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Thursday
November 18, 1993

Briefings on How To Use the Federal Register
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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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Presidential Documents

Title 3—

The President

Proclamation 6623 of November 14, 1993

Geography Awareness Week, 1993 and 1994

By the President of the United States of America

A Proclamation

From ancient times, when prehistoric peoples used colored clay and charred sticks to draw primitive maps on cave walls, our ancestors have sought to identify their relationship to their surroundings.

Geography, from the Greek "geographia"—earth description—is the field of knowledge that examines those connections that link the earth and its inhabitants.

After a recent decline in the emphasis placed on the study of geography, it is once again receiving the attention it deserves as a necessary element in the education of our citizens. The world has become smaller—politically, economically, and socially—and geographic literacy, knowledge, and understanding of other cultures have increasingly become more and more essential.

America must keep pace with the rest of the world. Our Nation's ability to interact in a global environment depends greatly upon our capacity to comprehend and operate within an interconnected sphere. Young Americans must possess the tools necessary to succeed in this endeavor. They must exhibit a basic understanding of the relationships between countries, between peoples, and among themselves. Without this knowledge, our future leaders will run the risk of taking a narrow and uninformed view of the world as they pursue international initiatives.

My Administration's education reform legislation, Goals 2000: Educate America Act, proposes to specifically include geography in the National Education Goals, and we support the development of voluntary national curricular standards to include geography.

We are making progress. By committing ourselves to this goal, we expect results—and we have already begun to see them. Many schools around the country are engaged in wonderful activities to improve their students' understanding of our mutually shared planet. We must build on these burgeoning efforts for the future of this Nation and for the future of the world.

To recognize the special value of geography to the well-being of our country and all its citizens, the Congress by Senate Joint Resolution 131 has designated the weeks beginning November 14, 1993, and November 13, 1994, as Geography Awareness Week and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the weeks of November 14, 1993, and November 13, 1994, as "Geography Awareness Week." I call upon the people of the United States, governmental officials, educators, volunteers, and students of all ages to observe these weeks with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth 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.

William J. Clinton

[FR Doc. 93–28538
Filed 11–16–93; 2:17 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-99-AD; Amendment 39-8730; AD 93-22-06]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes, Excluding Models A300-600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires installation of a protective cover above each generator control unit (GCU) and installation of a drainage circuit. This amendment is prompted by reports indicating that the GCU's are susceptible to damage due to foreign fluid drainage. The actions specified by this AD are intended to prevent liquid from entering the GCU and causing internal short circuiting, which could result in the failure of the GCU and subsequent loss of electrical generation capacity.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

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

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on July 23, 1993 (58 FR 39475). That action proposed to require installation of a protective cover above each generator control unit (GCU) and installation of a drainage circuit.

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

Two commenters support the proposed rule.

Another commenter requests that the proposed compliance time of 6 months be extended. This commenter states that the lead time for obtaining the required installation parts is 4 months from the date of order; because of this timeframe, affected operators may have difficulty complying with the AD within the 6-month compliance time. The FAA does not concur. If operators acted prudently and ordered the installation kit on the effective date of this AD, and if the installation kit was received within 4 months after ordering, operators would still have an additional 2 months after receipt to install the parts. In light of the fact that installation necessitates only 5 work hours to accomplish, it is unreasonable to assume that an operator could not comply with this AD within 6 months. For these reasons, the FAA considers any extension to the compliance time to be unwarranted.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,125, or $625 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39-AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-22-06 Airbus: Amendment 39-8730. Docket 93-NM-99-AD.

Applicability: Model A300 series airplanes, excluding Model A300-600 series airplanes and Model A310 series airplanes; on which Airbus Modification 10361 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent liquid from entering the generator control unit (GCU) and causing internal short circuits, which could result in the failure of the GCU and subsequent loss of electrical generation capacity, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a protective cover over each GCU and install a drainage circuit, in accordance with Airbus Industrie Service Bulletin A300-24-0082, dated March 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

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

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

(d) The installations shall be done in accordance with Airbus Industrie Service Bulletin A300-24-0082, dated March 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on November 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-27373 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-176-AD; Amendment 39-8732; AD 93-22-08]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes. This action requires inspections to detect certain discrepancies of the earth post assemblies installed in the vicinity of the engine nacelles, and replacement, if necessary. This amendment is prompted by a report of a failure of an earth post assembly. The actions specified in this AD are intended to prevent such failures, which could result in high current arcing and overheating at the earth post assemblies and their associated earth (ground) cables, thus creating an in-flight fire hazard.

DATES: Effective December 3, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Jetstream Model 4101 airplanes. The CAA advises that an operator has reported a failure of an earth post assembly installed in the vicinity of the left and right engine nacelle. Consequently, the earth cable for the propeller de-icing system and the earth post incurred overheat damage. If the earth post assembly, which grounds the DC generator and propeller de-icing systems, is not precisely attached to the airframe structure, it can overheat and fail due to improper grounding of the earth cables. This condition, if not corrected, could cause high current arcing and overheating at the earth post assemblies and their associated earth (ground) cables, thus creating an in-flight fire hazard.

