or related securities in that jurisdiction; and

(7) A description of any legal or other impediments that would prevent the Commission from obtaining any transaction information, including the identity of customers.

In addition, the written request should address the following terms and conditions which were incorporated in the Germany Exemptions.[13]

B. Notice

Distribution participants should agree to provide written notice to the Division of their intent to rely upon the exemptions. The notice would be furnished promptly, and not later than the commencement of the recordkeeping period.[14] Such notice may be furnished by the lead underwriter, global coordinator, or other offering coordinator as agent for other distribution participants relying upon the exemptions.[15]

C. Securities Qualifications

A critical element of any exemptions from the Trading Practices Rules will be the identification of a class of substantial issuers with actively-traded securities that are widely-followed by the investment community. A security that is a component of a widely-recognized stock index, and has a market capitalization that is the equivalent of US$1 billion and a value of average daily trading volume of the equivalent of US$5 million, generally would qualify for the exemptions.[16]

D. Disclosure to U.S. Investors

The written exemption request should describe the scope of disclosure of anticipated market activities in the issuer's home country jurisdiction that would be contained in the U.S. offering materials. In this regard, the U.S. offering materials should contain a comprehensive description of the trading and other market activities that could be undertaken by distribution participants (and affiliated purchasers) in the issuer's home country pursuant to the requested exemptions. The Commission also would expect that the disclosure would state that such trading or market activities may result in prices different from that which otherwise might prevail in the open market.

E. Principal Transactions

During the reporting period, the Commission would expect that all

[12] For example, the written request pertaining to the Germany Exemptions indicated that as a result of legal and judicial requirements in Germany, most primary securities distributions would involve distributions through rights. In connection with such offerings, it also was noted that the subscription price generally is deeply discounted by at least 20 to 30% from the then current market price for the underlying security. See Germany Exemptions Release.

[13] Although the Germany Exemptions should serve as a model for the essential features that should be addressed when the Commission considers granting similar exemptions to other foreign issuers, the Commission would consider the unique aspects of the particular foreign securities markets with respect to any individual request.

[14] See *infra* note 19.

[15] The notice provision of the Germany Exemptions included the following items: (1) The name of the issuer of the security being distributed; (2) if the security is a component of a stock index, the name of the index and for other securities, information with respect to the market capitalization of the security and the value of average daily trading volume; (3) the identity of all Significant Markets; (4) if the notice is provided for more than one underwriter or selling group member, the identity of all such underwriters and selling group members (other distribution participants relying upon the exemptions were required to furnish a separate notice); and (5) a statement that the distribution participants and their affiliated purchasers relying upon the Germany Exemptions are aware of the terms and conditions of the exemptions.

[16] The Commission expects that eligible securities generally would be components of a stock index of the home country which represents substantial issuers from that country.

principal transactions in the home market by distribution participants would be effected on or reported to a trading facility operated or regulated by a "foreign financial regulatory authority" ("FFRA").[17] The exemption request should discuss whether information regarding such trades is publicly disseminated.[18]

F. Recordkeeping and Reporting

Each distribution participant and its affiliated purchasers effecting transactions in the home country jurisdiction should agree to provide information with respect to each transaction in the security being distributed and related securities during a period [19] commencing prior to the commencement of the distribution in the United States and continuing until its completion.[20] The information should be submitted by each distribution participant (along with records of its affiliated purchasers) in a common record format to a single independent entity.[21] In most cases, an FFRA located in the jurisdiction would be acceptable to the Commission to act as the independent entity for transaction information.[22] The Commission also would expect the independent entity to agree to transmit transaction information supplied by the distribution participants and their affiliated purchasers to the Division within 30 days of a request for the information. If this information were not available from the independent entity, the Commission would expect the distribution participants and their affiliated purchasers to agree to provide the same transaction information directly to the Division upon request. The independent entity and the persons obligated to report their transactions would maintain this information for a period of not less than two years. In addition, distribution participants would make representatives available to the staff of the Commission to respond to inquiries relating to such information.

V. Conclusion

This policy statement is issued in the context of a continuing review of the Trading Practices Rules. The Commission believes that this Statement of Policy strikes an appropriate balance between the need to reduce burdensome costs associated with the application of the Trading Practices Rules during multinational distributions of foreign securities and the need to protect U.S. investors, and will provide additional investment opportunities to U.S. investors without compromising essential U.S. investor protections under the federal securities laws.

By the Commission.

Dated: November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-P

[17] An FFRA is defined in section 3(a)(51) of the Exchange Act, 15 U.S.C. 78c(a)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent or a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

[18] The exemption request should specify the transaction publication requirements of the trading facilities of the issuer's home country market.

[19] The Commission would expect that the recordkeeping and reporting periods generally would correspond to those of the Germany Exemptions, which vary depending upon whether the securities are being sold pursuant to a rights offering or secondary offering. In the case of a secondary offering, the transaction reporting period commences three business days prior to the determination of the offering price and continues until the distribution in the United States is completed. In the case of a rights offerings, the transaction reporting period commences when the rights subscription price is determined and continues until the distribution in the United States is completed. However, no transaction reporting would be required during this period, if the rights exercise price represents a discount of more than 10% from the then current market price of the underlying security. When the discount is at 10% or less, the reporting obligation is triggered and continues until the end of the rights subscription period, or until the discount to the current market price of the underlying security rebounds to at least 12%.

[20] The transaction information should include the following elements: (1) The name of the security; (2) the date of the transaction; (3) the time of the transaction, including execution and reporting times; (4) the volume of each transaction; (5) specification of the market where the transaction was executed; (6) the identity of the counterparty to the transaction; and (7) an indication whether the transaction was for a proprietary or customer account (provided that transactions effected for a customer account for which the person exercises discretionary authority would be reported as proprietary transactions).

The identity of customers (or counterparties other than distribution participant counterparties) would not be required if it is not legally possible under the laws of the issuer's jurisdiction to provide such information to the Commission. Distribution participants (and their affiliated purchasers) relying upon the exemptions from the Trading Practices Rules, however, would agree to waive secrecy laws or other impediments to the Commission's access to information with respect to their own transactions.

[21] Unless it were not feasible, the records would be reported in a Comma Delimited American Standard Code for Information Interchange (ASCII) format.

[22] If an FFRA were not available to act as the independent entity, the Commission would consider other alternatives. For example, the Germany Exemptions provided that the accountant for the lead German underwriter could serve as the independent entity. In all cases, the entity must be independent of the distribution participants. *Cf.* Regulation S-X under the Securities Act of 1933.

[Release Nos. 33-7028; 34-33138; International Series Release No. 607; File No. S7-19-93]

RIN 3235-AF52; 3235-AF53; 3235-AF54; 3235-AF11

Exceptions to Rules 10b-6, 10b-7, and 10b-8 Under the Securities Exchange Act of 1934 for Distributions of Foreign Securities to Qualified Institutional Buyers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new exceptions to Rules 10b-6, 10b-7, and 10b-8 ("Trading Practices Rules") under the Securities Exchange Act of 1934 which would permit transactions otherwise prohibited by those rules during distributions of foreign issuers' securities eligible for resale pursuant to Rule 144A under the Securities Act of 1933, when such distributions in the United States are made exclusively to qualified institutional buyers ("QIBs"). By eliminating the costs and other burdens associated with compliance with the Trading Practices Rules, the new exceptions should facilitate Rule 144A distributions of foreign securities to QIBs. However, the general anti-fraud and anti-manipulation provisions of the federal securities laws would continue to apply to activities of participants in Rule 144A distributions.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, Assistant Director; Elizabeth Pucciarelli Hensley, Branch Chief; or Diane Mage Roberts, Attorney-Adviser, Office of Trading Practices, Division of Market Regulation, at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is adopting new exceptions to Rules 10b-6,[1] 10b-7,[2] and 10b-8[3] ("Trading Practices Rules") under the Securities Exchange Act of 1934 ("Exchange

[1] 17 CFR 240.10b-6.

[2] 17 CFR 240.10b-7.

[3] 17 CFR 240.10b-8.

Act")[4] in connection with distributions of securities of foreign issuers that are eligible for resale pursuant to Rule 144A[5] ("Rule 144A—eligible securities") under the Securities Act of 1933 ("Securities Act"),[6] when such distributions in the United States are made exclusively to qualified institutional buyers ("QIBs")[7] in transactions exempt from Securities Act registration requirements under section 4(2)[8] of, or Rule 144A or Regulation D[9] under, the Securities Act ("Rule 144A Distributions"). The exceptions, which were proposed by the Commission in May 1993,[10] permit transactions otherwise prohibited by the Trading Practices Rules during such distributions. The amendments were proposed because the application of the Trading Practices Rules to Rule 144A Distributions may make it more difficult to include the United States in cross-border transactions.[11]

The Commission has determined to adopt the exceptions to the Trading Practices Rules substantially as proposed. The Commission emphasizes that the new exceptions in no way affect the continuing applicability of the general anti-fraud and anti-manipulation provisions under the federal securities laws to Rule 144A Distributions.[12]

II. Background

The Trading Practices Rules are anti-manipulation provisions governing the market conduct of persons participating in a distribution of securities and their affiliated purchasers. As described more fully in the Proposing Release, the Trading Practices Rules apply to transactions under Rule 144A that are distributions within the meaning of Rule 10b–6. Some market participants, however, have expressed concerns that the Rule 144A securities market has not achieved its full potential in part because foreign issuers are reluctant to include a United States ("U.S.") tranche in global offerings when the Trading Practices Rules apply to sales of foreign securities to U.S. institutional investors.[13] In response to these concerns, the Proposing Release sought comment on whether distributions of Rule 144A—eligible foreign securities should be excepted from the Trading Practices Rules, or whether these rules should continue to apply to such distributions.

The Commission notes that it is not aware of any abuses relating to pricing practices for Rule 144A-eligible securities, nor of any complaints or lawsuits by QIBs relating to sales of securities of foreign issuers in reliance on Rule 144A. The Commission will continue to monitor developments in the Rule 144A securities market.

III. Discussion of the Exceptions

The Commission received twelve comment letters in response to the proposed exceptions.[14] Nine commenters favored adoption of the proposed exceptions, generally stating that the exceptions would facilitate participation by institutions in the United States in the global securities markets by removing impediments to cross-border transactions by, among other things, eliminating the need for foreign issuers and underwriters to request exemptions from the Trading Practices Rules for individual transactions. Several of the commenters endorsing the proposed exceptions pointed to the fact that other provisions of the federal securities laws, including the general anti-fraud and anti-manipulation provisions, would continue to apply to Rule 144A Distributions. Six commenters suggested various modifications to the proposal. Two commenters opposed adoption of the proposed exceptions stating that, because the Trading Practices Rules are designed to protect U.S. investors, their modification would reduce the attractiveness of the Rule 144A securities market. One commenter expressed no opinion on whether the proposed exceptions should be adopted. In addition, the commenters generally were not aware of any foreign market activities that influenced improperly the price of securities during Rule 144A Distributions in the United States.

The Commission believes that the characteristics of transactions involving Rule 144A-eligible foreign securities serve as appropriate bases to either reduce or eliminate the application of these anti-manipulation rules in the limited context of offerings of Rule 144A Distributions. For example, Rule 144A Distributions are not subject to the registration provisions of the Securities Act; Rule 144A-eligible securities are not listed on a national securities exchange or quoted on an automated inter-dealer quotation system; and Rule 144A Distributions are limited to QIBs.

The Commission is adopting the exceptions as proposed, with a slight modification as discussed below. The new exceptions to the Trading Practices Rules permit market activities in all jurisdictions, including the United States,[15] without compliance with the Trading Practices Rules during distributions of Rule 144A-eligible securities of a foreign government or a foreign private issuer, as defined in Rule 3b–4 under the Exchange Act,[16] if such securities are offered and sold in the United States to QIBs (or persons reasonably believed to be QIBs) in transactions exempt from registration under section 4(2) of, or Rule 144A or Regulation D under, the Securities Act. The exceptions also are available for related securities during Rule 144A

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 230.144A. Rule 144A provides a non-exclusive safe harbor from the registration requirements of the Securities Act for resales of eligible restricted or unregistered securities to QIBs. See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 ("Rule 144A Adopting Release"). See also Securities Act Release No. 6806 (October 25, 1988), 53 FR 44016 (Rule 144A proposing release); Securities Act Release No. 6839 (July 11, 1989), 54 FR 30076 (Rule 144A reproposing release); Securities Act Release No. 6963 (October 28, 1992), 57 FR 48721 (adopting amendments to Rule 144A).

[6] 15 U.S.C. 77a *et seq.*

[7] Generally, with the exception of registered broker-dealers, an entity qualifying as a QIB must, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with that entity. Broker-dealers registered under the Exchange Act must own or invest on a discretionary basis at least $10 million in securities of issuers that are not affiliated with that broker-dealer. 17 CFR 230.144A(a)(1).

[8] 15 U.S.C. 77d(2).

[9] 17 CFR 230.501 through 508.

[10] Securities Exchange Act Release No. 32266, 58 FR 27686 (May 5, 1993) ("Proposing Release").

[11] *Id.*, 58 FR at 27688.

[12] *E.g.*, Securities Act Section 17(a), 15 U.S.C. 77q(a); Exchange Act Section 9(a), 15 U.S.C. 78i(a); Exchange Act Section 10(b), 15 U.S.C. 78j(b), and 17 CFR 240.10b–5. Moreover, transactions effected in accordance with the exceptions may not be engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of the security in distribution or any related securities.

[13] See also Letters regarding Application of Rules 10b–6, 10b–7 and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (April 25, 1991 and January 15, 1993), (1991) Fed. Sec. L. Rep. (CCH) ¶79,729 ("SIA Letter Exemptions"). The exceptions adopted herein supersede the SIA Letter Exemptions.

[14] The Commission received comment letters from two law firms, four broker-dealers, one industry association, one investment adviser, one mutual fund, two pension funds, and one banking institution. A Summary of Comments has been prepared by the Division of Market Regulation ("Division") and is available in File No. S7–19–93 in the Commission's Public Reference Section at the address noted above. In addition to publishing the Proposing Release for public notice and comment, the Division sent a letter and a copy of the Proposing Release to more than 125 institutions that appeared to qualify as QIBs, including investment companies, financial institutions, investment advisers, and insurance companies, and invited their comment on the Proposing Release. Four comment letters were received in response.

[15] Rule 144A provides that the securities may not, at the time of issuance, be securities of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act, or quoted in a U.S. automated inter-dealer quotation system. 17 CFR 230.144A(d)(3). Accordingly, the Commission expects that transactions effected in the United States pursuant to these exceptions will be limited.

[16] 17 CFR 240.3b–4(a), (c).

Distributions. Identical exceptions to Rules 10b–6, 10b–7,[17] and 10b–8 are adopted.

A Eligible Securities and Offerees

Commenters suggested expanding the scope of the securities and offerees to be covered by the exceptions. One commenter stated that the scope of the exceptions should be expanded to include domestic securities. Several commenters urged the Commission to broaden the proposed exceptions to cover "institutional accredited investors" under Regulation D.[18] Also some commenters suggested that the exceptions be expanded to include offers and sales to persons that are not necessarily QIBs but are not considered "U.S. persons" for the purposes of Regulation S under the Securities Act.[19]

The Commission notes that the exceptions as adopted are intended to address concerns that, because of the effects that the Trading Practices Rules can have on foreign trading activities, underwriters and foreign issuers have declined to extend Rule 144A Distributions into the United States or have limited sales of Rule 144A-eligible foreign securities in the United States so that such sales would not be deemed a distribution under Rule 10b–6. The Commission does not believe that it is appropriate at this time to extend the exceptions to Rule 144A transactions involving domestic securities or persons other than QIBs, but will continue to review the applicability of the Trading Practices Rules to private market transactions.[20]

Two commenters suggested that, consistent with the provisions of Rule 144A, the exceptions should be available to offers and sales to persons that the seller reasonably believes are QIBs. The Commission agrees that the exceptions should parallel Rule 144A in this regard,[21] and has incorporated a reasonable belief standard in the exceptions.

B. Additional Conditions

The Commission requested comment on whether certain additional conditions should be incorporated into the exceptions. For example, the Commission suggested that the liquidity of the issuer's securities may be relevant, and asked whether criteria should be included based on the issuer's public float or the U.S. dollar value of average daily trading volume of the issuer's securities. Additionally, the Commission suggested that the exceptions could require that the principal market for the issuer's securities be located in a jurisdiction with which the Commission has entered into a comprehensive information sharing and enforcement assistance agreement or understanding ("Information Sharing Agreement"). Where an Information Sharing Agreement is not available, the Commission asked whether the proposed exceptions should require distribution participants to make a commitment to maintain and produce relevant records. The Proposing Release also solicited comment on whether the exceptions should be available only for foreign securities whose principal market publicly disseminates transaction information.

Commenters generally expressed the view that liquidity conditions were not necessary or appropriate, particularly in light of the nature of participants in the Rule 144A securities market, and indicated that it may be difficult to obtain accurate or complete trading information in some markets. Another commenter stated that QIBs purchasing unregistered foreign securities do not expect foreign securities markets to have the same level of market information as is available in the United States and that these purchasers are willing to rely upon the foreign market regulation. One commenter, who opposed adoption of the proposed exceptions, expressed concern that, absent an Information Sharing Agreement, modification of the Trading Practices Rules would increase the likelihood of fraud. Other commenters generally believed that conditions requiring an Information Sharing Agreement, recordkeeping requirements, or the public dissemination of trade information should not be prerequisites for use of the proposed exceptions and expressed concern that information or recordkeeping requirements would restrict the benefit of the proposed exceptions.

The Commission also requested comment on the extent, if any, that disclosure should be provided in any offering materials that the Trading Practices Rules are not applicable to Rule 144A Distributions, and of the market activities of distribution participants and the potential effect of these activities on the security's price.[22] Commenters who addressed this issue opined that such disclosure would not be meaningful to QIBs.

After considering the comments received, the Commission has determined not to impose additional conditions. Moreover, as the commenters have observed, information regarding the nature of a foreign trading market, including market liquidity and the rules relating to transaction disclosure, are the types of information that QIBs can be expected to be able to obtain. The Commission is of the view that these additional conditions generally would restrict the utility of the exceptions and may compromise their intended purpose.

IV. Effects on Competition

Section 23(a) of the Exchange Act[23] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of the rule, if any, and to balance any impact against the regulatory benefits to be gained. In the Proposing Release, the Commission stated that it had considered the proposed exceptions in light of this standard and believed that the proposed exceptions would not likely impose any significant burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Although the Commission sought comment on this position, no comments were received.

[17] Comment was solicited on whether a complete exception from Rule 10b–7 was appropriate. Proposing Release, 58 FR at 27689 n.37; see also Securities Exchange Act Release No. 2446, 11 FR 10971 (March 18, 1940). Several commenters maintained that an unconditional exception to Rule 10b–7 was appropriate given that QIBs are sophisticated enough to understand that stabilizing activities would be regulated, if at all, by the jurisdiction of the foreign trading market. Two commenters opposed adoption of the proposed exceptions, implicitly arguing that a complete exception to Rule 10b–7 would be inappropriate. While the Commission is adopting the exceptions substantially as proposed, it notes that the subject of the regulation of stabilization will be considered in the context of a general review of the Trading Practices Rules.

[18] "Institutional accredited investors" are those that qualify under 17 CFR 230.501(a)(1), (2), (3), (5), (7), or (8).

[19] 17 CFR 230.902. Pursuant to paragraph (o)(2) of Rule 902, "any discretionary account * * * held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated or (if an individual) resident in the United States shall not be deemed a 'U.S. person' for purposes of Regulation S."

[20] Adoption of the exceptions will have no effect on the determination of whether an offering of securities constitutes a distribution for purposes of Rule 10b–6. See 17 CFR 240.10b–6(c)(5). For example, where an offering involves a contemporaneous placement to QIBs under Rule 144A and to institutional accredited investors under Regulation D in the United States, all of the securities sold in the United States must be considered for purposes of determining whether there is a Rule 10b–6 distribution, even though the portion involving a Rule 144A Distribution may be excepted from the rule.

[21] See 17 CFR 230.144A(d)(1).

[22] Proposing Release, 58 FR at 27690 n.50.

[23] 15 U.S.C. 78w(a)(2).

V. Regulatory Flexibility Act Analysis

Section 3(a) of the Regulatory Flexibility Act ("RFA")[24] requires the Commission to undertake a regulatory flexibility analysis of the impact of the exceptions on a substantial number of small entities.[25] The application of the RFA to the exceptions is limited. Because the definition of QIB in Rule 144A generally is limited to those entities that in the aggregate own or invest on a discretionary basis at least $100 million in securities of unaffiliated entities ($10 million in the case of a broker-dealer), Rule 144A pertains to resales of securities to substantial investors. Although Rule 144A places no similar size restrictions on placement agents that may resell such securities, it appears that Rule 144A has been utilized by substantial U.S. broker-dealers to resell securities of substantial foreign issuers. The Chairman previously has certified that the exceptions would not have a significant economic impact on a substantial number of small entities. A copy of the certification can be obtained from Diane Mage Roberts, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

VI. Effectiveness of Exceptions

Pursuant to 5 U.S.C. 553(d)(1), the Commission is making the exceptions effective upon publication in the **Federal Register** since the exceptions relieve restrictions from the Trading Practices Rules.

VII. Statutory Basis and Text of Rule Amendments

The amendments to Rules 10b–6, 10b–7, and 10b–8 are adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 2, 3, 9(a)(6), 10(b), 13(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), and 78w(a).

[24] 5 U.S.C. 603(a).

[25] 5 U.S.C. 605(b).

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–6 is amended by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) to read as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(i) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

3. Section 240.10b–7 is amended by redesignating paragraph (o) as paragraph (p) and adding a new paragraph (o) to read as follows:

§ 240.10b–7 Stabilizing to facilitate a distribution.

* * * * *

(o) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

4. Section 240.10b–8 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as follows:

§ 240.10b–8 Distributions through rights.

* * * * *

(f) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under Section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

By the Commission.

Dated: November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27556 Filed 11–12–93; 8:45 am]

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federal register

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November 15, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Boil Treatment Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 82N-0054]

RIN 0905-AA06

Boil Treatment Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that over-the-counter (OTC) boil treatment drug products are not generally recognized as safe and effective and are misbranded. This final rule applies only to topical drug products used to reduce the size of a boil or to reduce an infection related to a boil. Certain drug products used to provide relief of local symptoms (itch, pain, and discomfort) of a boil will be addressed in the rulemaking for OTC external analgesic drug products in a future issue of the **Federal Register**. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC boil treatment drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1982 (47 FR 28306), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC boil ointment drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based upon the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by September 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by October 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC boil treatment drug products was published in the **Federal Register** of January 26, 1988 (53 FR 2198). Interested persons were invited to file by March 28, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 25, 1988. New data could have been submitted until January 26, 1989, and comments on the new data until March 27, 1989. Final agency action on that proposal occurs with publication of this final rule on OTC boil treatment drug products.

In the tentative final monograph, no active ingredients were proposed as generally recognized as safe and effective and not misbranded for the treatment of boils. However, the agency proposed labeling in § 358.450(b) in the event that data were submitted that resulted in the upgrading of any ingredients to monograph status in the final rule. The proposed indication was "For the temporary relief of pain and discomfort of boils."

The primary types of products used in the drug treatment of boils are: (1) Antibacterial "drawing salves" to reduce boil size and infection, and (2) anesthetics to relieve local symptoms, such as itch, pain, and discomfort. The agency stated in the tentative final monograph (53 FR 2198 at 2204) that clinical data were needed to demonstrate the "drawing action" on a boil of ingredients such as magnesium sulfate or ichthammol, and to demonstrate the antiseptic action of sulfur and phenol. The agency also stated that if new data that were submitted during the allotted 12-month comment and new data period were not sufficient to establish monograph conditions for OTC boil treatment drug products, the final rule would declare these products to be new drugs (53 FR 2199). In this final rule, the agency concludes that no active ingredient has been shown to be generally recognized as safe and effective for use as a drawing agent or antiseptic in OTC boil treatment drug products. The agency also concludes that several other ingredients are not generally recognized as safe and effective for use as a topical analgesic, anesthetic, and antipruritic in OTC boil treatment drug products. No substantive data were submitted for these ingredients.

As discussed, the labeling proposed in part 358 for OTC boil treatment drug products applied primarily to products used for the temporary relief of pain and discomfort of boils. Among the ingredients considered for this indication were several topical analgesic, anesthetic, and antipruritic active ingredients (benzocaine, camphor, juniper tar, menthol, and phenol) that are also being considered in the OTC external analgesic rulemaking. However, with the exception of benzocaine, no data were submitted supporting the use of these ingredients in the treatment of pain and discomfort associated with boils. Thus, the agency has determined that these ingredients (other than benzocaine) are not generally recognized as safe and effective for this use. The affected ingredients are listed in § 310.545(a)(5) (21 CFR 310.545(a)(5)). Data were submitted for benzocaine, and action on this ingredient is being deferred and transferred to a separate rulemaking for OTC external analgesic drug products.

In the ongoing rulemaking for OTC external analgesic drug products, general claims for OTC topical analgesic, anesthetic, and antipruritic active ingredients have been proposed in part 348 (48 FR 5852 at 5868, February 8, 1983). Proposed § 348.50(b)(2) would establish the temporary relief of pain, itching, or pain and itching as an intended use. The proposed labeling would also allow a description of several conditions that pain and itching are associated with, e.g., sunburn, insect bites, and minor skin irritations. Section 348.50(b) also includes proposed labeling for other specialized uses of analgesic, anesthetic, and antipruritic ingredients. See, e.g., proposed § 348.50(b)(5) for products used for the treatment of fever blisters and cold sores. (See 55 FR 3370 at 3382 and 3383, January 31, 1990.) The agency has determined that the appropriate place to include relief of the pain and itching of boils, if supported by appropriate data, would be proposed § 348.50(b). Accordingly, the agency is deferring a decision on benzocaine as a topical analgesic, anesthetic, and antipruritic active ingredient for relief of pain and discomfort of boils. That use of benzocaine will be discussed in the

external analgesic drug rulemaking in a future issue of the **Federal Register**. Products containing benzocaine labeled for the temporary relief of pain and discomfort of boils may continue to be marketed at this time.

This final rule declares OTC drug products containing active ingredients for the treatment of boils to be new drugs under section 201(p) of the act, for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing ingredients for the treatment of boils by adding new § 310.531 (21 CFR 310.531) to subpart E. The inclusion of OTC boil treatment drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC boil treatment drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (§ 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Category II or III, the term "nonmonograph conditions" is used.

As discussed in the proposed rule for OTC boil treatment drug products (53 FR 2198), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of OTC boil treatment drug products to be in compliance with the monograph. Although data and information were submitted on ichthammol and sulfur in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, boil treatment drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking (47 FR 28306), the agency advised that conditions for the drug products subject to this monograph would be effective 6 months after the date of publication of a final monograph in the **Federal Register**. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions for these drug products. Therefore, on or after May 16, 1993, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC boil treatment drug products, one manufacturer submitted a comment and data. A copy of the comment and data received is on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comment

1. The comment submitted data in support of the safety and effectiveness of benzocaine in promoting reduction in boil size and relieving pain associated with boils (furuncles) (Ref. 1). As noted above, consideration of the use of benzocaine for relief of pain associated with boils is transferred to the rulemaking for OTC external analgesic drug products. The agency is only reviewing the data as they relate to reduction in boil size in this final rule. Three studies (Florendo, Weinrauch, and Goldstein) having identical protocols were submitted. The protocol for each study prescribed a randomized, double-blind, vehicle-controlled study enrolling 30 to 50 subjects with a clinical diagnosis of boils. The active treatment contained two active ingredients, benzocaine (20 percent) and triclosan (0.35 percent), while the vehicle was stated to contain triclosan (0.25 percent) only. Subjects were examined in a dermatology clinic or private office where a clinical history was obtained and the baseline boil size was determined. Subjects were then randomly assigned to a treatment group and told to apply the medication twice daily, in the morning and evening. The first application was given in the office or clinic. Reduction in boil size was one efficacy measure in these studies. Boil size determination was supposed to be made when pain relief was first experienced and after 3 days of treatment. Reduction in boil size was the difference in diameter of the boil between baseline and the end of treatment. Change in boil diameter, percent reduction in boil diameter, and the percent of subjects with a reduction in boil size were compared for the two treatments.

The agency has determined that the data are inadequate to demonstrate benzocaine's effectiveness in reducing the size of a boil. The agency considers the study design as having a number of problems. The active treatment was a combination product with two active ingredients. To prove efficacy, a four-arm study (to include each ingredient, the combination product, and vehicle) should have been conducted. The submitted studies had no true placebo (vehicle) because the vehicle component contained triclosan 0.25 percent, a concentration 0.1 percent less than used in the active treatment. Even though this concentration is lower than that of triclosan in the active treatment, it still may have contributed to the study results because it can have antibacterial properties. Thus, beneficial results of the active treatment may have been attributable to one or both of the two active ingredients. To prove efficacy for benzocaine, a study should compare benzocaine to its vehicle without triclosan. The submitted study design was only a test of whether the combination of benzocaine and triclosan outperforms triclosan by itself in the treatment of boils. The study design did not exclude any possible beneficial effects resulting from the incorporation of triclosan into the active treatment or the vehicle.

Boil size measurements should have been made with accuracy and with diligence in a study which claimed, as one of its objectives, to influence the size of the baseline condition. There should have been exclusions for subjects on recent oral antibiotics and on systemic or intralesional corticosteroid treatment. Subjects with multiple boils in adjacent areas should not have been accepted into the studies. Carbuncles and furuncles behave very differently on a clinical basis, and the

former should not have been included in a study on boils. Carbuncles are not simple boils and should not have been included in a study on boils because these lesions behave differently and require either incision and drainage, antimicrobial therapy, or both (Ref. 2).

The Florendo study enrolled 52 subjects: 24 subjects were randomized to the placebo group, and 28 subjects were randomized to the active group. Followup data were obtained from all 52 subjects. The two treatment groups were similar with respect to sex, age, and the age and size of boils. The treatment group did have a significantly higher proportion of subjects with boils which oozed or burst than did the placebo group. Four subjects in the treatment group and five subjects in the placebo group had multiple boils. The sponsor analyzed the change in boil size both with the boil as the unit of analysis and with the person as the unit of analysis. In the latter analysis, changes in boil size were first averaged within each person.

In the sponsor's analysis, a significantly higher percentage of treatment subjects than vehicle subjects had a reduction in boil size ($p < .05$); this was true whether the analysis was by subject or by boil and whether or not boils which burst were excluded. The mean absolute reduction in boil size was greater in the treatment group than in the vehicle group in all analyses. Borderline significance was achieved ($p < .06$) in the two analyses with all boils included (whether analyzed by boil or by person). Similar findings were achieved with percentage change in boil size. The agency notes that the size of the boils was measured only to the nearest centimeter (cm). The agency believes that a more exact measurement should have been made to assess changes in size.

The Weinrauch study enrolled 51 subjects: 27 subjects were randomized to the placebo group, and 24 subjects were randomized to the treatment group. Followup data were obtained from all 51 subjects. The two treatment groups were similar with respect to sex, age, and all the baseline parameters. No subjects had multiple boils. Four boils in the vehicle group and one in the treatment group burst or oozed during the trial.

In the sponsor's analysis, when boils that burst were excluded, there was a significantly greater proportion of subjects with a reduction in boil diameter as well as a significantly greater mean absolute and percentage boil size reduction in the treatment group compared to the vehicle group. When all boils were included, the direction of these results did not change, and they did not approach statistical significance.

The Goldstein study enrolled 69 subjects, with 66 (38 vehicle and 28 treatment) subjects completing it. One placebo subject was excluded because his boil size was not initially recorded. Also, one subject was on another medication, which was a violation of the protocol. The two treatment groups were similar with respect to age and the baseline parameters. No subject had multiple boils. One boil in the treatment and one boil in the vehicle group burst during the trial.

No significant differences were observed with respect to change in boil size. The vehicle group had a slightly higher proportion of subjects with reduction in boil diameter (37 percent) than did the treatment group (32 percent).

The agency found that the data sheets (Ref. 1) showed a great variation in the times when boil size was measured. For some subjects, boil size was measured only during the first 4 hours; for other subjects, measurements were made only after 1 day or 3 days. Measurements were made on both day 1 and 3 for less than half of the subjects who received the drug. The inconsistency of these measurements makes the data unsatisfactory. Also, some subjects did not complete the 3-day study; they were stopped after 1 day to begin either oral administration of antibiotics or to have incision and drainage.

The study appears not to have been conducted with proper care. Boil size was measured only to the nearest cm. Boil size was not measured precisely or consistently on all subjects in a study that proposes to study changes in boil size resulting from treatment. The boil size was not recorded for several subjects (e.g., subject 2,612). There was some confusion as to the meaning of some of the data entries; for example, terms such as "1.3" for presence of pus (subject 2,654) and "patient aspirated pus after the first day" (subject 3,577). Data entries like these cast doubt on the validity and/or appropriateness of the data recording and the subjects studied.

The raw data sheets for the Goldstein study (Ref. 1) are included in the file and contain numerous inconsistencies. At least one subject with no baseline boil size measurement was included in the analysis. In conclusion, there are numerous errors and omissions in the conduct of the Goldstein study that cause the agency to conclude that the results should be discounted.

In summary, the three studies submitted were not designed properly. The data collection for these studies appears to be incomplete in many instances. The subjects were not uniformly assessed at the various time points specified in the protocol for data collection, and the data were not collected precisely. Boil size measurements appear not to have been carried out carefully, and measurements were made in an inexact manner. The design of the studies was not appropriate for a two-component (combination) product. A four-arm study (to include each component, the combination product, and the vehicle) was needed to demonstrate efficacy. The vehicle should not have contained either component of the combination product. In conclusion, none of the three studies is an adequate, well-controlled study. Benzocaine has not been shown to be effective in reducing the size of boils.

The comment subsequently informed the agency (Ref. 3) that triclosan in a concentration of 0.35 percent was in both the vehicle and in the active drug. The comment stated that it was a typographical error stating that the concentration was 0.25 percent.

The comment contended that the active preparation was not a combination product because the triclosan in the product (as an antimicrobial) does not have proven effectiveness. The comment further argued that even if triclosan were proven effective as an antimicrobial, its "contribution" as an inactive ingredient is irrelevant to the results. The comment maintained that the only active ingredient was benzocaine, whose efficacy for relief of pain was proven. The comment claimed that triclosan had two purposes in the product: (1) To help guard against spread of infection from a boil to other sites if the boil ruptured, and (2) to act as a bacteriostatic preservative.