Jetstream Aircraft, Limited, has issued Series 4100 Alert Service Bulletin J41-A24-012, Revision 1, dated September 13, 1993, that describes procedures for a one-time visual and hands-on inspection of the earth post assemblies installed in the vicinity of the left and right engine nacelle. The service bulletin also describes procedures for conducting a visual inspection to detect damage caused by overheating of each earth post and its associated airplane structure, to detect damage caused by overheating of the cables and terminal tags on each earth post (DC generator and propeller de-icing cables), and to verify that at least two threads of the earth bolt are visible. Procedures for conducting a hands-on inspection is also included in the service bulletin; this inspection is performed to verify that the terminal tags of the earth cables are tightly attached to the earth post assembly. The service bulletin also describes procedures for installation of a new earth post assembly and subsequent testing of that assembly to ensure proper grounding of the earth cables. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, this AD is being issued to prevent failure of certain earth post assemblies, which could result in high current arcing and overheating at the earth post assemblies and attached earth (ground) cables, thus creating an in-flight fire hazard. This AD requires a one-time visual and hands-on inspection to detect discrepancies (i.e., overheating, looseness, etc.) of the earth post assemblies installed in the vicinity of the left and right engine nacelle, and replacement of earth post assemblies and earth cables with new assemblies, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.**

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-176-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-22-08 Jetstream Aircraft, Limited: Amendment 39-8732. Docket 93-NM-176-AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent high current arcing and overheating of certain earth post assemblies and their associated earth (ground) wires, thus creating an in-flight fire hazard, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, conduct a visual and hands-on inspection to detect discrepancies (i.e., overheating, looseness, etc.) of earth post EP2 (left) and earth post EP4 (right) and their attached earth cables, in accordance with the Accomplishment Instructions of Jetstream Series 4100 Alert Service Bulletin J41-A24-012, Revision 1, dated September 13, 1993.

(1) If no discrepancy is detected, no further action is required.

(2) If any discrepancy is detected, prior to further flight, replace the discrepant earth post with a new earth post and earth cables in accordance with paragraph B. of the Accomplishment Instructions of Jetstream Series 4100 Alert Service Bulletin J41-A24-012, Revision 1, dated September 13, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

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

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

(d) The inspections and replacement shall be done in accordance with Jetstream Series 4100 Alert Service Bulletin J41-A24-012, Revision 1, dated September 13, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 6	1	Sept. 13, 1993.
2, 4-5, 7, 8, 9.	Original	Sept. 8, 1993.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 3, 1993.

Issued in Renton, Washington, on November 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-27482 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-53-AD; Amendment 39-8706; AD 93-19-07]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes, Equipped With Air Cruisers Company Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the decorative cover on the L1 passenger door escape slide. This proposal is prompted by reports that escape slides located at the L1 passenger door have failed to deploy properly because the decorative cover obstructed slide deployment. The actions specified by this AD are intended to prevent failed deployment of escape slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on May 27, 1993 (58 FR 30725). That action proposed to require modification of the decorative cover on the L1 passenger door escape slide.

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

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,015, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

93-19-07 Fokker: Amendment 39-8706. Docket 93-NM-53-AD.

Applicability: Model F28 Mark 0100 series airplanes, equipped with Air Cruisers Company escape slide, part number D31840-( ), with a cover having Air Cruisers Company part number 60750-101, 60750-103, or 61862-101; or with a cover having Fokker part number Y00294-401; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failed deployment of escape slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the decorative cover on the L1 passenger door escape slide, in accordance with Fokker Service Bulletin SBF100-25-064, dated February 23, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

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

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

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100-25-064, dated February 23, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on September 29, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28456 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-241-AD; Amendment 39-8710; AD 93-20-03]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes, that requires the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Lockheed Model L-1011 series airplanes was published in the **Federal Register** on February 3, 1993 (58 FR 6906). That action proposed to require the implementation of a corrosion prevention and control program (CPCP) either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program.

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

Two commenters support the rule.

One commenter requests that the wording of proposed paragraph (a)(1)(iii) be revised to refer to "each corrosion task," rather than "all airplane areas." This change will make the language consistent with the rest of the paragraph. The FAA concurs and has changed the wording of the final rule accordingly. This change is meant only for clarifying purposes; it does not affect the requirements of the rule in any way.

Another commenter requests that paragraph (e) be revised to require that a proposed corrective action be submitted to the FAA within 60 days after the determination is made that corrosion exceeds Level 1, and then implemented within 30 days after FAA approval of the corrective action. As proposed, the rule would require that the FAA-approved corrective action be implemented within 60 days after the determination is made that corrosion exceeds Level 1. The commenter considers that a 60-day schedule is too short a time period in which to expect operators to design a corrective action, submit the proposed corrective action to the FAA, wait for FAA approval, revise their maintenance program to include the corrective action, and implement the corrective action. Further, this commenter points out that the suggested change is identical to a parallel requirement in similar AD's applicable to Boeing Model 737 and 747 series airplanes [reference AD 90-25-01, amendment 39-6789 (55 FR 49263, November 27, 1990); and AD 90-25-05, amendment 39-6790 (55 FR 49268, November 27, 1990)]. The FAA does not concur with the commenter's request. The FAA does not consider that 60 days is inadequate for necessary action to be taken and a revised program implemented. The determination that corrosion "findings" exceed Level 1 in any area is generally expected to be made some time after the detection of such corrosion on more than one airplane. Therefore, during the interim between detection and determination, an operator would have ample opportunity to consider possible program adjustments, even before the final determination is made. In addition, the means for reducing future findings to Level 1 or better are commonly known in the industry and are generally simple in concept, such as reducing a corrosion task interval or using multiple applications of corrosion inhibitors; therefore, a long period of time would not necessarily be required for an operator to develop or design some new means. The 60-day time period allotted for this requirement is meant simply to allow time for the operator's final coordination of the change with its local FAA inspector and for implementation of the program adjustment; the FAA does not consider it to be excessively restrictive.

This commenter is correct in pointing out that the AD's applicable to Boeing products differ from this AD in that an additional 30 days is provided for accomplishing a similar requirement. The FAA notes, however, that the reason for the additional 30 days provided is based on the fact that the FAA approval authority for changes to the Boeing product CPCP programs resides in a remote location, namely, the Seattle Aircraft Certification Office. In the case of this AD for the Lockheed Model L-1011, however, that approval authority is assigned to each operator's local FAA Principal Maintenance Inspector (PMI); therefore, the approval cycle should be expedited because of this. Additionally, the FAA is committed to responding as expeditiously as possible to operators' proposals so as to avoid delays in the review and approval process.

Further, this AD action is meant to address a worldwide system for preventing unsafe levels of corrosion. AD 90-25-01 and AD 90-25-05 require that, if corrosion is found that exceeds Level 1, the operator must review its corrosion control program and implement an FAA-approved means to reduce corrosion to Level 1 or better; the operator's FAA-approved maintenance program must then be revised to incorporate the approved corrective action. The requirements of paragraph (e) of this new AD differ from those of AD 90-25-01 and AD 90-25-05 specifically in order to address airplanes

that are not operated under an FAA-approved maintenance program.

One commenter requests that proposed paragraph (f)(2), concerning airplanes not previously maintained in accordance with the AD, be revised to require that only the specific corrosion tasks that are "past due" on the newly acquired airplane be accomplished prior to further flight, rather than all tasks. This commenter states that some Model L-1011's currently are less than 10 years old and the implementation age in many areas of the airplane may not yet have been reached. Since the corrosion prevention and control program is based on aircraft age, implementation age, and AD effective date, the requirements of proposed paragraph (a)(1) should still apply to those areas that are not "past due" (those that have not yet reached the implementation age). By changing paragraph (f)(2) as suggested, the implementation schedule for newly acquired airplanes would be similar to that of the rest of an operator's fleet. The FAA does not agree that a change to paragraph (f)(2) is necessary. While the commenter is correct concerning younger airplanes, the majority of the Model L-1011 fleet is older than 10 years. The intent of paragraph (f) is to ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. It is essential that scheduling of the inspections for each airplane not be delayed or postponed due to a transfer of ownership. Paragraph (f)(2) does require that the corrosion tasks be performed before the airplane is placed in service (i.e., prior to further flight); however, it also allows for the use of alternative schedules, provided they are approved by the FAA. Operators who acquire younger airplanes should consider following that provision of the paragraph.

One commenter requests that the proposed rule be revised to require the reporting of Levels 2 and 3 corrosion found as a result of opportunity inspections. A note that appeared in paragraph (g) of the proposed rule indicates that such reporting is merely "highly desirable," not required. The commenter considers that all corrosion findings are important to the corrosion program, and corrosion reports will be helpful in making future improvements to the program. The FAA does not agree that any revision to the rule is necessary. This AD alone cannot possibly address every type of inspection in which corrosion potentially could be found. This rule requires operators to report corrosion found as a result of specified inspections; however, this rule does not relieve operators from routinely reporting corrosion findings as required by Federal Aviation Regulations (FAR) Section 121.703 ("Mechanical reliability reports"). Reporting of opportunity inspection results would fall under that regulation.