Based on the comment's arguments (Ref. 3), the agency is now treating the comment as addressing only the claim that benzocaine is effective for relief of pain associated with boils, and that the comment is not interested in other claims being attributed to other ingredients used to treat boils. As noted above, the use of benzocaine for relieving pain associated with boils is being transferred to the rulemaking for OTC external analgesic drug products.

References

(1) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(2) Maibach, H. I., R. Aly, and W. Noble, "Bacterial Infections of the Skin" in Dermatology, 2d ed., edited by Moschella, S., and H. Hurley, W. B. Saunders Co., Philadelphia, pp. 612–613, 1985.

(3) Comment No. C5, Docket No. 82N–0054, Dockets Management Branch.

2. The comment included data in support of the usefulness of the ingredients ichthammol, sulfur, and triclosan in a combination product for the treatment of boils (Refs. 1 through 5). The comment also urged the agency to consider benzocaine in combination with ichthammol, sulfur, and triclosan used as antimicrobials for the treatment of boils.

The agency has reviewed the data submitted on ichthammol, sulfur, and triclosan as antimicrobials for the treatment of boils and finds they are inadequate to establish effectiveness for this use. Of the references submitted with the comment, the agency considers the following pertinent to ichthammol and sulfur: Kownatzki, Urich, and Schopf (Ref. 2) showed that ichthyol (ichthammol) induced a neutrophilic cell accumulation in an in vitro chemotaxis (Boyden) chamber. On this basis, they concluded that ichthyol has anti-inflammatory properties. Libenson et al. (Ref. 3) concluded from a laboratory experiment that elemental sulfur has antibacterial activity against streptococcal strains and to a lesser degree against *Staphylococcus aureus*. Woiwood (Ref. 4) concluded by an in vitro test that colloidal sulfur has antistaphylococcal activity in an experimental inoculation medium.

The agency finds that these references demonstrate that in laboratory (in vitro) experimental testing, ichthammol and sulfur possess certain properties that might make them useful in certain inflammatory and bacteriological conditions. However, the references submitted did not contain any human clinical studies on the use of ichthammol and sulfur for the treatment of boils. Thus, the references do not contain adequate data to establish that ichthammol and sulfur are safe and effective in the treatment of boils. The agency notes that, after the initial submission was made, the comment subsequently stated that triclosan at 0.35 percent does not have proven effectiveness as an antimicrobial (Ref. 5). The agency concludes that data from well-controlled human clinical studies are necessary to demonstrate the safety and efficacy of ichthammol, sulfur, or triclosan as antimicrobials useful for the treatment of boils. Likewise, clinical data are also needed to support any combination of ichthammol, sulfur, or triclosan with benzocaine.

References

(1) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(2) Kownatzki, E., S. Urich, and E. Schopf, "The Effect of a Sulfonated Shale Oil Extract (Ichthyol) on the Migration of Human Neutrophilic Granulocytes *in vitro*," Archives of Dermatological Research, 276:235–239, 1984, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(3) Libenson, L. et al., "Antibacterial Effect of Elemental Sulfur," Journal of Infectious Diseases, 93:28–35, 1953, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(4) Woiwood, A. J., "The Inhibition of Bacterial Growth by Colloidal Heavy Metal Sulphides and by Colloidal Sulphur," Journal of General Microbiology, 10:509–520, 1954, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(5) Comment No. C5, Docket No. 82N–0054, Dockets Management Branch.

3. The comment urged the agency to consider ichthammol and sulfur as "drawing" agents alone or in combination with benzocaine. The comment submitted a large number of published references on these ingredients (Ref. 1) together with the data on benzocaine (Ref. 2) discussed in comment 1 of section I. of this document.

The agency has reviewed the references and finds they are inadequate to establish the safety and effectiveness of ichthammol or sulfur for use as a drawing agent to treat boils. Five of the references (Refs. 3 through 7) discussed ichthammol and sulfur for various indications when applied topically, but none of the references specifically discussed the use of ichthammol, sulfur, or any ingredient as a "drawing" agent. The creation of an osmotic equilibrium is postulated as the mechanism of action for drawing salves and is discussed in comment 5 of section I. of this document below. In the advance notice of proposed rulemaking on OTC boil ointment drug products, the Panel concluded that drawing salves to treat boils do not have any merit (47 FR 28306 at 28308). The agency concludes that the data submitted are not adequate to support the effectiveness of ichthammol and sulfur as "drawing" agents individually or in combination with benzocaine in treating or in reducing the size of a boil. Data from well-controlled human clinical studies are necessary to demonstrate the safety and effectiveness of ichthammol or sulfur for use as a "drawing" agent in the treatment of boils.

References

(1) Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(2) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(3) Kownatzki, E., S. Urich, and E. Schopf, "The Effect of a Sulfonated Shale Oil Extract (Ichthyol) on the Migration of Human Neutrophilic Granulocytes in vitro," Archives of Dermatological Research, 276:235–239, 1984, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(4) Libenson, L. et al., "Antibacterial Effect of Elemental Sulfur," Journal of Infectious Diseases, 93:28–35, 1953, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(5) Woiwood, A. J., "The Inhibition of Bacterial Growth by Colloidal Heavy Metal Sulphides and by Colloidal Sulphur," Journal of General Microbiology, 10:509–520, 1954, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(6) Czarnetzki, B. M., "Inhibitory Effects of Shale Oils (Ichthyols) on the Secretion of Chemotactic Leukotrienes From Human Leukocytes and on Leukocyte Migration," The Journal of Investigative Dermatology, 87:694–697, 1986, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(7) Combes, F. C., "The Role of Sulfur in Dermatology," New York State Journal of Medicine, 32:1019–1023, 1932, in Comment No. C4, vol. 3, Exhibit J, Docket No. 82N–0054, Dockets Management Branch.

4. The comment noted the agency's statement in the tentative final monograph (53 FR 2198 at 2204) that "the 'drawing' action of ingredients such as magnesium sulfate or ichthammol * * * needs to be shown clinically." The comment stated that, as it understood this statement, clinical proof of any "drawing" action for benzocaine will not be required.

The comment is correct in stating that clinical proof of any "drawing" action for benzocaine is not required. No claim as a "drawing" agent has been attributed to benzocaine. Thus, the statement in the tentative final monograph on "drawing" action of ingredients such as magnesium sulfate or ichthammol did not include benzocaine. However, if a claim for "drawing" action were to be made for benzocaine, then clinical proof would be required.

5. The comment contended that magnesium sulfate and ichthammol in a boil ointment formula contribute to a "drawing" action. The comment suggested that such an action "is related to the osmotic equilibrium created at the site of application, i.e., the high fluid level of the boil versus the high solids level of the formula." The comment maintained that over a period of time and as the boil increases in fluid volume, this fluid will favor the salve formula and a decrease in boil volume will result. The comment reasoned that the "drawing" action results because the magnesium sulfate and ichthammol upset the equilibrium between the fluid

in the boil and the formula containing these and other base ingredients on the surface outside the boil.

The agency acknowledges the comment's contention and theory concerning a "drawing" action for magnesium sulfate and ichthammol. However, the comment did not submit adequate effectiveness data to support a "drawing" action for magnesium sulfate or ichthammol in the treatment of boils. The agency reviewed and evaluated the comment's submitted literature references (see comment 3 of section I. of this document) and found those references inadequate to support the effectiveness of any ingredient as a "drawing" agent.

II. The Agency's Final Conclusions on OTC Boil Treatment Drug Products

At this time, there is a lack of data from adequate and well-controlled, double-blind studies to establish that benzocaine, ichthammol, magnesium sulfate, sulfur, triclosan, or any other ingredients are effective to treat or reduce the size of boils. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective for this OTC use. Treatment is defined as reducing the size of a boil or reducing an infection related to a boil. Treatment has involved the use of "drawing salves" for these purposes. These "drawing salves" contained various ingredients.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(5) the following ingredients that had been previously considered under this rulemaking for use in the treatment of boils: Aminoacridine hydrochloride, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluidextract, hexachlorophene, isobutamben, juniper tar, lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate, sassafras oil, thymol, and zinc oxide. The final rule in this document establishes that any OTC boil treatment drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other active ingredients for the treatment of boils, such as benzocaine, ichthammol, sulfur, and triclosan. Therefore, any ingredient that is labeled, represented, or promoted for OTC use for the treatment of boils is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC boil treatment active ingredients in more than one regulation and for ease in locating these ingredients in the Code of Federal Regulations, the agency is listing all of these ingredients in a single regulation in new § 310.531 entitled "Drug products containing active ingredients offered over-the-counter (OTC) for the treatment of boils." Accordingly, the ingredients currently listed in § 310.545(a)(5) are now being listed in § 310.531(d), and § 310.545(a)(5) is being removed. The additional ingredients covered by this final rule are being listed in § 310.531(e). This final rule does not apply to OTC drug products that contain benzocaine and that are labeled for the temporary relief of itch, pain, and discomfort of boils. The agency is deferring that use of benzocaine to the rulemaking on OTC external analgesic drug products. A paragraph is included in new § 310.531 to indicate that section does not apply to drug products that contain benzocaine labeled, represented, or promoted for OTC topical use with such external analgesic claims.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 2198 at 2205). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC boil treatment drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC boil treatment drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.531 is added to subpart E to read as follows:

§ 310.531 Drug products containing active ingredients offered over-the-counter (OTC) for the treatment of boils.

(a) Aminacrine hydrochloride, benzocaine, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluid extract, hexachlorophene, ichthammol, isobutamben, juniper tar (oil of cade), lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate,

sassafras oil, sulfur, thymol, triclosan, and zinc oxide have been present in OTC boil treatment drug products. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredient for OTC use for the treatment of boils. Treatment is defined as reducing the size of a boil or reducing an infection related to a boil. Treatment has involved the use of "drawing salves" for these purposes. These "drawing salves" contained various ingredients. Based on evidence currently available, any OTC drug product offered for the treatment of boils cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for the treatment of boils is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any OTC boil treatment drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After May 7, 1991, any such OTC drug product that contains aminacrine hydrochloride, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluid extract, hexachlorophene, isobutamben, juniper tar (oil of cade), lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate, sassafras oil, thymol, or zinc oxide initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) After May 16, 1994, any such OTC drug product that contains benzocaine, ichthammol, sulfur, or triclosan initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(f) This section does not apply to drug products that contain benzocaine labeled, represented, or promoted for OTC topical use in accordance with part 348 of this chapter.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(5).

Dated: November 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-27917 Filed 11-12-93; 8:45 am]

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Monday
November 15, 1993

Part VIII

Environmental Protection Agency

40 CFR Part 192
Health and Environmental Standards for Uranium and Thorium Mill Tailings; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FRL–4797–8]

Health and Environmental Standards for Uranium and Thorium Mill Tailings

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending its general environmental regulations pertaining to uranium mill tailings disposal sites pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The amendments clarify the current rule by ensuring timely emplacement of a permanent radon barrier and by requiring appropriate monitoring for nonoperational uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or one of its Agreement States (affected Agreement States). These affected Agreement States are Colorado, Washington, and Texas, which are the states that license sites to manage uranium byproduct materials pursuant to the Atomic Energy Act (AEA). This action is related to another action by EPA to rescind its National Emissions Standard for Hazardous Air Pollutants (NESHAPs) for radon emissions from the disposal of uranium mill tailings at nonoperational sites which was promulgated on December 15, 1989, as it applies to sites licensed by the NRC or an affected Agreement State.

DATES: Effective Date: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gale C. Bonanno, Air Standards and Economics Branch (6602J), Criteria and Standards Division, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460, (202) 233–9219.

SUPPLEMENTAL INFORMATION:

Docket

Docket A–91–67 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Table of Contents

I. History of Regulation of Uranium Mill Tailings
A. Description of Uranium Mill Tailings
B. EPA and NRC's UMTRCA Rulemakings
C. EPA's Clean Air Act Rulemaking
II. Challenge to Subpart T
A. Petitions for Reconsideration
B. Section 112(d)(9) of the Clean Air Act Amendments of 1990 (the "Simpson Amendment")
C. Memorandum of Understanding between EPA and NRC
D. Current Regulatory Proceedings
III. Legal Basis for this Action
A. Statutory Authority for Today's Action
1. Emphasis Upon Expeditious Radon Control
2. UMTRCA's Scheme and Purposes are Consistent with Today's Action which Clarifies and Better Implements EPA's Existing Regulations
B. Interpretive Caselaw
1. AMC I and AMC II
2. Quivira Mining and AMC III
3. Caselaw Supports this Action
C. Settlement Agreement
IV. Amendments 40 CFR Part 192, Subpart D
A. Limited Scope
B. Closure Requirements
C. Appropriate Monitoring
V. Discussion of Comments and Response to Comments from NPR
VI. Miscellaneous
A. Paperwork Reduction Act
B. Executive Order 12291
C. Regulatory Flexibility Analysis

I. History of Regulation of Uranium Mill Tailings

A. Description of Uranium Mill Tailings

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States and all piles emit radon gas, a decay product of the waste material processed at the uranium mills.

To deal specifically with the risks associated with these piles, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901–7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978.

The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or the licensing Agreement State, is responsible for implementing the EPA standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97–415, sections 18(a) and 22(b), *reprinted in* 2 1982 U.S. Code Cong. & Admin. News at 96 Stat. 2077 and 2080. As partially amended thereby, EPA was required to promulgate standards of general applicability for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

B. EPA and NRC's UMTRCA Rulemakings

EPA is authorized to promulgate generally applicable environmental standards to govern the remediation process. 42 U.S.C. 2022(a) and 7918 (as to DOE sites); 42 U.S.C. 2014 and 2022(b) (as to NRC-licensed sites). On January 5, 1983, EPA promulgated final rules for the disposal and cleanup of the inactive uranium mill tailings sites under UMTRCA Title I (48 FR 605).

Title I requires the Department of Energy (DOE) to conduct remedial action at inactive uranium mill tailings sites to ensure compliance with EPA's regulations for properly managing uranium byproduct materials. The program for inactive sites requires the disposal of tailings and the clean-up of on-site locations contaminated with tailings. DOE is responsible for implementing the standards established by EPA, with the concurrence of the NRC, and in cooperation with the host states. The requirements developed to implement the Title I program are not the subject of today's rulemaking.

On April 29, 1983, EPA proposed standards for Title II uranium and thorium mill tailings sites (48 FR 19584). These rules were promulgated on September 30, 1983 (48 FR 45926), and are codified at 40 CFR part 192, subparts D and E. Title II applies to currently operating uranium mill tailings facilities licensed by the NRC or an Agreement State. The Title II program established requirements for the final disposal of tailings, the control of effluents into ground water, and radon emissions [1] during and after milling operations. The requirements are divided into two parts. The first part applies to the management of tailings during the active life of the pile and during the subsequent closure period, which begins after cessation of milling operations but prior to completion of final disposal, including the period of time when the tailings are drying out. The second part of the requirements specifies the standards that must be met once the piles are closed. These standards govern the design of disposal systems, and therefore guide the activities carried out during the closure period to ensure the adequacy of the final cover. For NRC licensed mill tailings sites that are being closed, subpart D calls for reclamation plans designed to control radon emissions to a flux not to exceed an average release rate of 20 pCi/m^2-s for 1000 years to the extent reasonably achievable, but in any event for at least 200 years. 40 CFR 192.32(b)(1) (i) and (ii).

Both the UMTRCA Title I and Title II standards were challenged by several parties in the Tenth Circuit Court of Appeals. On September 3, 1985, the court upheld all aspects of EPA's standards, excepting the ground water provisions of the Title I regulations at 40 CFR 192.20(a) (2)–(3). *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied* 426 U.S. 1158 (1986). On September 24, 1987, EPA proposed new regulations to replace those set aside (40 CFR part 192, subpart C, 52 FR 36000). The final action for that rulemaking is pending and is not affected by today's action.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40 to conform the previous NRC regulations issued five years earlier to the provisions of EPA's general UMTRCA standards at 40 CFR part 192, as it affected matters other than ground water protection (50 FR 41852). On November 13, 1987, NRC promulgated final rules for ground water protection at uranium mill tailings sites that conformed to provisions of EPA's standards for ground water protection at 40 CFR part 192, subparts D and E (52 FR 43553).

Under the NRC regulations, uranium milling operations that process or dispose of uranium and thorium, and their byproduct materials, must apply to the NRC for a license. In its application for an NRC license, the owner or operator of the mill must demonstrate the expected compliance with the technical, financial, ownership and long-term surveillance requirements of NRC's implementing regulations during the siting and construction of the mill, its operation, the decontamination and decommissioning of the mill after operations cease, and the reclamation of the milling facility and its surrounding environs. In accordance with 10 CFR 40.41(e), the NRC may incorporate in any license or later amend the license to include additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary to protect health or to minimize danger of life or property.

C. EPA's Clean Air Act Rulemaking

Both the UMTRCA standards promulgated by EPA in 1983 and the implementing NRC standards promulgated in 1985, failed to require or otherwise establish compliance schedules to ensure that the tailings piles would be expeditiously closed, and that the 20 pCi/m^2-s standard would be met, within a reasonable period of time. Moreover, the NRC criteria also failed to require monitoring to verify compliance with the flux standard (50 FR 41852). In response to the separate requirements of the Clean Air Act, and in light of the shortcomings of the current UMTRCA program for NRC-licensed uranium mill tailings sites, EPA promulgated standards under the Clean Air Act to ensure that the piles would be closed in a timely manner. These NESHAPs were published on December 15, 1989 (54 FR 51654) codified at 40 CFR part 61, subpart T (nonoperational) and subpart W (operational).