Another commenter requests that the proposed rule be revised to exclude airplanes that are within 6 months of "retirement." The commenter states that it would not be cost effective to require operators to inspect airplanes so close to retirement. Further, the commenter considers that the structural integrity of the airplane would not be impaired if it remains in service for 6 months after the time limit for implementing the initial corrosion task. The commenter considers this amount of time to be reasonable and points out that proposed paragraph (c) allows scheduling revisions of up to 6 months after the indicated compliance time. The FAA does not concur with the commenter's request. The intent of the CPCP is obviously to detect and correct corrosion within a time frame consistent with an adequate level of safety for the airplane. The implementation ages were developed by the L-1011 Structures Working Group (which is sponsored by the Airworthiness Assurance Task Force) with this goal in mind. Deferral of the inspections, for economic or other reasons, and without adequate technical justification for doing so, would be inconsistent with this goal. Paragraph (h) of the final rule does provide operators with the opportunity to apply for FAA approval of adjusted compliance times or alternative compliance methods, provided that sufficient justification is submitted to ensure that an acceptable level of safety is maintained in the meantime.

One commenter requests that the proposed rule be revised to remove the basic corrosion task and reporting requirements for landing gear components. This commenter indicates that service experience has shown that normal overhaul procedures are adequate to maintain corrosion at safe levels on Model L-1011 landing gear components. This commenter also points out that similar action was taken for the Boeing Model 737 CPCP. Upon further review, the FAA concurs with the commenter's request. The FAA has determined that corrosion task numbers C-32-710-01 (nose landing gear) and C-32-730-01 (main landing gear, left and right) may be removed from the accomplishment requirements of this AD. Paragraphs (a) and (b) of the final rule have been revised to specify this. Operators should note, however, that other corrosion tasks in the "C-32" series listed in the referenced Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L-1011," remain under the corrosion inspection program required by this AD.

One commenter points out that no mention was made in the proposal of section 7.2 of the Lockheed CPCP document. That section lists corrosion-related service bulletins recommended for regulatory action by the Airworthiness Assurance Task Force. The commenter questions whether or not the intent of the proposed rule is to make these service bulletins mandatory. The FAA notes that the service bulletins listed in section 7.2 of the CPCP document relate to various modifications of fuselage structure, and not specifically to the corrosion program. The FAA intends to address those service bulletins by separate rulemaking action.

One commenter, the manufacturer, states that the number of corrosion tasks that would be required by the proposed AD is 127, rather than 226, as was indicated in the economic impact information in the preamble of the notice. The FAA has verified this information and has corrected the economic information, below, accordingly.

The FAA has revised paragraph (a)(1)(iv) of the final rule to clarify that it specifies a mandatory rate of task accomplishment only for aircraft areas that have exceeded their implementation age (IA).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 241 Model L-1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this proposed AD. It will take an average of 20 work hours per task to accomplish the 127 corrosion tasks called out in the Document; this represents a total of 2,540 work hours. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the 6-year average inspection cycle is estimated to be $16,344,900, or $139,700 per airplane. This total cost figure assumes that no

operator has yet accomplished the requirements of this AD.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions (corrosion tasks) required by this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Likewise, any costs associated with special airplane scheduling is likely to be minimal.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

93-20-03 Lockheed: Amendment 39-8710. Docket 92-NM-241-AD.

Applicability: All Model L-1011 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L-1011," dated March 15, 1991, including "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L-1011," issued September 29, 1992 (hereafter, both publications are referred to as "the Document"), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Atlanta Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant PMI." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD. Corrosion task numbers C-32-710-01 (nose landing gear) and C-32-730-01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

Note 3: A "corrosion task," as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 4: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial corrosion task of each "airplane area" specified in Section 4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "implementation age" (IA) for a corrosion task as of one year after the effective date of this AD: Initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For airplane areas that have exceeded the IA for a particular corrosion task, as of one year after the effective date of this AD: Initial compliance must occur within one R interval for that task, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD: Initial compliance must occur for each corrosion task within one R interval for that task, but not to exceed 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraph (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, for airplane areas that exceed the IA for that area, the operator must accomplish the initial corrosion task for each such area at a minimum rate equivalent to one such area per year, beginning one year after the effective date of this AD.

Note 6: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 7: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD. Corrosion task numbers C-32-710-01 (nose landing gear) and C-32-730-01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model L-1011 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model L-1011 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 8: Notwithstanding the provisions of Section 1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model L-1011 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each airplane area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each airplane area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Lockheed Aeronautical Systems in accordance with section 5 of the Document.

Note 9: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards Office, who may concur or comment and then send it to the Manager, Atlanta ACO.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(k) The completion of the corrosion tasks shall be done in accordance with Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L-1011," dated March 15, 1991; including "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L-1011," issued September 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on October 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28457 Filed 11-17-93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 924, 929, 935, 936, 937, 938, 941, 942, 943, and 944

National Marine Sanctuary Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations incorporate the revised statutory language of certain provisions of the National Marine Sanctuaries Program Amendments Act of 1992, (1992 Amendments), and certain provisions of the National Marine Sanctuaries Program Amendments and Authorization of 1988, (1988 Amendments). The 1992 and 1988 Amendments (the Amendments) encompass a wide range of procedural and policy revisions relating to the National Marine Sanctuary Program. The promulgation of this final rule effects conformity of NOAA's marine sanctuary regulations with those statutory revisions.