The NESHAP for nonoperational uranium mill tailings, codified at 40 CFR part 61, subpart T, applies to both Title I and Title II sites. The standard has three primary requirements. First, it imposes an emission limit of 20 pCi/m^2-s of radon-222 from a disposed pile, consistent with the UMTRCA standard. Second, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it was not physically possible for a mill owner or operator to complete disposal within that time, EPA contemplated a negotiated compliance agreement with the mill owner or operator pursuant to EPA's enforcement authority to assure that disposal will be completed as quickly as possible. Third, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit.

As noted earlier, the numerical radon emission limit, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is an emissions limit with compliance established through monitoring). However, the two year disposal requirement and the radon monitoring requirement are not separately required by the existing UMTRCA regulations.

II. Challenge to Subpart T

A. Petitions for Reconsideration

After promulgating subpart T, EPA received petitions for reconsideration filed by NRC, the American Mining Congress (AMC), Homestake Mining Co. Among other concerns set forth in these petitions is the argument that the overlap between EPA's subpart D of the UMTRCA regulations and subpart T of the CAA NESHAP has resulted in regulations that are unnecessarily burdensome and duplicative. It was also alleged that subpart T was unlawful because it was physically impossible to come into compliance with subpart T in the time required. While these petitions remain pending before EPA (at least in

[1] The term "release" is used in 40 CFR Part 192 subpart D. EPA intends "release" as used in today's amendments to subpart D and this rulemaking to mean "emission" as that term is used in 40 CFR part 61 subpart T.

part), EPA has taken several actions to address the issues they raise.

B. Section 112(d)(9) of the Clean Air Act Amendments of 1990 (the "Simpson Amendment")

In November 1990, Congress amended the CAA and included a new section, section 112(d)(9), which authorized EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA found, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects the public health with an ample margin of safety. Today's action is needed to assist EPA in making the "Simpson Amendment" finding for NRC-licensed uranium mill tailings disposal sites, as it seeks to fill the timing gaps and other concerns that underlie EPA's 1989 decision to promulgate subpart T.

C. Memorandum of Understanding Between EPA and NRC

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended.

In accordance with the MOU, the NRC and affected Agreement States have agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m^2-s.

D. Current Regulatory Proceedings

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing the "Simpson Amendment" by publishing three **Federal Register** (FR) notices. In the first notice (56 FR 67537), EPA published a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of nonoperational uranium mill tailings disposal sites. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAP at 40 CFR part 61, subpart T, and amends the UMTRCA standards at 40 CFR part 192 to ensure that the remaining rules are as protective of public health with an ample margin of safety, as would implementation of the CAA rule being rescinded. If EPA fails to complete these rulemakings by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAPs for radionuclides that appear at 40 CFR part 61, subpart T, as they apply to nonoperational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate monitoring requirements for nonoperational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA has tentatively concluded that with today's modifications to the general UMTRCA regulations, as properly implemented by the NRC and the Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements, the NRC's regulatory program for nonoperational uranium mill tailings piles would protect the public health with an ample margin of safety. However, prior to finalizing its rule to rescind subpart T, after NRC conforms its regulations to the UMTRCA rules as modified, and all nonoperational site licenses are modified in accordance therewith, EPA currently intends to propose a finding in the **Federal Register** and provide an additional 30 day comment period on whether the NRC regulatory program protects public health with an ample margin of safety. After this occurs, EPA is likely to take final action on its proposal to rescind 40 CFR part 61, subpart T.

Consistent with their responsibilities under the MOU, as well as EPA's proposal to rescind the NESHAP at 40 CFR part 61, subpart T, NRC and the affected Agreement States have agreed to amend the licenses of all nonoperational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones. To this end, NRC and the Agreement States have already requested the licensees to voluntarily seek amended licenses and have processed those requests. Moreover, NRC and the affected Agreement States have agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing a permanent radon barrier, including interim milestones, and to ensure (and verify) compliance with the 20 pCi/m^2 – s flux standard.

III. Legal Basis For This Action

A. Statutory Authority for Today's Action

1. Emphasis Upon Expeditious Radon Control

The crux of this action is additional regulatory means to ensure expeditious and permanent control of radon emissions from uranium mill tailings piles after active milling operations have ceased. The importance of timeliness is inherent to UMTRCA. It is evidenced by Congress' action in amending UMTRCA to require prompt EPA rulemaking action, and by the actual terms of Title II. It is also evidenced by the legislative history for Title II, contained in UMTRCA's two-part House Report, which confirms UMTRCA's purpose to require expeditious public health protection. See H. Rep. 95–1480(I) (Aug. 11, 1978) ("HR 1") (Interior and Insular Affairs Committee) and H. Rep. 95–1480(II) (Sept. 30, 1978) ("HR 2") (Interstate and Foreign Commerce Committee), reprinted in 6 1978 U.S. Code Cong. & Admin. News at 7433–7478 (UMTRCA passed the House on October 14, 1978, and was signed into law on Nov. 8, 1978).

Both parts of the House Report mirror UMTRCA's statutory language by: (1)

Making clear that UMTRCA is primarily directed to health risks associated with radon-222 releases into the environment from uranium mill tailings disposal; and (2) calling for "every reasonable effort . . . to provide for the disposal, stabilization and control in a safe and environmentally sound manner of such (uranium mill) tailings." HR 1 at 11, HR 2 at 25; HR 1 at 13. Expeditious control of disposed tailings was paramount. At Title I sites, DOE (in consultation with EPA, NRC and the host State) was required to quickly remediate disposed tailings sites "in accord with necessity for reducing the most threatening hazards first." HR 1 at 15. The same expeditiousness was expected of title II disposal sites, which should "in all cases be controlled and regulated by States and the Commission, to the maximum extent allowed by the state of the art, to insure that the public and the environment will be protected from the hazards from the tailings for as long as they remain a hazard." Id. at 17–18. To further underscore the urgent purpose, the Report states:

> The committee is convinced that *all* tailings pose a potential and significant radiation health hazard to the public. Legislation is needed *now* to stabilize and control all such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public. . . .
>
> The committee, however, is also convinced that it would be a grievous and costly mistake to authorize a remedial program for inactive mill sites without also enacting regulatory legislation to control the *even more serious problem at active (i.e., Title II) mill sites.*

HR 2 at 29 (emphasis added).

This intent is implemented by provisions in title II. For instance, NRC implements EPA's general standards for title II through licensing of active tailings sites, which licenses must be timely modified to conform to environmental standards. NRC licenses issued or renewed after enactment of UMTRCA must contain the terms and conditions which the NRC determines to be necessary to assure that, prior to termination of the license the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the NRC consistent with EPA's general standards. Any license in effect on the enactment date of 42 U.S.C. 2113(a) must either contain the terms and conditions of renewal, or comply with paragraphs (1) and (2) of section 2113(a) upon the termination of the license, whichever first occurs. See 42 U.S.C. 2113(a). This provision, which went into effect upon enactment, meant that Congress expected action at each title II site within three, or at the most five years of enactment:

> For each licensee, such period (for implementing UMTRCA requirements) would be 3 years following enactment, or until the time at which the licensee's license would first be required to be renewed, whichever is the longer period * * *. In no case may such grace period be longer than 5 years following enactment of (UMTRCA).

HR 1 at 22; see also Id. at 23 (authorizing immediate expenditures by DOE and NRC on remediation).

Moreover, while timely implementation of Title II could financially or otherwise burden licensees, rather than delay implementation, Congress recognized these burdens and instructed NRC to take such hardships into account. H. Rep. No. 95–1480(I) at 44. While NRC was provided some authority to reasonably implement EPA's regulations on a site-by-site basis, it was assumed that in general the regulations would be implemented expeditiously.

The statute placed deadlines upon EPA, NRC and the Agreement States to promulgate and conform their respective regulations. See 42 U.S.C. 2021 and 2022. As noted above, EPA delay in promulgating standards led to UMTRCA's amendment in 1983, which added language requiring that EPA promulgate final Title II standards by October 1983 or lose the right to do so. 42 U.S.C. 2022(b) (as amended by Pub. L. 97–415); see H. Conf. Rep. No. 97–884 at 44–45, reprinted in 4 1982 U.S. Code Cong. & Admin. News at 3614–15 (expressing concern over EPA delay and emphasizing the importance of timeliness).

During the time period for NRC to conform its regulations to EPA's, NRC is not expected to "suspend the implementation or enforcement of its regulations." H. Conf. Rep. No. 97–884 at 45. Congress further made clear its view that UMTRCA implementation proceed immediately, going so far as to note that for title I sites "the '7-year clock' for the completion of cleanup . . . begins to run (for DOE) October 1, 1982." Id. As to title II sites, during the transition period for EPA to propose and promulgate regulations (and although its rules would be suspended during that period) "NRC is authorized to take such action as it may deem necessary, on a licensee-by-licensee basis, to protect public health, safety, and the environment." Id. at 47.

Thus, the legislative scheme is one of urgency. EPA is to promptly promulgate regulations that will promptly be implemented at each site through licensing by NRC. Radon emissions are identified as the primary threat to public health, and all tailings are to be controlled without exception.

In its February 1983 proposal for the existing UMTRCA rules, EPA took note of the January 1983 amendments to UMTRCA calling for EPA to promulgate rules or lose its authority to do so: "WE (sic) are therefore proceeding to establish these standards expeditiously." 48 FR 19585. EPA noted that of the 27 licensed uranium mills, only 16 were operating, 8 had recently closed, and others had been closed for some time. *Id.* EPA mirrored Congress in referencing radon emissions as the primary source of public health risk from these sites, and noted that radon emissions rates are currently at their peak. *Id.* EPA then listed the panoply of existing guidance materials, including the ALARA principle (that radiation exposure be limited to a level "as low as reasonably achievable"), and proposed that its UMTRCA standards "supplement" the existing guidance in a manner that

> (1) take(s) account of the tradeoffs between health, safety, and environmental and economic costs and benefits in a way that assures adequate protection of the public health, safety, and the environment; (2) can be implemented using *presently available techniques and measuring instruments;* and (3) are reasonable in terms of overall costs and benefits.

Id. at 19587 (emphasis added). In soliciting comment, EPA explicitly stated that it "*assumed (a) 15-year operating and 5-year dry-out*" period, and that the Agency was concerned about potentially significant risks to public health during those periods. *Id.* at 19600. Taken together—by basing its regulations on "presently available" means, and by expressing concern over the transition periods—EPA was assuming that compliance would occur expeditiously, without delay. While EPA recognized that there would be some lag in time before final closure could occur (i.e., to allow the tailings to dry), EPA certainly was not contemplating a period of additional or indefinite delay between ceased operations and final closure.

These purposes and assumptions were further augmented by EPA in taking final action on the rules. In listing the major provisions, EPA stated that the rule "(4) (r)equires that disposal of uranium mill tailings piles be designed so that, after disposal, radon emissions will be limited to 20 (pCi/m^2–s)." 48 FR 45927. The tone is one of immediacy, suggesting that the requirements will apply as soon as possible, without any more delay than is necessary to implement the design

standard. This is emphasized by EPA noting the danger of lung cancer from inhaling radon emissions, a danger that exists as much today as it will later in time. *Id.* at 45928:

> Tailings pose a present hazard to human health. Beyond this *immediate* but generally limited health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period.

Thus, EPA acted to immediately limit the present hazards and immediately halt hazards in the future by requiring that final closure expeditiously occur following ceased operations.

2. UMTRCA's Scheme and Purposes are Consistent With Today's Action Which Clarifies and Better Implements EPA's Existing Regulations

Today's action is intended to fill gaps and otherwise clarify EPA's existing regulations in order to ensure the expeditious, effective, and permanent control of radon emissions. By making minor amendments to EPA's existing regulations to explicitly require emplacement of a radon barrier as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), interim milestones towards emplacement, and monitoring to assure that the design of the radon barrier is effective, EPA is better fulfilling Congress' purposes in enacting UMTRCA for Title II sites. As set forth above, Congress quite clearly was seeking, through UMTRCA, to protect public health from the dangers associated with radon emissions, both today and into the future, and has taken measures to require that EPA and the implementing agencies (DOE and NRC) do so expeditiously. Nothing in today's action is intended to modify the essential purposes or the essential aspects of the existing regulatory scheme; rather, EPA intends to better fulfill Congress' mandates by clarifying the existing requirements.

In promulgating the 1983 regulations, EPA intended and expected expeditious progress towards radon control once an active site ceased milling operations. EPA "assumed . . . (a) 5-year dry-out" period after milling operations had ceased, and based its regulations on that assumption. EPA did not, however, explicitly mandate a set period for drying out, in part due to the variable circumstances at each site, and also because expeditiousness was implicit to regulatory and statutory schemes, viewed as a whole.

Today's action does not seek to change EPA's rationale or scheme set forth in its 1983 rule. Rather, through minor amendments, it seeks to clarify and supplement that scheme in a manner that will better support its initial intent. Without setting forth mandatory schedules, EPA generally requires that once a site becomes nonoperational (i.e., when final closure begins), a barrier to control radon will be emplaced as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Interim milestones towards emplacement will support and better assure this progress, and post-emplacement monitoring will serve as confirmation that the design of the cover is working as intended.

B. Interpretive Caselaw

Judicial review of EPA's and NRC's regulations has resulted in several written opinions by the United States Court of Appeals for the 10th Circuit. Those opinions interpret UMTRCA in much the same manner as does EPA—radon control is paramount, and Congress intends that EPA and NRC promulgate regulations to protect public health in a manner that has immediate and long lasting effect. More particularly, with exception only as to matters not at issue today, the courts upheld EPA's and NRC's regulations, including the agencies' consideration of costs and benefits.

It is worthwhile to review the four opinions interpreting UMTRCA: (1) *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985) ("*AMC I*") (addressing EPA's UMTRCA inactive site regulations); (2) *AMC* v. *Thomas*, 772 F.2d 640 (10th Cir. 1985) ("*AMC II*") (addressing EPA's UMTRCA active site regulations); (3) *Quivira Mining Co.* v. *NRC*, 902 F.2d 781 (10th Cir. 1989) (addressing NRC's implementing criteria); and (4) *AMC* v. *NRC*, 902 F.2d 781 (10th Cir. 1990) ("*AMC III*") (addressing amendments to NRC's implementing criteria).

1. AMC I and AMC II

The inactive site regulations at issue in *AMC I* are codified at 40 CFR part 192, subparts A-C; the active site regulations at issue in *AMC II* are codified at 40 CFR part 192, subpart D, and are the subject of this action. Stated generally, the court in *AMC I* upheld EPA's inactive site regulations under UMTRCA, except as regards a failure to adopt provisions to protect surface and groundwater. The court in *AMC II* likewise upheld EPA's active site regulations (including the groundwater protection provisions), and in so doing relied upon the extensive statutory interpretation set forth in *AMC I*.

The court in *AMC I* began its analysis with UMTRCA's statutory purposes and structure, quoting the Congressional findings at 42 U.S.C. 7901(a) (set forth above). 772 F.2d. at 621. The court also noted that the 1982 UMTRCA amendments meant that Congress strongly desired that the public health protection regulations quickly go into effect: "Anxious to institute standards for the mill tailings, Congress also provided that should the EPA miss the extended deadline, remedial action would commence using the proposed standards." *Id.* at 623 (citations omitted).

The court addressed the contention that a prerequisite to any regulations is that EPA find that uranium mill tailings present a significant risk to public health. *Id.* at 627. The court disagreed, finding that Congress had already spoken strongly on this issue:

> It would be disingenuous to hold, after reading Congress' own statement of its findings and purposes, that the EPA must make its own determination of whether radon emissions present a risk significant to warrant regulation under the UMTRCA.

Id. The court also reviewed the legislative history, and concluded that "Congress chose to consider protecting future generations by enacting the UMTRCA and requiring the *immediate stabilization and disposal of those tailings.*" *Id.* (emphasis added).

After dispensing with other less pertinent issues, the court then addressed EPA's consideration of costs and benefits. In drawing a middle course between cost-benefit "optimization" (advanced by industry), and feasibility analysis (advanced by environmental groups), the court determined only that "EPA must consider the costs involved in the regulations and, with the guidance of Congress' intent, find that these costs bear a reasonable relationship to the benefits derived." *Id.* at 632.

In *AMC II*, the court applied its analysis to the subpart D active site regulations (that EPA is today clarifying and otherwise amending). 772 F.2d at 643. The court upheld EPA's regulations in their entirety, commenting that even though EPA's cost estimates were "significant" (if accurate), "Congress placed the responsibility for evaluating them upon the EPA without imposing a specific cost-benefit requirement." *Id.* at 646.

2. Quivira Mining and AMC III

The *Quivira Mining* case involved industry challenges to NRC's 1985 UMTRCA criteria, which conform their 1980 criteria to EPA's UMTRCA regulations for active sites as

promulgated in 1983 and upheld in *AMC I* and *AMC II*, discussed above (the underlying EPA regulations are the subject of this action). Industry primarily argued that NRC had failed to properly consider costs and benefits in promulgating its 1985 criteria. 866 F.2d at 1249. The court disagreed and upheld NRC's 1985 criteria, finding that NRC's consideration of costs in its 1980 rulemaking, coupled with EPA's consideration of costs in its 1983 active site rulemaking, adequately fulfilled the relatively deferential "cost-benefit rationalization" required by UMTRCA. *Id.* at 1250, 1257–58.