EFFECTIVE DATE: These regulations are effective on November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Captain Francesca Cava, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 3105 East-West Highway, suite 11520, Silver Spring, MD 20910, (301/713-3125).

SUPPLEMENTARY INFORMATION:

I. Authority

This final rulemaking is issued under the authority of title III of the Marine Protection, Research, and Sanctuaries Act (Act), 16 U.S.C. 1431 *et seq.*; as amended by title II of Public Law 102-587 (1992) and title II of Public Law 100-627 (1988). The Amendments reauthorize and amend title III of the Act.

II. Background

On November 7, 1988, President Reagan approved Public Law 100-627; Title II of Public Law 100-627 contains the 1988 Amendments.[1] The 1988

[1] A notice of proposed rulemaking was published in the **Federal Register** to implement the 1988 Amendments, 57 FR 31150 (July 14, 1992). That notice may be withdrawn and a substitute version of the regulations implementing the section of the

Amendments authorize appropriations through FY 1991 and amend the Act.

On November 4, 1992, President Bush approved Public Law 102–587; title II of Public law 102–587 contains the 1992 Amendments. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division, NOS, NOAA, Department of Commerce.

The 1988 Amendments: (1) Modify the sanctuary designation procedures to reduce the length of the process to two and one-half years; (2) require the Secretary of Commerce (Secretary) to promote and coordinate the use of marine sanctuaries for marine research by NOAA and other Federal and state agencies; (3) authorize the Secretary to issue special use permits for conducting specific activities in sanctuaries and to assess fees for conducting activities under such permits; (4) allow the Secretary to enter into cooperative agreements with nonprofit organizations for the promotion of, and the solicitation of private donations for, interpretive, historical, educational and scientific activities, and to accept donations for use in designating and administering marine sanctuaries; (5) make any person who destroys, causes the loss of, or injures any sanctuary resource liable to the United States for response costs and damages, and make recovered funds available for restoration, replacement, or acquisition of equivalent resources and for sanctuary management purposes; and (6) expand enforcement authority.

The 1992 Amendments: (1) Strengthen and clarify the purposes and policies of the National Marine Sanctuary Program; (2) clarify certain definitions and other provisions; (3) streamline the sanctuary designation process; (4) require the Secretary to cooperate with not only the appropriate Regional Fishery Management Council, but also other appropriate fishery management authorities in drafting any sanctuary fishing regulations; (5) require interagency consultation on proposed activities that are likely to damage sanctuary resources; (6) require reviews of sanctuary management plans every five years; (7) require the Secretary to engage in international cooperation; (8) make explicit that it is unlawful to destroy, cause the loss of, or injure sanctuary resources; (9) increase the maximum civil penalty amount from $50,000 to $100,000; (10) make explicit that a civil penalty constitutes a maritime lien; (11) make explicit that proceeds from forfeiture constitute a separate recovery; (12) make technical changes regarding use of amounts received as civil penalties, forfeitures and costs; (13) clarify that the area of application and enforceability of the Act includes the territorial sea and exclusive economic zone; (14) strengthen the roles of research and monitoring as components of sanctuary management; (15) provide greater flexibility to enter into cooperative and other ventures to carry out the purposes and policies of the Act; (16) allow the Secretary to acquire land or other property necessary and appropriate to carry out the purposes and policies of the Act; (17) make certain technical amendments to section 312 of the Act, which addresses liability for destruction, loss and injury to sanctuary resources; and (18) allow the Secretary to establish advisory councils to provide assistance regarding the designation and management of sanctuaries.

III. Purpose of This Rule

The purpose of this rule is to amend the National Marine Sanctuary Program and individual-sanctuary regulations to make them consistent with the Act, as amended.

IV. Specific Amendments to the Regulations

A. Findings, Purposes and Policies

The 1992 Amendments revise the existing findings at subsection 301(a)(2) by reiterating that certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational or esthetics qualities that give them special national significance, and adding "and in some cases, international" significance. The 1992 Amendments add "research" to subsection 301(a)(4) as an additional factor to be considered in identifying special areas of the marine environment. In addition, the 1992 Amendments add a new finding at subsection 301(a)(6) that "protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations."

The 1992 Amendments revise subsection 301(b)(2) to clarify that one of the purposes and policies of the Act is to provide authority for comprehensive and coordinated conservation and management of not only these special marine areas but also "activities affecting them". Subsection 301(b)(3) is revised to emphasize support, promotion and coordination of "long-term"monitoring and research as a purpose and policy of the Act. The following purposes and policies are also added: To "develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas"; to "create models of, and incentives for, ways to conserve and manage these areas"; to "cooperate with global programs encouraging conservation of marine resources"; and to "maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate." These additions are incorporated into the Act at subsections 301(b)(6)-(b)(9).

This final rule amends § 922.1 to incorporate these additions and clarifications.

B. Definitions

The 1992 Amendments clarify that the definition of "marine environment" at section 302(3) includes the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act. The 1988 Amendments defined "sanctuary resource" as "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological historical, research, educational, or aesthetic value of the sanctuary" (section 302(8)). This final rule amends § 922.2 to incorporate these additions and clarifications.

C. Sanctuary Designation Standards

The 1992 Amendments revise subsection 301(a)(2)(B) by specifying that in order to designate a sanctuary, the Secretary need only find that existing State and Federal authorities "should be supplemented," not necessarily that they are inadequate. The Secretary is to consider "maintenance of critical habitat of endangered species,"as a factor in determining whether an area meets the Sanctuary designation standards (subsection 303(b)(1)(A)). This rule amends paragraphs (a) and (b) of § 922.33 to incorporate these changes.

D. Designation Procedures

The 1992 Amendments require that the resource assessment report section of the environmental impact statement for a proposed sanctuary include information on "governmental" uses of the area and on any "past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed

1988 Amendments addressing liability for destruction, loss and injury to sanctuary resources (section 312 of the Act) will be proposed. The final rule promulgated today implements those sections of the 1988 Amendments that NOAA has determined may be implemented without notice and an opportunity for comment.

sanctuary." The Secretary is to consult with the Secretary of Defense, the Secretary of Energy and the Administrator of the Environmental Protection Agency in preparing the discharge/disposal section (subsection 303(b)(3)). This final rule revises paragraph (h) of § 922.31 to incorporate these requirements.

This final rule revises paragraph (e) of § 922.31 to eliminate the statement that the time period between Active Candidate selection and proposing to designate an area as a national marine sanctuary will normally not exceed three years. Paragraph (e) of § 922.31 continues to require that the draft management plan and the draft environmental impact statement be prepared as quickly as possible to allow for maximum public input, and adds the provision "and compliance with statutory timeliness for designation."

The 1992 Amendments eliminate the requirement of preparation of a prospectus for Congress for each proposed designation (subsection 304(a)), and instead require only submission of "documents, including an executive summary" providing the required information about the proposed designation (section 304(a)(1)(C)). The final rule amends § 922.32 to incorporate this streamlining.

The 1992 Amendments require that the Secretary cooperate with not only the appropriate Regional Fishery Management Council, but also other appropriate fishery management authorities in drafting regulations for fishing within the exclusive economic zone for a proposed sanctuary (subsection 304(a)(5)). The final rule amends paragraph (f) of § 922.31 to incorporate this requirement.

The 1988 Amendments revised subsection 304(b)(1) to require the Secretary to either issue a notice of designation with respect to a proposed site not later than 30 months after the date the notice declaring the site to be an active candidate is published in the **Federal Register** or publish in the **Federal Register** "findings regarding why such notice has not been published." The final rule revises paragraph (a) of § 922.34 to incorporate this requirement.

The 1992 Amendments further revised section 304(b) by eliminating the subsection providing for Congressional disapproval of a sanctuary designation through enactment of a joint resolution. Subsection 304(b)(3) is eliminated and subsection 304(b)(4) is redesignated as subsection 304(b)(3) to conform with this change. Subsection 304(b)(2) is also revised to reflect this change. The final rule makes appropriate revisions to § 922.34 to reflect this deletion.

E. Pre-existing Activities

The 1992 Amendments revised subsection 304(c)(1) to simplify the legislative language with respect to the date on which a lease, permit, license or right of subsistence use or of access is pre-existing for purposes of the Act. The subsection now provides that nothing in the Act is to be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license or right of subsistence use or of access if the lease, permit, license or right "is in existence on the date of designation of any national marine sanctuary." The final rule revises § 922.11 to reflect this change.

A section 304(e) has been added by the 1992 Amendments requiring the Secretary to review sanctuary management plans and their implementation every five years. Although not previously a statutory requirement, the final rule implementing the 1984 amendments to the Act included such a requirement (15 CFR 922.40(d)). The 1992 Amendments make this requirement statutory and clarify that the Secretary "shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title." The final rule revises paragraph (d) of § 922.40 to reflect this change.

F. Enforcement

The 1992 Amendments revised section 307, the enforcement section, by increasing the maximum civil penalty for violation of the Act or any regulation or permit issued under the Act from $50,000 to $100,000 (subsection 307(c)(1)). The final rule amends the enforcement provisions of each of the individual-sanctuary regulations to change the maximum amount of the civil penalty to the new amount. The changed sections are 924.4, 929.9, 935.8, 936.7, 937.7, 938.7, 941.10, 942.7, 943.8, and 944.7. Further, the references in those regulations to NOAA's consolidated civil procedure regulations (15 CFR part 904) have been updated as necessary.