Regarding NRC's reliance upon EPA's earlier consideration of costs, the court acknowledged ambiguity as to whether UMTRCA requires that NRC consider costs "anew." *Id.* at 1257. The court resolved the ambiguity in favor of NRC, deferring to the agency's reasonable construction: "It is a permissible construction of the 'due consideration' command for the NRC to accept the EPA cost-benefit analysis for the revised criteria." *Id.* at 1258.

The court in *AMC III* addressed renewed industry challenges, this time to 1987 amendments to NRC's UMTRCA criteria. 902 F.2d at 782. Among other things, industry again pressed its argument that NRC had failed to adequately consider costs and benefits under UMTRCA. *Id.* at 783. And again the court held that because EPA had properly considered costs and benefits in 1983, "NRC performed its due consideration obligation here when it conformed to the EPA's regulations it was required to adopt." *Id.* at 784.

3. Caselaw Supports This Action

The judicial interpretations set forth above are relevant to this action in two ways: (1) The *AMC I* and *AMC II* decisions affirm Congress' strong interest in the expeditious control of radon at active (i.e., NRC-licensed) uranium mill tailing disposal sites; and (2) the *Quivira Mining* and *AMC III* decisions set forth the scope of cost-benefit considerations, including the propriety of relying upon earlier efforts to the extent the regulations are not charting a new course.

This action is directed at clarifying and better effecting EPA's intent in promulgating the 1983 rules that there not be any undue delay in controlling radon emissions once a disposal site ceases milling operations. The regulatory language, including interim milestones of progress towards control and monitoring provisions, fulfill Congress' intent regarding expeditious public health protection, and are intended to better implement EPA's 1983 rules.

EPA has duly considered costs in its draft Background Information Document (BID) which addresses EPA's consideration of costs and benefits. Few if any additional costs will be incurred by site owners or operators as a result of this final action, since timely radon control has always been required. Moreover, the cost analysis which EPA conducted for its 1983 rulemaking remains relevant, since today's action encompasses amendments to the UMTRCA regulations to clarify and enhance implementation of the fundamental regulatory scheme contained in EPA's 1983 UMTRCA rules.

C. The Settlement Agreement

Two additional items further explain the legal basis and rationale for today's final action: (1) Clean Air Act section 112 (including EPA rulemaking thereunder), and (2) a litigation settlement agreement thereunder, recently entered into by EPA and the affected industry and environmental groups.

In response to the risks associated with litigation, in light of the Simpson Amendment and in order to foster a consensus approach to regulation in this area, EPA commenced discussions with NRC, the American Mining Congress ("AMC"), Homestake Mining Co., the Environmental Defense Fund ("EDF") and the Natural Resources Defense Counsel ("NRDC"). Each has a direct interest in the matter, all but NRC had challenged EPA's promulgation and/or stay of subpart T and collectively, they had historically found little common ground in this area.

As a result (and as discussed above), in October 1991, a Memorandum of Understanding ("MOU") was signed by EPA and NRC setting forth the outline to a regulatory approach that would best resolve the differences between EPA and NRC. As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and propose rescission of subpart T under section 112(d)(9), and to issue an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF v. Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al. v. EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, final agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a consensus approach to regulations of NRC-licensed nonoperational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). A copy of the settlement agreement is also in the docket to this action.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. If implemented, the agreement will result in the expeditious control of radon-222 emissions at nonoperational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. It will enable EPA to fulfill the requirement of section 112 (d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by changing EPA's UMTRCA regulations such that public health will be as well protected under UMTRCA as would implementation of subpart T under the CAA.

Under the agreement, the pending litigation will not be dismissed until after certain terms in the agreement are fulfilled. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation of the underlying litigation.

This action is consistent with the settlement agreement. By clarifying and filling gaps in EPA's UMTRCA regulations, EPA may, after the other elements in the settlement agreement are also implemented, be able to make the finding necessary to rescind subpart T under section 112(d)(9). If properly implemented, a unified regulatory scheme under UMTRCA has the advantage of avoiding confusing and unnecessarily duplicative regulation, while also protecting public health with an ample margin of safety.

IV. Amendments to 40 CFR Part 192, Subpart D

A. Limited Scope

Today's amendments to the general UMTRCA regulations for nonoperational uranium mill tailings disposal sites at 40 CFR part 192,

subpart D (subpart D) fill specific regulatory gaps that currently exist in subpart D. While subpart D, as currently written, requires eventual compliance with the 20 pCi/m²-s flux standard, it does not mandate that compliance occur by a specific date. Rather, as promulgated by EPA under subpart D and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at the same numerical emission limit as allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T under CAA section 112. In addition, the current UMTRCA regulations call for an impoundment design that will likely achieve compliance with the 20 pCi/m²-s flux standard for 1000, or at least 200 years, but they do not include any requirement that monitoring occur to verify the efficacy of the design. This action also fills this gap.

The amendments are not intended to substantively alter the current regulatory scheme; instead, they are merely intended to fill regulatory gaps with respect to timely compliance and appropriate monitoring. Once these gaps are filled by today's amendments and are implemented by NRC, EPA may then have the basis for rescinding subpart T, thereby avoiding unnecessarily duplicative and burdensome regulation.

The Agency's finding, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990, that NRC's regulatory program protects the public health with an ample margin of safety must include a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part, the regulations governing disposal of tailings and the operating license requirements that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and a site-specific basis. The Agency intends "in significant part" to mean that the Agency must find that NRC or an affected Agreement State has not failed to implement and enforce the requirements in a manner that may reasonably be expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

EPA is also amending subpart E of 40 CFR part 192 to avoid any inference that today's minor amendments to subpart D also apply to subpart E. EPA is only addressing timing and monitoring requirements in subpart D, and amending subpart E only for clarification. EPA's subpart D timing and monitoring requirements at §§ 192.32(a)(3)(i–v) and 192.32(4)(i–ii) apply only to uranium mill tailings. Since subpart E references the subpart D standards at § 192.41, EPA believes it necessary to amend subpart E by adding § 192.41(e). This amendment is intended only to clarify that the amendments do not apply to subpart E sites, and is not intended to alter the present regulatory scheme. EPA does not intend by this minor amendment to subpart E to make a finding that the amendments to subpart D are not suitable for management of thorium byproduct material. EPA is not precluded from addressing these issues at a later time for management of thorium byproduct material.

B. Closure Requirements

EPA is amending 40 CFR part 192, subpart D to require (1) emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard by all sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the final radon barrier; and (3) that site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation, with a goal that this occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

EPA recognizes that the UMTRCA regulatory scheme encompasses a design standard. EPA is making minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Sites are required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux standard. The new requirement for verifying the flux with monitoring is only meant to assure the efficacy of the design of the permanent radon barrier following construction and is not intended to relieve licensees of other existing requirements.

Site control shall be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The tailings closure plan (radon), either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Under the Settlement Agreement, which NRC has agreed in principle to uphold, such finding will constitute final agency action. The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m²-s flux standard. The phrase "milestones" refers to enforceable dates by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²-s flux standard.

Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the (radon) tailings closure plans. In addition, today's final regulations will require that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are constructed and undertaken to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of this regulation is for existing sites, or those that become nonoperational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) within the time periods set forth in the MOU, including

Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming nonoperational. However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated through appropriate monitoring, and after providing an opportunity for public participation, the performance of the milestone(s) may be extended. Only under this circumstance and during the period of the extension must compliance with the 20 pCi/m²-s flux standard be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the (radon) tailings closure plan, be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that (1) the licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m²-s flux standard; (2) such delay is consistent with the definition of "available technology;" and (3) such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health. Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in Attachment A of the MOU. (56 FR 67569)

NRC may grant an extension of time to comply with either of the following deadlines: (1) "Performance of milestones" based upon a finding that compliance with the 20 pCi/m²-s flux standard has been met, or (2) "Final compliance" beyond the date or relevant milestone based upon cost. These two bases upon which NRC may grant an extension are mutually exclusive, that is a request for a specific extension may be based on one or the other but not both grounds. If a milestone is being extended for a basis other than cost, such an extension may be granted if NRC finds that compliance with the 20 pCi/m²-s flux standard has been demonstrated using EPA Method 115 or an NRC approved alternative, and the site must continue to demonstrate compliance on an annual basis. However, if a licensee requests extension of the final compliance date (or relevant milestone) based upon cost, such an extension may only be granted if NRC finds that the three criteria specified in § 192.32(a)(3)(iii) are met. EPA believes this interpretation is consistent with the reality of annual risks from radon emissions, as well as the risks associated with allowing sites to fail to close within the two year period specified in subpart T through negotiated compliance agreements.

Any extensions of the final compliance date based upon cost will be granted on a site-specific basis. If a licensee requests an extension based upon cost, technology may not be used as a basis for granting the extension unless the costs are grossly excessive, as measured by normal practice within the industry. EPA recognizes that the emissions from the pile may exceed the 20 pCi/m²-s flux standard pending final compliance, but believes these increases will be minimal and of limited duration. In addition, such extensions will only be granted if NRC or an Agreement State finds that the emissions caused by the delay will not cause significant incremental risk to the public health. EPA believes these emissions should not exceed those emissions which could occur under subpart T if compliance agreements were negotiated. Under the circumstances, EPA believes affording authority for extensions of the final compliance date based upon cost provides adequate protection of the public health.

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public participation on proposals or requests to (1) incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses, and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the **Federal Register**. In addition, consistent with the MOU, application may be made to NRC for public participation on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities. While EPA desires to keep the public informed and provide for public participation, such provisions are not intended to transform the licensing (and amendment) process into notice and comment rulemaking in accordance with Administrative Procedure Act (APA) requirements.

Under the existing regulatory scheme, NRC and the affected Agreement States may have the authority to allow, at a licensee's request, a portion of a site to remain accessible, during the closure process to accept byproduct material as defined in section 11(e)(2) of the AEA, (e.g., wastes from in situ mining operations, or from groundwater corrective action programs), or to accept materials from other sources that are similar to the physical, chemical and radiological characteristics of the in situ uranium mill tailings and associated wastes. In addition, NRC and the affected Agreement States may authorize a portion of a site to remain accessible to accept section 11(e)(2) byproduct material after placement of a permanent radon barrier over a portion of a pile or impoundment. Nothing in today's action alters, ratifies, or otherwise affects this authority. However, EPA notes that, consistent with the MOU and the Settlement Agreement, such authorization shall not to be used as a method to impede emplacement of the permanent radon barrier over the remainder of the site in a manner to achieve compliance with the 20 pCi/m²-s flux standard, averaged over the entire pile or impoundment as demonstrated by the licensee's monitoring described below.

EPA does not intend to substantively alter the 1983 scheme with today's action, but instead seeks to clarify and supplement that scheme to fill a regulatory gap which currently exists. By acknowledging NRC's apparent authority to allow a portion of a site to remain accessible for disposal, EPA is acknowledging a current NRC practice. EPA believes that placement of "materials similar to the physical, chemical and radiological characteristics of uranium mill tailings and associated wastes from other sources" on a portion of an impoundment is consistent with on-going disposal activities currently authorized by NRC. See 57 FR 20525. For instance, mining uranium by using uranium solution extraction processes produces "discrete (radioactive) surface wastes" which, although they do not have the same physical form as uranium mill tailings, have historically been disposed of in uranium mill tailings impoundments. See Definition of "Byproduct Material" at 10 CFR 40.4(a–1). In addition to wastes from in situ uranium mining operations and groundwater corrective actions, wastes which arise from processing non-source material for its source material content may produce wastes which are physically and chemically similar to tailings, and may be disposed of in a tailings impoundment. For instance, the tailings produced from processing ore for its copper content may produce tailings containing greater than 0.05 percent uranium, a source material, and thus, would be subject to licensure by the

NRC. See 57 FR at 20527. EPA understands that NRC's disposal of associated wastes and other byproduct materials in uranium mill tailings impoundments will not be used as a means of circumventing other applicable regulations such as 40 CFR Part 61, subpart W. See 57 FR at 20533. Moreover, while NRC may grant such authorization, licensees may not use this authorization to avoid emplacing a permanent radon barrier and complying with the 20 pCi/m²-s flux standard. In addition, under the Settlement Agreement NRC or an Agreement State may authorize a portion of a site to remain accessible for disposal of byproduct material after placement of a permanent radon barrier provided NRC or the Agreement State makes a finding, constituting final agency action and providing for public participation, that the site will continue to achieve the 20 pCi/m²-s flux standard when averaged over the entire impoundment. Even if a portion of a site is authorized to remain accessible for disposal of byproduct materials during the closure process or after placement of a permanent barrier consistent with the Settlement Agreement, as described above, this will not cause a nonoperational uranium mill tailings disposal site to revert to an operational site as defined by 40 CFR 192.31(q).

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) The limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee, as explained below. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA has added an additional definition in the final rule to clarify ambiguities surrounding use of the term "permanent radon barrier." That term is now defined as "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)."

The term "available technology" includes technologies and methods for emplacing a permanent radon barrier on nonoperational uranium mill tailings disposal sites, but does not include extraordinary measures or techniques that would impose grossly excessive costs as measured by practice within the industry (or one that is reasonably analogous), and provided there is reasonable progress towards emplacement of the permanent radon barrier (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc. considering normal practice in the industry; laser fusion of soils, etc.). To determine whether costs are grossly excessive, the closure cost estimate contained within the licensee's (radon) tailings closure plan may be used as a baseline. However, costs which are determined to be greater than the estimated costs contained in the plan will not automatically be considered grossly excessive.

The phrase "factors beyond the control of the licensee" includes factors causing delay in the schedule in the applicable license for timely emplacement of the permanent radon barrier to achieve compliance with the 20 pCi/m²-s flux standard (and 10 CFR part 40, appendix A, criteria 6) despite the good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the (radon) tailings closure plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

The term "operational" means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins. When final closure begins a site is no longer in operation as that term is defined in 40 CFR 61.251(e) and 40 CFR 61 subpart W no longer applies. The closure plan contains a description of how final closure will be conducted. See 40 CFR 264.111.

C. Appropriate Monitoring

After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 pCi/m²-s, as contemplated by 40 CFR 192.32(b)(1)(ii). Appropriate monitoring shall be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m²-s flux standard.

EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 pCi/m²-s flux standard by all sites, but does not propose continuous emissions monitoring. Rather, a single monitoring event may well suffice to verify the design of the permanent radon barrier to ensure continued compliance.

If the NRC or an Agreement State extends the time for performance of milestones after making a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 pCi/m²-s flux standard must be demonstrated each year during the period of the extension.

When a site's tailings closure plan (radon) provides for phased installation of the radon barrier, the licensee will be allowed to conduct radon flux monitoring for each portion of the tailings area on which the radon barrier has been placed by conducting flux monitoring on the closed portion as described above.

V. Discussion of Comments and Response to Comments From NPR

A public hearing on the notice of proposed rulemaking (NPR) (58 FR

32174, June 8, 1993) was held in Arlington, Virginia on June 21, 1993. Representatives from NRC and AMC testified at the hearing. Written comments were also received from EDF, AMC, NRC, the Texas Water Commission (affected Agreement State), a few companies and an individual. To the extent they are specifically restricted to EPA's modifications to its UMTRCA regulations, the comments have been evaluated by the Agency, and a summary and response are set forth below. Some comments, not addressed here, are directed to EPA's earlier promulgation of subpart T, a rulemaking decision that is not being revisited by the amendments to subpart D. EPA responded to many of those comments when the Agency promulgated subpart T. The comments have also been repeated in subsequent petitions to reconsider that action, which are pending before the Agency. These petitions might be addressed or otherwise resolved should 40 CFR part 61, subpart T be rescinded.

1. General

In response to the NPR, environmental groups and industry generally support the proposed amendments to the regulations promulgated under UMTRCA at 40 CFR part 192 subpart D. Various commenters suggested specific revisions to the proposed regulation and preamble, as well as to the draft Background Information Document (BID). EPA has carefully reviewed all comments and suggested revisions; revising the regulation, preamble and BID where deemed appropriate.

2. Section 112(d)(9) of the Clean Air Act, as Amended ("Simpson Amendment")

Comment: The Simpson Amendment "mandates" EPA to eliminate duplicative regulation under the Clean Air Act if the NRC regulatory program adequately protects the public health.

Response: EPA disagrees with the commenters' assertion that the Simpson Amendment is mandatory. The Simpson Amendment, section 112(d)(9) of the CAA, authorizes EPA to decline to regulate radionuclide emissions from facilities licensed by the NRC or Agreement States, under section 112 of the CAA, provided that EPA determines, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects the public health with an ample margin of safety.

3. NRC Regulatory Scheme

Comment: The existing NRC regulatory program protects the public health with an ample margin of safety and provides sufficient basis for EPA to rescind 40 CFR 61 subpart T pursuant to the Simpson Amendment; specifically, EPA's timing and monitoring concerns, the subject of these amendments, are adequately addressed in NRC's regulations at 10 CFR part 40 and Appendix A thereto. The Memorandum of Understanding (MOU) between EPA and NRC merely serves to strengthen NRC's authority under the existing regulatory program.

Response: EPA is conducting a separate rulemaking on the issue of rescission of the CAA radionuclide NESHAP at 40 CFR 61 subpart T, and the adequacy of the existing NRC regulatory program as a basis for such rescission will be addressed in that rulemaking. For a discussion of EPA's view on whether the current NRC regulatory program protects the public health with an ample margin of safety, and would thus support rescission of subpart T, see EPA's proposal to rescind subpart T, 56 FR 67561 (December 31, 1991). Comments on the adequacy of the current NRC regulatory program to support rescission of subpart T will be addressed in that rulemaking, and are not relevant to the regulatory changes adopted today.