The 1992 Amendments also make explicit that a civil penalty constitutes a maritime lien and that proceeds from forfeiture actions constitute a separate recovery, and make technical changes regarding use of amounts received as civil penalties, forfeiture and costs. The 1992 Amendments also clarify that the area of application and enforceability of the Act includes the territorial sea and the exclusive economic zone. No revision to NOAA's regulations is necessary.

G. Research, Monitoring and Education

The 1988 Amendments added a section 309 to the Act dealing with the promotion and coordination of national marine sanctuaries for research purposes. The 1992 Amendments revise section 309 to emphasize monitoring and education, in addition to research, as priorities within national marine sanctuaries. This section also directs the Secretary to promote and coordinate the use of national marine sanctuaries for research, education and monitoring, e.g., consulting with "Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons," including coordination with the National Estuarine Research Reserve System (section 309(b)). A new § 922.42 is added by the final rule to set forth the provisions of section 309.

V. Miscellaneous Rulemaking Requirements

A. Executive Order 12866: Regulatory Impact

NOAA has concluded that these regulations are not significant within the meaning of section 3(f) of Executive Order 12866 because they will not result in:

(1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of such recipients; or

(4) A novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for designating and managing national marine sanctuaries in accordance with the Amendments. The regulations will not have a significant impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act, and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, no

Regulatory Flexibility Analysis was prepared.

C. Paperwork Reduction Act of 1980

These Regulations will impose no collection of information requirements of the type covered by the Paperwork Reduction Act.

D. National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

E. Administrative Procedure Act

This final rule amends the existing National Marine Sanctuary Program and individual-sanctuary regulations to make them consistent with the Act, as amended. The changes to the regulations are non-discretionary and except from minor editorial changes have been accomplished by incorporating the statutory language into the regulations. Because the 1988 and 1992 Amendments have already changed the law, no purpose would be served by publishing general notice of proposed rulemaking in the **Federal Register** and allowing public comment. Accordingly, as provided by section 553(b) of title 5 of the United States Code, the agency for good cause finds that the notice and public comment procedure therein is unnecessary.

The changes in the law were self-implementing upon enactment. Therefore, NOAA for good cause finds no purpose served by delaying the effective date of these regulations as would otherwise be required by section 553(d) of title 5 of the United States Code. Accordingly, under 5 U.S.C. 553(d)(3) the agency is making them effective immediately.

F. Executive Order 12612

These regulations do not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in

15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Recreation and recreation areas, Research.

15 CFR Parts 924, 929, 935, 936, 937, 938, 941, 942, 943, 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 7, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR parts 922, 924, 929, 935, 936, 937, 938, 941, 942, 943 and 944 are amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

1. The authority citation for part 922 is revised to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 922.1 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (Act), the mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or esthetics qualities.

(1) Protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations.

(2) [Reserved]

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitor of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

* * * * *

3. Section 922.2 is amended by removing the paragraph designation preceding each definition, adding in alphabetical order new definitions for *Exclusive economic zone* and *Sanctuary resource* and revising the definition for *Marine environment* to read as follows:

§ 992.2 Definitions.

* * * * *

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act.

* * * * *

Marine environment means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

* * * * *

Sanctuary resource means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.

* * * * *

4. Section 922.11 is revised to read as follows:

§ 922.11 Access and valid rights.

Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any national marine sanctuary shall not be terminated by the Secretary. The Secretary may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

5. Section 922.31 is amended by revising paragraphs (e), (f) introductory text, and (h) to read as follows:

§ 922.31 Development of designation materials.

* * * * *

(e) The draft management plan and DEIS shall be prepared as quickly as possible to allow for maximum public input and compliance with statutory timeliness for designation.

(f) The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare and recommend for consideration by the Secretary draft regulations for fishing within the proposed sanctuary if the proposed sanctuary includes waters within the exclusive economic zone.

The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within the proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

* * * * *

(h) As part of the DEIS, the Secretary shall develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial, governmental, or recreational resource uses in the area that are subject to the primary jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.

* * * * *

6. Section 922.32 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (b) to read as follows:

§ 922.32 Congressional documents.

(a) As required by subsection 304(a)(1)(C) of the Act, on the same day that the **Federal Register** notice in paragraph (i) of § 922.31 is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee documents, including an executive summary, consisting of:

* * * * *

(b) In accordance with the provisions of section 304 of the Act, the Secretary shall not publish a notice to designate an area proposed as a national marine sanctuary until after forty-five (45) days of continuous session of Congress starting with the day the documents required by paragraph (a) of this section are submitted to Congress.

7. Section 922.33 is amended by revising paragraphs (a)(2)(ii) and (b)(1) to read as follows:

§ 922.33 Designation determination and findings.

(a) * * *

(2) * * *

(ii) Existing state and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

* * * * *

(b) * * *

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

* * * * *

8. Section 922.34 is revised to read as follows:

§ 922.34 Designation.