EPA does not believe that NRC's current regulations at 10 CFR part 40 and appendix A of part 40 adequately address EPA's concerns on timing and monitoring. Both EPA's UMTRCA regulations (40 CFR part 192 subpart D) and NRC's implementing regulations did not require placement of covers by specific dates or verification that radon flux through the covers met the flux standard. These issues led to EPA's promulgation of the CAA NESHAP at 40 CFR part 61 subpart T. EPA promulgated subpart T in 1989 to address the timing issue and provide for verification of the 20 pCi/m^2-s flux standard, noting that "(S)ome piles have remained uncovered for decades emitting radon. (A)lthough recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years" (54 FR 51683, December 15, 1989).

Although commenters suggest that 10 CFR 40.63, and 10 CFR 40.42(c)(2) (iv), (i), and (iii) adequately address EPA's timing and monitoring concerns, neither EPA's general standards nor NRC's implementing criteria compel sites to proceed toward final closure by a certain date. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria require appropriate monitoring to demonstrate the efficacy of the closure design to ensure compliance with the 20 pCi/m^2-s standard. In fact, as indicated in footnote 1 to 40 CFR 192.32(b)(1) promulgated in September 1983, the flux standard was expressly intended as a design standard, for which monitoring after installation was not required. (48 FR 45947, October 7, 1983). Thus, EPA believes that the UMTRCA standards should be amended to include timing requirements and a provision to confirm that the radon flux through the cover meets the flux standard.

Comment: It appears EPA is acknowledging and concurring in NRC's regulation of "similar byproduct material."

Response: EPA is recognizing a current NRC practice that allows a portion of a site to remain accessible for disposal in the preamble of the NPR. EPA believes that placement of "materials similar to the physical, chemical and radiological characteristics of uranium mill tailings and associated wastes from other sources" on a portion of an impoundment is consistent with on-going disposal activities currently authorized by NRC. See 57 FR 20525. Nothing in today's action is intended to ratify, alter or otherwise affect this authority.

4. EPA's Legal Rationale for the Proposed Amendments

Comment: Some commenters claim that EPA's discussion of the legislative scheme mischaracterizes the potential problem involved. These commenters objected to use of terms such as "urgency" and "immediacy," as there was no significant increase in public health risk without long term exposure to radon emissions at the levels projected.

Response: The commenter misunderstands the Agency's discussion of the legislative scheme. As described in the proposal, Congress placed great emphasis on expeditious action by EPA to impose controls on the disposal of the uranium mill tailings. This is reflected most dramatically in Congress' decision to remove EPA's authority to issue standards under 42 U.S.C. 2022(b) if EPA failed to promulgate final title II standards by the end of October 1983. In addition, Congress was clearly concerned that EPA standards lead to the expeditious control of radon emissions from uranium mill tailings piles. The relevant case law reflects this interpretation of the statute. See section III supra for a more detailed discussion of these points.

Congress believed that uranium mill tailings presented a major threat to public health, based on the extremely long radioactive decay process

associated with these piles. They amounted for all practical purposes to a "perpetual hazard." H. Rep. No. 95–1480, 95th Cong., 2nd Sess. 11, reprinted in 1978 U.S. Code Cong. & Ad. News 7433. Given the long term nature of the problem, and the prior history of minimal federal regulation of mill tailings piles, Congress required that "every reasonable effort be made by the States, the Federal Government, and private industry to provide for the disposal, stabilization, and control" of such mill tailings. H. Rep. No. 95–1480, 95th Cong., 2nd Sess. 13, reprinted in 1978 U.S. Code Cong. & Ad. News 7435. The regulatory changes adopted today are in line with this goal—they will require the control of radon emissions through expeditious emplacement of a permanent barrier. Today's regulations implement Congressional intent, and in no way contradicts the fact that uranium mill tailings present a long term threat to the public health.

5. Rescission of Subpart T

Comment: A few commenters expressed concern and suggested that EPA is not committed to rescinding subpart T.

Response: The amendments to subpart D are related to EPA's action to rescind subpart T, the NESHAP for radon emissions from the disposal of uranium mill tailings at nonoperational sites which was promulgated on December 15, 1989, as applied to NRC-licensees. EPA has demonstrated its commitment to avoid duplicative regulation of these sites and to ensure uranium mill tailings disposal piles are closed as expeditiously as practicable by executing the MOU with NRC (and the affected Agreement States) and the settlement agreement with EDF, NRDC, AMC, and Homestake Mining Co. The MOU and the settlement agreement provide the regulatory approach for this action. EPA has also proposed rescission of subpart T. See 56 FR 67561 (December 31, 1991).

EPA believes that today's amendments eliminate an existing deficiency in the regulatory scheme, and may enable EPA to rescind subpart T, providing a single consistent framework which can be implemented by NRC. EPA has tentatively concluded that the amendments to subpart D, if effectively implemented and enforced by NRC and the Agreement States to ensure specific enforceable closure deadlines and monitoring requirements, may enable EPA to make the finding required by the Simpson Amendment. EPA reiterates its commitment to the terms of the MOU and the settlement agreement.

Comment: EPA should rescind subpart T simultaneously with today's action.

Response: EPA is not rescinding subpart T with today's action. EPA is not prepared at this time to make the finding pursuant to the Simpson Amendment that the public health is protected with an ample margin of safety at this time. EPA does not intend to take final action on the proposed rescission of subpart T until after NRC and the Agreement States complete the license amendments as specified in the MOU and NRC conforms its implementing regulations to today's amendments to subpart D, and other conditions of the MOU occur. EPA plans to publish an additional notice in the **Federal Register** and provide for a 30 day comment period on whether the NRC regulatory program protects public health with an ample margin of safety, including whether: (1) EPA has effectively promulgated appropriate revisions to 40 CFR part 192, subpart D; (2) NRC's regulations at 10 CFR part 40, appendix A, either already adequately and appropriately implement the revisions to EPA's regulations, or may reasonably be expected to do so prior to rescission of subpart T; (3) the revision of NRC and Agreement State licenses reflect these new requirements; and (4) any judicial challenge to EPA or NRC regulations which is pending that presents a significant risk of interference with full compliance with the MOU and the settlement agreement.

6. Settlement Agreement

Comment: The regulatory program for nonoperational uranium mill tailings sites is best served by EPA adopting the proposed regulations to the extent the proposal is consistent with the settlement agreement executed between EPA, EDF, NRDC, AMC, Homestake Mining Co., and individual site owners (NRC agreed in principle by letter).

Response: The agreement adds comprehensive detail to, and continues the approach set forth in the MOU executed between EPA and NRC in October 1991. The settlement agreement settles the pending litigation and administrative proceeding, avoids potential future litigation, and otherwise provides a consensus approach to regulation of NRC-licensed nonoperational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993).

EPA believes this action is consistent with the settlement agreement. By clarifying and filling gaps in EPA's UMTRCA regulations, EPA may, after the other elements in the settlement agreement are also implemented, be able to make the finding necessary to rescind subpart T under the Simpson Amendment. The agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement.

Comment: Proposed rule § 192.32(a)(3)(ii) which addresses the extension of performance milestones and the final compliance date based on cost is confusing because it combines two separate provisions of the settlement agreement. The commenter recommends separate sections in the regulation to clarify any confusion surrounding this provision. The commenter also interpreted proposed § 192.32(a)(3)(ii) such that a site need not meet the 20 pCi/m^2-s standard in all cases before any extension of either interim or final deadlines may be granted by NRC or an Agreement State.

Response: EPA agrees with the commenter that § 192.32(a)(3)(ii) as proposed is confusing because it combines the two separate instances in which extensions of milestones may be granted by the NRC or an Agreement State. EPA has revised the final regulation to incorporate the extension provisions in two separate paragraphs in § 192.32(a)(3) (ii) and (iii), to more fully reflect the intent of the settlement agreement described above.

EPA generally agrees with the commenter's interpretation of § 192(a)(3) (ii) and (iii) that a site need not satisfy the 20 pCi/m^2-s standard in all cases before NRC or an Agreement State may approve any extension of the interim milestone or the final closure date. Section 192(a)(3) (ii) and (iii) are based upon the regulatory approach set forth in settlement agreement paragraphs III.2.i. and III.2.j., and they establish the criteria for granting an extension when a site meets the 20 pCi/m^2-s standard and the criteria for an extension of the final compliance date or relevant milestone based upon cost. The criteria for an extension based upon cost does not include the requirement that the site meet the 20 pCi/m2-s standard. However, it does include other criteria designed to protect the public health.

The commenter also noted that NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee," as that term is implicit in the definition of "as expeditiously as possible." EPA understands that under subpart D's provisions there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for

emplacement of the radon barrier that meets the standard of "as expeditiously as possible." Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the "as expeditious as practicable" standard of § 192.32(a)(3)(i). However EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it could change a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC and the Agreement States in amending the licenses due to "factors beyond the control of the licensee," or for any other basis.

7. Proposed Amendments

7.1. Prescriptiveness of Proposed Amendments

Comment: One commenter suggested that EPA's amendments were more prescriptive than they should be given EPA's authority to promulgate general environmental standards. Specifically, the details of particular licensing processes should be left to the NRC and Agreement States.

Response: The regulations adopted today are within EPA's UMTRCA authority, and do not impermissibly infringe on NRC and the Agreement States.

As spelled out by Congress when it amended the Atomic Energy Act in 1978, EPA "shall, by rule, . . . promulgate . . . standards of general application for the protection of the public health, safety, and the environment" from hazards associated with uranium mill tailings at active processing or disposal sites. 42 U.S.C. 2022(b)(1).[2] Congress also required that the NRC conform its requirements to these standards, 42 U.S.C. 2022(b)(1), and assigned responsibility for the implementation and enforce-ment of EPA's UMTRCA standards to the NRC, in the licensing activities, and to the Agreement States. 42 U.S.C. 2022(e). The text of the statute thus indicates that Congress intended to grant broad, general authority to EPA in setting standards under UMTRCA, limited only by the requirement that they be of "general application" and that they be aimed at the "protection of the public health, safety, and the environment."

The legislative history for UMTRCA provides important additional insight into Congressional intent on the limits of this standard setting authority, stemming from the assignment of different responsibilities to EPA and the NRC. Congress intended that EPA's "standards and criteria should not interject any detailed or site-specific requirements for management, technology or engineering methods on licensee or on the Department of Energy." See H.Rep. No. 95–1480, 95th Cong., 2nd Sess. 17, reprinted in 1978 U.S. Code Cong. & Ad. News 7433, 7439. Also see the House Report at 46, 1978 U.S. Code Cong. & Ad. News 7473 ("The committee stresses that the EPA standards are not to be site-specific"). From this, it is clear that EPA is to establish criteria or standards that are generally applicable, but should not promulgate requirements that dictate the specific management, technology, or engineering methods required at specific sites.

Viewing EPA's authority in this light, the revisions to subpart D promulgated herein clearly fall within the range of standards authorized by Congress. They are not site-specific, and instead apply to any and all sites subject to subpart D. The regulations define when a permanent radon barrier has to be placed on the site, and require appropriate monitoring. A written plan detailing the steps for closure in compliance with these standards is to be incorporated into the individual site license, including a schedule for key closure milestone activities. The regulations also set out the criteria for extensions of these milestones. None of these requirements are site specific, and they do not dictate the management, technology, or engineering methods required for any specific site.

The revisions adopted herein do provide for site-specific variability in their application. For example, in implementing the standard of "as expeditiously as practicable considering technological feasibility," EPA expects that different sites will establish different schedules and dates for emplacement of the permanent radon barrier. This site-specific variability, however, does not transform the generally applicable standard into an unlawful site-specific standard. These site-specific results stem from the application of the general standard to the variety of circumstances found at different sites. Likewise, EPA's criteria for an extension of a milestone or for keeping sites open during or after the closure process establish general standards applicable to all sites. While not all licensees are expected to seek such extensions or authority, any such request will be measured against the generally applicable standard in these regulations. The substantive and procedural requirements for such extensions or authorizations are designed to establish generally applicable requirements that EPA believes will best ensure the proper consideration of all relevant factors in acting on such a request.

The relevant case-law supports EPA's belief that it has authority to adopt these standards and criteria. In *AMC I*,[3] the court reviewed among other things a rule allowing exceptions from the general standards for inactive sites. That regulation authorized such exceptions for the implementing agencies so long as the selected remedial action came as close to meeting the otherwise applicable standard as was reasonable under the circumstances. This provision clearly allowed site-specific variability, based on the peculiar circumstances of a site. The court upheld this regulation as generally applicable standards were in place and, if necessary, a court could determine in a specific case whether an exception was reasonable. The court's main concern was whether EPA had promulgated general standards that would apply to a case or had delegated such authority to the implementing agency. It was satisfied that EPA had acted lawfully, as EPA had promulgated a general standard applicable absent an exception, and had promulgated what amounted to a general standard applicable in those limited situations involving exceptions.

In this case, EPA has likewise promulgated a generally applicable standard, along with detailed criteria applicable for those limited circumstances where an exception is sought. EPA's requirements clearly provide an adequate basis for a court to determine, for example, in a specific case whether an extension for emplacement of the permanent radon barrier was properly granted. In fact,

[2] Congress granted similar authority to EPA with respect to inactive sites selected by the Department of Energy under Title I of UMTRCA. 42 U.S.C. 2022(a).

[3] *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985) (addressing EPA's UMTRCA regulations for inactive sites).

EPA's general criteria for evaluating such exceptions would appear to be much more like a generally applicable standard than the broad authority for exceptions approved in *AMC I*, and should therefore easily meet the threshold established by that court.

7.2. Seven Year Goal

Comment: The MOU goal specifying closure of nonoperational uranium mill tailings sites by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status is not a regulatory requirement.

Response: The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation and are not in standby status, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). That is the regulatory requirement adopted herein. EPA's and NRC's goal is that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. EPA believes this regulatory requirement is fully consistent with the goals expressed in the MOU.

In accordance with the MOU, the NRC and affected Agreement States have amended the licenses of most sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. Pursuant to the MOU and the regulations adopted today, the amended licenses require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²-s.

This action amends 40 CFR part 192, subpart D to require (1) emplacement of a permanent radon barrier by all sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the final radon barrier; and (3) that site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA believes that this regulatory approach is consistent with the goal in the MOU that this occur by December 31, 1997, or seven years after the date on which operating impoundments cease operations.

7.3. Permanent Radon Barrier

Comment: The term "permanent" should be revised to read "final radon barrier" to distinguish the barrier used to comply with the standard from any interim barriers placed during the closure process.

Response: EPA believes the term "permanent radon barrier" to be appropriate. However, to clarify any ambiguities surrounding use of this term, "permanent radon barrier" has been defined to mean "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)."

7.4. Tailings Closure Plan (Radon)

Comment: It is essential that the Tailings Closure Plan (Radon) be incorporated in individual site licenses and that the plan contain a schedule for compliance.

Response: EPA agrees with this comment, and both the proposed and final regulations reflect this requirement. EPA understands that the NRC and affected Agreement States have amended most of the licenses of sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered pursuant to the MOU executed between EPA, NRC and the affected Agreement States. Pursuant to the MOU and the regulations adopted today, these license amendments should establish a detailed tailings closure plan for radon, including key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²−s. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m²−s flux standard. The phrase "milestones" refers to enforceable dates by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²−s flux standard. Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon).

7.5. Monitoring

Comment: It is not accurate to refer to a "monitoring" requirement, since a single event is sufficient.

Response: Today's amendments require that monitoring occur after construction of the permanent radon barrier. Subpart T requires monitoring to occur only once to demonstrate compliance with the standard. EPA believes that conducting a single test and analysis of the radon emissions through the radon barrier typically will be sufficient to verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 do not exceed 20 pCi/m²-s as required by § 192.32(b)(1)(ii). Each tailings closure plan (radon) will establish the amount of testing and analysis required.

Comment: The timing of the monitoring requirement is ambiguous. Response: Today's amendments require monitoring to verify the efficacy of the design of the permanent radon barrier upon emplacement of such barrier. The details on timing of the monitoring requirement are left to NRC.

Comment: EPA's specification of Method 115 in the monitoring requirement limits flexibility.

Response: 40 CFR 192.32(a)(4)(i) requires monitoring to be conducted using either EPA Method 115 or any other measurement method proposed by a licensee that NRC approves as being at least as effective as Method 115 in demonstrating the efficacy of the permanent radon barrier. (emphasis added) EPA believes that this regulation does not unduly restrict flexibility as it provides for alternative methods.

Comment: EPA's Method 115 references another document, "Radon Flux Measurements on Gardiner and Royster Phosphogypsum Piles Near Tampa and Mulberry, Florida" (EPA 520/5–85–029), which should be readily available.

Response: This document is available for public inspection and is included in Docket A–91–67 which contains the rulemaking record for this action. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

8. Amendment of 40 CFR 192 Subpart E

Comment: In addition to amending subpart D, EPA should amend 40 CFR 192 subpart E to exclude the application of the subpart D amendments to the subpart E requirements for disposal of thorium mill tailings.

Response: EPA agrees and is amending subpart E by adding a new

§ 192.41(e) to clarify EPA's intent that the subpart D timing and monitoring requirements at §§ 192.32(a)(3)(i–v) and 192.32(4)(i–ii) apply only to uranium mill tailings. This amendment is necessary as subpart E references the subpart D standards in 192.41, the only purpose of this amendment is to clarify that the amendments to subpart D do not apply to subpart E sites, and is not intended to alter the present regulatory scheme under subpart E. By amending subpart E, EPA is not making a determination that the timing and monitoring requirements imposed for subpart D sites would be improper for subpart E sites. This rulemaking is only intended to address subpart D sites, and is not intended to make substantive decisions concerning subpart E sites. The amendment to subpart E is designed to do no more than preserve the status quo, without prejudging or prejudicing the appropriateness of any future modifications to subpart E.

9. NRC Waiver Authority and Citizens Suits Provisions

Comment: NRC waiver authority and the lack of citizens suits provisions under UMTRCA provide insufficient basis for EPA to rescind subpart T.

Response: As noted previously, EPA is conducting a separate rulemaking on the issue of rescission of the CAA radionuclide NESHAP at 40 CFR 61 subpart T, and the adequacy of the existing NRC regulatory program as a basis for such rescission will be addressed in that rulemaking. For a discussion of EPA's view on whether the current NRC regulatory program protects the public health with an adequate margin of safety, and would thus support rescission of subpart T, see EPA's proposal to rescind subpart T, 56 FR 67561 (December 31, 1991). Comments on the adequacy of the current NRC regulatory program to support rescission of subpart T will be addressed in that rulemaking, and are not relevant to the regulatory changes adopted today.

10. Technical

10.1. EPA's Risk Analysis Set Forth in the Background Information Document (BID)

Comment: EPA's risk analysis set forth in the BID is flawed because the "potential risk from radon emitted during the two-year period (December 15, 1989—December 15, 1991) cannot be meaningfully compared to potential increased risks from radon emitted until sites are closed according to the dates set forth in the MOU."

Response: The purpose of this rulemaking is to incorporate the timing and monitoring provisions of subpart T into EPA's UMTRCA regulations, thereby potentially providing the basis for eventual rescission of subpart T. It is reasonable to assume the baseline risks and costs are those that would have resulted had the piles been covered by December 15, 1991, pursuant to subpart T. The modeling period used for both the baseline and for covering the piles by the MOU dates is from December 15, 1991 to December 15, 2061. This period does not include the time between promulgation, December 15, 1989, and the date the piles were to be covered, December 15, 1991.

Comment: EPA based its analysis of the health risk posed by uranium mill tailings disposal sites on a number of studies dealing with miners, however, the evaluation of the working level month (WLM) dosimetry for that population is not correct. BEIR IV was not sufficiently critical of the data on which it based its analysis of the risk of inhaling radon daughters, specifically it overestimated the risk to Swedish iron miners, and to the Beaverlodge and Ontario uranium miners.

Response: EPA relied on the National Academy of Sciences' BEIR IV report and the 1987 report by the National Institute for Occupational Safety and Health (NIOSH) in addition to other relevant studies in its risk analysis. Given the broad uncertainty inherent in the risk assessment, any potential overestimate would not change EPA's conclusion on the risk from mill tailings. In fact, the conclusion of one of the studies cited in the comments, a reassessment of the Beaverlodge uranium miners, states: "[u]nless new studies significantly reduce the range of uncertainty, there is little justification for changing the limits for exposure to radon * * * progeny * * * for occupational exposures." *Review of Risk Estimates for Inhalation of Radon Progeny by Miners: Presentation by the Atomic Energy Board of Canada (AEBC) before the ICRP Main Commission*, Nov. 1992.

Comment: The radon emissions from uncovered subpart T uranium mill tailings piles is not a significant risk to the public health.

Response: In this rulemaking EPA is not revisiting the determinations made in either the subpart T or UMTRCA rulemakings that uranium mill tailings piles need to be covered to protect the public health. In addition, the court in *AMC I* made it clear there was no requirement that EPA show a significant risk from uranium mill tailings prior to regulation of the tailings. *American Min. Congress* v. *Thomas*, 772 F.2d 617, 629 (10th Cir. 1985).

10.2. Extensions

Comment: Extensions of time and the practical aspects of closure occurring on schedule are not addressed in the BID accompanying the proposed rule.

Response: Any attempt to model extensions in the closure dates agreed to in the MOU would require the arbitrary selection of those piles to be granted extensions and choices of closure dates. There is no limit to the number of these combinations. EPA believes that the better procedure is to develop the model based on the dates in the MOU, and to recognize that extensions in the closure dates would increase total emissions and reduce present value costs.

10.3. Correlation Between 1 pCi/g of Radium to the Radon Flux

Comment: The BID relies on a false assumption that a concentration of radium of 1 pCi/g will result in 1 pCi/m^2-s radon flux from the tailings.

Response: EPA recognizes that the one-to-one radium to radon correlation is an approximation. However, there is no scientific consensus on what the value should be. Numerous factors enter into estimating the emanation rate. The rate varies according to tailings characteristics such as grain structure, grain size and moisture content. It also is affected by meteorological conditions such as temperature and barometric pressure. The impact of these factors on the emanation rate is not well understood. The rate can be expected to vary across individual piles, and from pile to pile. The Agency considered it prudent to assume a rate the tailings would be expected to exhibit at the time they are dry, prior to constructing the cover.

10.4. Equilibrium Factor

Comment: EPA does not accurately address the equilibrium factor in the BID.

Response: EPA uses a nominal value of 0.5 (rather than the 0.4 value used by the National Council for Radiation Protection (NCRP)) for the indoor equilibrium factor for radon entering houses directly from underground (see Technical Support Document for the 1991 Citizen's Guide to Radon, pp. 2–32, 33). However, when a house is located downwind from the radon source, ingrowth of radon decay products will occur, and some of these decay products will infiltrate the house. As the radon and its decay products move downwind, ingrowth will continue until an equilibrium between continued ingrowth and loss of decay

products due to ground deposition and participation scavenging is achieved. Therefore, the equilibrium fraction will increase with time, and with distance traveled, until a maximum is reached. This equilibrium will be maintained indefinitely. At a wind speed of 3.5 m/s, this maximum is calculated to be reached at about 20,000 meters (or about 12.5) miles. Since most of the population exposed to radon from the uranium mill tailings piles is more than 12.5 miles downwind, the value used in the BID is believed to be appropriate.

Comment: EPA's discussion of the equilibrium factor in the BID does not address support of the theoretical estimates utilized by monitoring data.

Response: The decay of radioactive materials such as radon is well understood. The diffusion of radon in the atmosphere is also well known; however it is a very complex phenomena. It is traditionally accepted that the atmospheric dispersion of radon and its decay products be modeled because of the difficulty of measuring their concentrations at points long distances downwind from sources such as mill tailings piles. EPA's dispersion models are based on accepted scientific principles and have received peer review. Given the difficulty inherent in the measurement of radon and its decay products in the atmosphere, we see little justification in requiring the extraordinary efforts that would necessarily be expended in accumulating monitoring data on emissions from mill tailings piles.

10.5. Moisture Content of Type B Soil

Comment: The 7.5 percent value for moisture content of type B soil used in EPA's BID should be revised to 6 percent to be consistent with NRC's Regulatory Guide 3.64.

Response: EPA used a moisture content of 7.5 percent for type B soil in estimating the emanation of radon through earthen covers on mill tailings piles. This assumed moisture content for type B soil has been used in all of EPA's rulemakings under UMTRCA and the CAA since 1983. The diffusion of radon through covers is a very complex phenomena that is affected by a large number of variables. For example, a small change in the assumed porosity of the cover material, a change within NRC's accepted range of these values (NUREG/CR–3533), would change the estimated emanation rate to a greater extent than would a change in the assumed moisture content from 7.5 percent to 6 percent. Given the sensitivity of the estimated diffusion rate to variation in the input parameters, EPA does not believe that a change to NRC's default value of 6 percent for the moisture content for type B soil is warranted.

10.6. Computer Codes Used to Assess Health Effects

Comment: It appears EPA is modifying existing regulations without benefit of rulemaking by discussing "Cap–88–EPA" in the BID, since "Comply-R" was the computer code used to assess health effects under the current CAA regulations (NESHAPs).

Response: The computer code "Comply-R" was not used in the 1989 NESHAPs rulemaking for estimating health risks from uranium mill tailings piles. EPA used "AIRDOS" for estimating the health risks from these piles in the 1989 rulemaking, which gives results essentially the same as "Cap–88–EPA."

10.7. Evaporation Ponds

Comment: Some commenters strongly support allowing evaporation ponds to remain open after emplacement of the permanent radon barrier.

Response: EPA received many comments to the Advanced Notice of Proposed Rulemaking (ANPR) noting that evaporation ponds should be excluded from the expeditious cover requirement. EPA reiterates that the Agency does not intend the expeditious radon cover requirement to extend to areas where evaporation ponds are located, even if on the pile itself, to the extent that such evaporation pond is deemed by the implementing agency (NRC or an affected Agreement State) to be an appropriate aspect to the overall remedial program for the particular site. Rather, the evaporation pond area may be covered to control radon after it is no longer in use and ready for covering. EPA believes the overall public health interest in comprehensively resolving the problems associated with each site is best served by requiring that the radon cover be expeditiously installed in a manner that does not require interruption of this aspect of remediation. Moreover, the ponds themselves serve as an effective radon barrier. EPA believes that provided all other parts of the pile are covered with the radon barrier, compliance with the 20 pCi/m^2-s standard will result, and this will be maintained by covering the evaporation pond area when it is no longer in use.

11. Miscellaneous

11.1. Amending UMTRCA

Comment: One commenter objects to an apparent EPA request to amend UMTRCA to include timing requirements.

Response: EPA did not intend to request that UMTRCA be amended when it stated in the preamble to the proposed rule "[T]hus the Agency believes that UMTRCA should be amended * * * in order to find that the NRC program protects the public with an ample margin of safety * * *". EPA was referring to the proposed amendments to the UMTRCA regulations promulgated by EPA at 40 CFR 192 subpart D.

11.2. Provisions for the Impacts of Flooding at the Sites

Comment: EPA has not duly considered the possible implications of the current Midwest flooding on uranium mill tailings disposal sites, particularly one site located near the Colorado River.

Response: The MOU and this rule are directed to timely compliance with the 20 pCi/m^2-s flux standard and not erosion protection and groundwater remediation. This rulemaking addresses changes to the UMTRCA regulations which EPA believes are requisite to a finding that the NRC regulatory program protects the public health with an ample margin of safety. Milestones which are not reasonably calculated to advance timely compliance with the 20 pCi/m^2-s standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon) and are not the subject of this action. EPA does not intend today's amendments to subpart D to address groundwater and erosion protection concerns and in addition understands that no nonoperational uranium mill tailings disposal site was in jeopardy due to the recent flooding in the Midwest. EPA understands NRC and the Agreement States consider the possibility of flooding at a particular site in reviewing the site's reclamation and closure plan. Furthermore, EPA understands that the magnitude of floods considered by the NRC are based upon the probable maximum flood, or the probable maximum precipitation event. These events generally have a much lower probability of occurrence and larger magnitude for a given drainage area than the events that occurred in the Midwest this year. Design practices for protecting uranium mill tailings covers from erosion are described in NRC's *Design of Erosion Protection Covers for Stabilization of Uranium Mill Tailings Sites* (1990).

VI. Miscellaneous

A. Paperwork Reduction Act

In light of NRC's conforming regulations and any recordkeeping regulations adopted thereunder, and the designation in UMTRCA of NRC and Agreement State authority to implement and enforce such regulations, any issues under the Paperwork Reduction Act are properly considered by NRC in its conforming regulations.

B. Executive Order Requirements

This action was submitted to the Office of Management and Budget (OMB) under Executive Order 12291, which was revoked by Executive Order 12866 on September 30, 1993. This action was not classified as "major" under Executive Order 12291. Therefore, the Agency did not prepare a Regulatory Impact Analysis (RIA). OMB completed their review under Executive Order 12866. OMB's written comments (if any) are available in the public docket.

C. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of this rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR Part 61, subpart T that there was no significant impact on small business entities. There has been no change in this finding, since no new tailings piles have been constructed since 1989. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 192

Air pollution control, Environmental protection, Groundwater protection, Hazardous constituents, Hazardous materials, Radiation protection, Radium, Radon, Thorium and Uranium.

Dated: October 29, 1993.

Carol M. Browner,

Administrator.

Part 192 of chapter I, subchapter F of title 40 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: Sec. 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95–604, as amended.

Subpart D—[Amended]

2. Section 192.31 is amended by adding new paragraphs (k), (l), (m), (n), (o), (p), and (q) to read as follows:

§ 192.31 Definitions and cross-references.

* * * * *

(k) *As expeditiously as practicable considering technological feasibility* means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(l) *Permanent Radon Barrier* means the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii).

(m) *Available technology* means technologies and methods for emplacing a permanent radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry or one that is reasonably analogous, (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc., considering normal practice in the industry; laser fusion, of soils, etc.), provided there is reasonable progress toward emplacement of a permanent radon barrier. To determine grossly excessive costs, the relevant baseline against which cost increases shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's tailings closure plan, but costs beyond such estimates shall not automatically be considered grossly excessive.

(n) *Tailings Closure Plan (Radon)* means the Nuclear Regulatory Commission or Agreement State approved plan detailing activities to accomplish timely emplacement of a permanent radon barrier. A tailings closure plan shall include a schedule for key radon closure milestone activities such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

(o) *Factors beyond the control of the licensee* means factors proximately causing delay in meeting the schedule in the applicable license for timely emplacement of the permanent radon barrier notwithstanding the good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, Federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the tailings closure plan (radon) proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

(p) *Operational* means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins.

(q) *Milestone* means an enforceable date by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m^2-s flux standard.

3. Section 192.32(a) is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(6), and by adding new paragraphs (a)(3) and (a)(4), to read as follows:

§ 192.32 Standards.

(a) * * *

(3) (i) Uranium mill tailings piles or impoundments that are nonoperational and subject to a license by the Nuclear Regulatory Commission or an Agreement State shall limit releases of radon-222 by emplacing a permanent radon barrier. This permanent radon barrier shall be constructed as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the pile or impoundment ceases to be operational. Such control shall be carried out in accordance with a written tailings closure plan (radon) to be incorporated by the Nuclear Regulatory Commission or Agreement State into individual site licenses.

(ii) The Nuclear Regulatory Commission or Agreement State may approve a licensee's request to extend the time for performance of milestones if, after providing an opportunity for public participation, the Nuclear Regulatory Commission or Agreement State finds that compliance with the 20 pCi/m^2-s flux standard has been demonstrated using a method approved by the NRC, in the manner required in 192.32(a)(4)(i). Only under these circumstances and during the period of the extension must compliance with the 20 pCi/m^2-s flux standard be demonstrated each year.

(iii) The Nuclear Regulatory Commission or Agreement State may extend the final compliance date for emplacement of the permanent radon barrier, or relevant milestone, based upon cost if the new date is established after a finding by the Nuclear Regulatory Commission or Agreement State, after providing an opportunity for public participation, that the licensee is making good faith efforts to emplace a permanent radon barrier; the delay is consistent with the definition of "available technology" in § 192.31(m); and the delay will not result in radon releases that are determined to result in significant incremental risk to the public health.

(iv) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of the site to remain accessible during the closure process to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), or to accept materials similar to the physical, chemical and radiological characteristics of the in situ uranium mill tailings and associated wastes, from other sources. No such authorization may be used as a means for delaying or otherwise impeding emplacement of the permanent radon barrier over the remainder of the pile or impoundment in a manner that will achieve compliance with the 20 pCi/m^2-s flux standard, averaged over the entire pile or impoundment.

(v) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of a pile or impoundment to remain accessible after emplacement of a permanent radon barrier to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), if compliance with the 20 pCi/m^2-s flux standard of § 192.32(b)(1)(ii) is demonstrated by the licensee's monitoring conducted in a manner consistent with § 192.32(a)(4)(i). Such authorization may be provided only if the Nuclear Regulatory Commission or Agreement State makes a finding, constituting final agency action and after providing an opportunity for public participation, that the site will continue to achieve the 20 $pCi/m2-s$ flux standard when averaged over the entire impoundment.

(4)(i) Upon emplacement of the permanent radon barrier pursuant to 40 CFR 192.32(a)(3), the licensee shall conduct appropriate monitoring and analysis of the radon-222 releases to demonstrate that the design of the permanent radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^2-s as required by 40 CFR 192.32(b)(1)(ii). This monitoring shall be conducted using the procedures described in 40 CFR part 61, Appendix B, Method 115, or any other measurement method proposed by a licensee that the Nuclear Regulatory Commission or Agreement State approves as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m^2-s flux standard.

(ii) When phased emplacement of the permanent radon barrier is included in the applicable tailings closure plan (radon), then radon flux monitoring required under § 192.32(a)(4)(i) shall be conducted, however the licensee shall be allowed to conduct such monitoring for each portion of the pile or impoundment on which the radon barrier has been emplaced by conducting flux monitoring on the closed portion.

4. Section 192.32(b)(1), footnote number 1 is revised to read as follows:

§ 192.32 Standards.

* * * * *

(b) * * *

(1) * * *

[1]The standard applies to design with a monitoring requirement as specified in § 192.32(a)(4).

Subpart E—[Amended]

5. Section 192.41 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 192.41 Provisions.

Except as otherwise noted in § 192.41(e), the provisions of subpart D of this part, including §§ 192.31, 192.32, and 192.33, shall apply to thorium byproduct material and:

* * * * *

(e) The provisions of § 192.32(a) (3) and (4) do not apply to the management of thorium byproduct material.

[FR Doc. 93-27707 Filed 11-12-93; 8:45 am]
BILLING CODE 6560-50-P

federal register

Monday
November 15, 1993

Part IX

The President

Proclamation 6622—National Women Veterans Recognition Week, 1993

Notice of November 12—Continuation of Emergency Regarding Chemical and Biological Weapons Proliferation

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

Presidential Documents

Title 3—

The President

Proclamation 6622 of November 10, 1993

National Women Veterans Recognition Week, 1993

By the President of the United States of America

A Proclamation

American women have served with distinction and courage in every overseas combat theater of conflict since World War I. Some have been wounded in the line of duty, and others have given their lives for our country, but all have contributed tremendously to the success of America's Armed Forces. Bringing their talent, skill, and vision to a variety of occupations within each of the service branches, women have made an everlasting mark on the military history of the United States.

The loyalty and the sacrifices of the women who have served our country merit the respect and admiration of all of us. It is fitting then that we set aside a special time to honor these veterans, to salute them for their tireless devotion to duty while in uniform and for their patriotism and commitment to democratic ideals in civilian life.

The Vietnam Women's Memorial is a monument dedicated to the many women who volunteered to serve in the Armed Forces during the Vietnam era. Appropriately, it recognizes the living as well as those who died. It is part of the important ongoing process of healing, both for veterans and for our country as a whole. It is a remembrance of the brave and compassionate service that is so worthy of our esteem.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 7, 1993, as National Women Veterans Recognition Week, and I encourage all Americans to join in acknowledging the contributions and sacrifices of these veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

[FR Doc. 93–28204
Filed 11–12–93; 10:38 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compilation of Presidential Documents* (vol. 29, issue 45).

Presidential Documents

Notice of November 12, 1993

Continuation of Emergency Regarding Chemical and Biological Weapons Proliferation

On November 16, 1990, consistent with the authority provided the President under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), President Bush issued Executive Order No. 12735. In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security posed by the proliferation of chemical and biological weapons. Because the proliferation of these weapons continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 16, 1990, must continue in effect beyond November 16, 1993. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order No. 12735.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 12, 1993.

[FR Doc. 93-28224
Filed 11-12-93; 11:48 am]
Billing code 3195-01-P

Editorial note: For the President's letter to Congressional leaders transmitting this notice, see issue 45 of the *Weekly Compilation of Presidential Documents.*

Reader Aids

Federal Register

Vol. 58, No. 218

Monday, November 15, 1993

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	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

58255–58482.....1
58483–58640.....2
58641–58734.....3
58735–58934.....4
58935–59158.....5
59159–59342.....8
59343–59638.....9
59639–59930.....10
59931–60100.....12
60101–60362.....15

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

303.....58935

3 CFR

Proclamations:
6619.....58255
6352 (See USTR notice of November 3).....58713
6620.....59157
6621.....59637
6622.....60359

Executive Orders:
12170 (Continued by notice of November 1).....58639
12569 (Amended by EO 12877).....59159
12677 (Revoked by EO 12876).....58735
12735 (Continued by Notice of November 12, 1993) 361
12853 (See DOT notice of November 1).....58480
12872 (See DOT notice of November 1).....58480
12876.....58735
12877.....59159
12878.....59343
12879.....59929

Administrative Orders:
Notices:
November, 11 1992 (See Notice of November, 12, 1993).....60361
November 1, 1993.....58639
November 12, 1993.....60361
Presidential Determinations:
94–3 of October 29, 1993.....58637
94–3 of October 29 (See USTR notice of November 1).....58379

5 CFR

302.....58257
317.....58257
335.....59345
352.....58257
359.....58257
511.....59345
532.....59639
534.....58257
550.....58257
610.....58257

Proposed Rules:
837.....59685

7 CFR

271.....58444
272.....58442, 58444, 58455
273.....58442, 58444, 58455
319.....59348
354.....59354, 60101
457.....58262
905.....59931
944.....59933
1421.....58739
1434.....58739
1767.....59822
1786.....58729
1901.....58641
1943.....58647
1944.....58641
1955.....58647

Proposed Rules:
13.....58299
272.....58458
273.....58458, 58463
319.....59953

8 CFR

103.....58935
240.....58935
299.....58935

Proposed Rules:
3.....59953
204.....59200
214.....58982
274a.....58982

9 CFR

94.....58750
203.....58902
317.....58918
318.....59934
381.....58918

Proposed Rules:
54.....59955
71.....59959
79.....59955
91.....59962
92.....58304, 59414, 59963
94.....60146
317.....58922
381.....58922

10 CFR

1046.....60102

Proposed Rules:
73.....58804, 59965
40.....58657
52.....58664
430.....59417, 59418

11 CFR

Ch. I.....59640

100.....59641
102.....59641
104.....60244
110.....59641
112.....59642
114.....59641
201.....59642

12 CFR

4.....59686
325.....60102
618.....59161
711.....58263
943.....59935
1625.....58938

Proposed Rules:

34.....59688
225.....59688
323.....59688
545.....59688
563.....59688
564.....59688
936.....58305, 58988
960.....58988
1402.....59210
1408.....59215

13 CFR

121.....58650

14 CFR

25.....58263, 59646
39.....59161, 59936, 59937, 59939, 59940, 59941, 59942, 59944
71.....58277, 59356, 59357, 59358, 59656
73.....59359, 59945
91.....59360
97.....58277, 58279
1221.....58944

Proposed Rules:

Ch. I.....58512
25.....59689
39.....58305, 58307, 58310, 58667, 58669, 58807, 58808, 58992, 59223, 59418, 59965, 59967, 59968, 59970
71.....58311, 58312, 59422
121.....58512
127.....58512
135.....58512
145.....58512

15 CFR

19.....59946
789.....58483
799.....59163
904.....58484

16 CFR

305.....59166, 59167, 59168

Proposed Rules:

305.....60147
307.....58810

17 CFR

1.....58651, 58729
210.....60304
211.....59361
229.....60304
239.....60304
240.....60304, 60324, 60326
249.....58651

Proposed Rules:

229.....60307
230.....60307
239.....60307
249.....60307

18 CFR

341.....58753
342.....58753
343.....58753
344.....58753
345.....58753
347.....58753
360.....58753
361.....58753
375.....58753

Proposed Rules:

Ch. I.....58814, 59423
2.....59423
284.....58817, 59972
341.....58817
352.....58817

19 CFR

24.....59298

20 CFR

416.....60103

Proposed Rules:

655.....58994

21 CFR

5.....60105
74.....60106
101.....59363, 59657, 60105, 60109
176.....60109
310.....60332
510.....59168, 59946
520.....58651
522.....59946
526.....58486
529.....59168
556.....58486
558.....58652
573.....59169

Proposed Rules:

Ch. I.....59695, 59697
182.....59697
184.....59697
201.....59622
310.....59622
314.....59622
330.....59626
1308.....58819

22 CFR

121.....60112, 60115

24 CFR

200.....60246
280.....58280
905.....58784
970.....58784

Proposed Rules:

135.....59423
570.....60088
905.....58513
965.....58513

25 CFR

11.....58729

Proposed Rules:

226.....59142

26 CFR

1.....58787, 59657

Proposed Rules:

1.....59698
31.....58820

28 CFR

44.....59947

Proposed Rules:

65.....58994

29 CFR

1.....58954
5.....58954
2619.....60116
2676.....60116

Proposed Rules:

507.....58994

30 CFR

950.....58487

Proposed Rules:

253.....58517
701.....58518, 59424
784.....58518, 59424
817.....58518, 59424
870.....59334
886.....59334
887.....59334
888.....59334
904.....58313
915.....58997
917.....58997
935.....58824
946.....58827

31 CFR

128.....58494

Proposed Rules:

357.....59972
601.....59973

32 CFR

199.....58955, 59365
311.....59658

33 CFR

2.....59364
3.....59364
100.....59170, 59948
162.....59364
165.....58497, 59171, 59948, 59951

Proposed Rules:

110.....59425
117.....58518, 59426
165.....59974, 59975

34 CFR

643.....59144

36 CFR

215.....58904
217.....58904

37 CFR

301.....59658
307.....58282
311.....59658

38 CFR

3.....59365
36.....59658

39 CFR

Proposed Rules:

3001.....58519

40 CFR

9.....58382
51.....58498, 59366
55.....59172
85.....58382
86.....58382
180.....59662
185.....59663
192.....60340
266.....59598
271.....59367, 59370, 59598
282.....58624
300.....59369
761.....59372
763.....58964
799.....59667

Proposed Rules:

Ch. I.....58315
52.....59427, 59698
81.....58999
82.....59630
180.....59699, 59700
261.....58521
268.....59976

41 CFR

301.....58501

42 CFR

405.....58502
406.....58502
409.....58502
410.....58502
411.....58502
412.....58502
413.....58502
418.....58502
489.....58502

Proposed Rules:

124.....58828

43 CFR

Public Land Order:

3160.....58505
3180.....58630
6997.....58593
7001.....59098
7004.....58902
7007.....58968
7008.....58969

Proposed Rules:

426.....59427

44 CFR

64.....58653, 58655, 58969

45 CFR

96.....60118
233.....60134

46 CFR

1.....60256
67.....60256
502.....58970

Proposed Rules:

160.....59428

47 CFR

2.....59174
15.....59174
22.....59174
43.....58788
73.....58506, 58507, 58790, 59374, 59375
76.....60135, 60141

80.....58790
90.....58729, 59298
99.....59174
Proposed Rules:
15.....59977
73.....58533, 58671, 58672, 58833, 58834, 59431
90.....59977
97.....59701

48 CFR

Ch. 7.....58596
836.....58730
852.....58730
501.....58283
752.....58596
1805.....59188
1807.....58791
1834.....58791
1839.....59188
1852.....58791, 59188
1870.....58791
9903.....58791
904.....59682
925.....59682
952.....59682
970.....59682
Proposed Rules:
13.....59616
14.....59618
15.....59618
52.....59618
209.....58315, 58316, 60244
217.....58317
235.....58673
242.....58317, 60244
252.....58316, 60244
9904.....58999

49 CFR

390.....59194
391.....59194
571.....59189
665.....58732
1033.....60144
Proposed Rules:
172.....59224
174.....59224
175.....59224
176.....59224
177.....59224
192.....59431
571.....59224
575.....59224
1105.....60164
1121.....60164
1152.....60164

50 CFR

16.....58976
204.....59375
215.....58297
216.....58285
625.....59196
630.....58507
642.....58509
652.....59197
661.....59197
672.....59375
675.....58297, 58802, 59375, 60145
676.....59375
Proposed Rules:
14.....59978
17.....58534, 59979
215.....58680
216.....58680, 59007
222.....58680
227.....58318, 59230
285.....59008
630.....59008
641.....59230
651.....59232
652.....58681
672.....59980
675.....59980
678.....59008

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 12, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-019-00007-1)	20.00	Jan. 1, 1993
27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
53-209	(869-019-00011-9)	21.00	Jan. 1, 1993
210-299	(869-019-00012-7)	30.00	Jan. 1, 1993
300-399	(869-019-00013-5)	15.00	Jan. 1, 1993
400-699	(869-019-00014-3)	17.00	Jan. 1, 1993
700-899	(869-019-00015-1)	21.00	Jan. 1, 1993
900-999	(869-019-00016-0)	33.00	Jan. 1, 1993
1000-1059	(869-019-00017-8)	20.00	Jan. 1, 1993
1060-1119	(869-019-00018-6)	13.00	Jan. 1, 1993
1120-1199	(869-019-00019-4)	11.00	Jan. 1, 1993
1200-1499	(869-019-00020-8)	27.00	Jan. 1, 1993
1500-1899	(869-019-00021-6)	17.00	Jan. 1, 1993
1900-1939	(869-019-00022-4)	13.00	Jan. 1, 1993
1940-1949	(869-019-00023-2)	27.00	Jan. 1, 1993
1950-1999	(869-019-00024-1)	32.00	Jan. 1, 1993
2000-End	(869-019-00025-9)	12.00	Jan. 1, 1993
8	(869-019-00026-7)	20.00	Jan. 1, 1993
9 Parts:			
1-199	(869-019-00027-5)	27.00	Jan. 1, 1993
200-End	(869-019-00028-3)	21.00	Jan. 1, 1993
10 Parts:			
0-50	(869-019-00029-1)	29.00	Jan. 1, 1993
51-199	(869-019-00030-5)	21.00	Jan. 1, 1993
200-399	(869-019-00031-3)	15.00	Jan. 1, 1993
400-499	(869-019-00032-1)	20.00	Jan. 1, 1993
500-End	(869-019-00033-0)	33.00	Jan. 1, 1993
11	(869-019-00034-8)	13.00	Jan. 1, 1993
12 Parts:			
1-199	(869-019-00035-6)	11.00	Jan. 1, 1993
200-219	(869-019-00036-4)	15.00	Jan. 1, 1993
220-299	(869-019-00037-2)	26.00	Jan. 1, 1993
300-499	(869-019-00038-1)	21.00	Jan. 1, 1993
500-599	(869-019-00039-9)	19.00	Jan. 1, 1993
600-End	(869-019-00040-2)	28.00	Jan. 1, 1993
13	(869-019-00041-1)	28.00	Jan. 1, 1993
14 Parts:			
1-59	(869-019-00042-9)	29.00	Jan. 1, 1993
60-139	(869-019-00043-7)	26.00	Jan. 1, 1993
140-199	(869-019-00044-5)	12.00	Jan. 1, 1993
200-1199	(869-019-00045-3)	22.00	Jan. 1, 1993
1200-End	(869-019-00046-1)	16.00	Jan. 1, 1993
15 Parts:			
0-299	(869-019-00047-0)	14.00	Jan. 1, 1993
300-799	(869-019-00048-8)	25.00	Jan. 1, 1993
800-End	(869-019-00049-6)	19.00	Jan. 1, 1993
16 Parts:			
0-149	(869-019-00050-0)	7.00	Jan. 1, 1993
150-999	(869-019-00051-8)	17.00	Jan. 1, 1993
1000-End	(869-019-00052-6)	24.00	Jan. 1, 1993
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr. 1, 1993
200-239	(869-019-00055-1)	23.00	June 1, 1993
240-End	(869-019-00056-9)	30.00	June 1, 1993
18 Parts:			
1-149	(869-019-00057-7)	16.00	Apr. 1, 1993
150-279	(869-019-00058-5)	19.00	Apr. 1, 1993
280-399	(869-019-00059-3)	15.00	Apr. 1, 1993
400-End	(869-019-00060-7)	10.00	Apr. 1, 1993
19 Parts:			
1-199	(869-019-00061-5)	35.00	Apr. 1, 1993
200-End	(869-019-00062-3)	11.00	Apr. 1, 1993
20 Parts:			
1-399	(869-019-00063-1)	19.00	Apr. 1, 1993
400-499	(869-019-00064-0)	31.00	Apr. 1, 1993
500-End	(869-019-00065-8)	30.00	Apr. 1, 1993
21 Parts:			
1-99	(869-019-00066-6)	15.00	Apr. 1, 1993
100-169	(869-019-00067-4)	21.00	Apr. 1, 1993
170-199	(869-019-00068-2)	20.00	Apr. 1, 1993
200-299	(869-019-00069-1)	6.00	Apr. 1, 1993
300-499	(869-019-00070-4)	34.00	Apr. 1, 1993
500-599	(869-019-00071-2)	21.00	Apr. 1, 1993
600-799	(869-019-00072-1)	8.00	Apr. 1, 1993
800-1299	(869-019-00073-9)	22.00	Apr. 1, 1993
1300-End	(869-019-00074-7)	12.00	Apr. 1, 1993
22 Parts:			
1-299	(869-019-00075-5)	30.00	Apr. 1, 1993
300-End	(869-019-00076-3)	22.00	Apr. 1, 1993
23	(869-019-00077-1)	21.00	Apr. 1, 1993
24 Parts:			
0-199	(869-019-00078-0)	38.00	Apr. 1, 1993
200-499	(869-019-00079-8)	36.00	Apr. 1, 1993
500-699	(869-019-00080-1)	17.00	Apr. 1, 1993
700-1699	(869-019-00081-0)	39.00	Apr. 1, 1993
1700-End	(869-019-00082-8)	15.00	Apr. 1, 1993
25	(869-019-00083-6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1-1.60	(869-019-00084-4)	21.00	Apr. 1, 1993
§§ 1.61-1.169	(869-019-00085-2)	37.00	Apr. 1, 1993
§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1, 1993
§§ 1.301-1.400	(869-019-00087-9)	21.00	Apr. 1, 1993
§§ 1.401-1.440	(869-019-00088-7)	31.00	Apr. 1, 1993
§§ 1.441-1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501-1.640	(869-019-00090-9)	20.00	Apr. 1, 1993
§§ 1.641-1.850	(869-019-00091-7)	24.00	Apr. 1, 1993
§§ 1.851-1.907	(869-019-00092-5)	27.00	Apr. 1, 1993
§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869-019-00094-1)	22.00	Apr. 1, 1993
§§ 1.1401-End	(869-019-00095-0)	31.00	Apr. 1, 1993
2-29	(869-019-00096-8)	23.00	Apr. 1, 1993
30-39	(869-019-00097-6)	18.00	Apr. 1, 1993
40-49	(869-019-00098-4)	13.00	Apr. 1, 1993
50-299	(869-019-00099-2)	13.00	Apr. 1, 1993
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-019-00101-8)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-019-00104-2)	11.00	[5] Apr. 1, 1991
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
*1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
*1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[6] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
*1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[6] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	[7] Oct. 1, 1991
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	12.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869-019-00053-4)	36.00	Jan. 1, 1993
Complete 1993 CFR set		775.00	1993

Title	Stock Number	Price	Revision Date
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1990
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.