(a) In designating an area as a national marine sanctuary, the Secretary shall publish a notice of the designation in the **Federal Register** not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the **Federal Register** pursuant to § 922.30(b), or shall publish not later than such date in the **Federal Register** findings regarding why such notice has not been published. The notice of designation shall be published together with the text of the final implementing regulations. The Secretary shall also advise the public of the availability of the final management plan and the FEIS.

(b) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with subsection 304(b)(3) of the Act, beginning on the date of publication of the **Federal Register** notice in paragraph (a) of this section unless in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor(s) of the affected state(s) certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state(s).

(c) If the Secretary determines that the actions in paragraph (b) of this section affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (b) of this section shall take effect.

9. Section 922.40 is amended by revising paragraphs (a) and (d) to read as follows:

§ 922.40 General.

(a) The Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

* * * * *

(d) Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter.

10. Section 922.42 is added to read as follows:

§ 922.42 Promotion and coordination of sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring and education, including coordination with the

National Estuarine Research Reserve System.

PART 924—MONITOR MARINE SANCTUARY

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY FINAL REGULATIONS

PART 935—THE CHANNEL ISLANDS NATIONAL MARINE SANCTUARY REGULATIONS

PART 936—THE POINT REYES/ FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY REGULATIONS

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

11. Section 924.4, 929.9, 935.8, 936.7, 937.7, 938.7, 941.10, 942.7, 943.8 and 944.7 are revised to read as follows (Text of each section is identical):

§ ____._____ Penalties.

(a) Each violation of the act, any regulation, in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[FR Doc. 93-27859 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Show Cause Orders

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with an exception, of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises the Indiana Surface Mining Rules governing show cause orders and adjudicative proceedings for the suspension and revocation of surface coal mining permits. The amendment is intended to revise the Indiana program to be consistent with corresponding Federal regulations.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determination

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information on the background of the Indiana program, including the Secretary's findings, the disposition of public comments and a detailed explanation of the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letters dated August 15, 1989, and December 5, 1989 (Administrative Record Numbers IND-0674 and 0723), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 06 and 310 IAC 12-6-6.5. The amendment proposed changes to the Indiana program concerning suspension or revocation of permits and adjudicative proceedings. The program amendment was reviewed and approved, in part, by the Director on January 18, 1991 (56 FR 1915). In the same **Federal Register** notice, certain required program amendments were codified at 30 CFR 914.16 (d) and (e) which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated February 24, 1993 (Administrative Record Number IND-1214), the IDNR submitted program amendment number 93-2 in response to the required program amendments. The proposed amendment includes revisions in 310 IAC 0.6-1-5, 310 IAC 0.6-1-13, 310 IAC 0.7-3-5, and 310 IAC 12-6-6.5.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16381), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 26, 1993.

On July 23, 1993, OSM sent Indiana a letter listing its concerns raised during OSM's review of the proposed amendment (Administrative Record No. IND-1284). Indiana chose not to respond to this letter and informed OSM on September 28, 1993, that it should proceed with a final rulemaking.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. 310 IAC 0.6-1-5 Petitions for Review; Response

(a) 310 IAC 0.6-1-5, Hearing Procedures

In the January 18, 1991, **Federal Register** (56 FR 1918), the Director of OSM found that Indiana's proposed two-tiered hearing procedure was less effective than 30 CFR 843.13 which provides for only one hearing opportunity. The Director believed that

the two-tiered process would result in undue delays in the issuance of show cause orders. Required program amendment 30 CFR 914.16(d) was promulgated to require Indiana to revise its rules to be no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

Indiana now proposes to satisfy this required amendment by deleting the terms "complaint" and "complaint and proposed" from 310 IAC 0.6–1–5 and other rules governing hearing procedures to avoid the creation of a two-tiered hearing process. The Director finds that the proposed deletion of the terms "complaint" and "complaint and proposed," together with other changes discussed below, have eliminated the presence of a two-tiered system of hearings. He, therefore, finds that the deletions of the terms "complaint" and "complaint and proposed" in 310 IAC 0.6–1–5 create adjudicatory proceedings for the suspension and revocation of permits which are the same or similar to those contained in section 521(a)(4) of SMCRA and 43 CFR 4.1190 through 4.1196.

(b) 310 IAC 0.6–1–5(d), Service of Show Cause Orders

Indiana proposes to add a provision that will require each show cause order to be served either by certified mail or personal delivery. 43 CFR 4.1109(b) requires that copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail. Indiana's proposed language is substantively identical to 43 CFR 4.1109, insofar as it pertains to the isusance of show cause orders and can, therefore, be approved.

(c) 310 IAC 0.6–1–5(e), Contents of Answer To Show Cause

Indiana proposes to add language to require the permittee's answer to a show cause order to set forth certain details refuting the order. The proposed language would require the permittee to state the reasons in detail why a pattern of violations or any permit condition does not exist or has not existed including reasons for contesting: the fact of any violations alleged in the order as constituting a pattern of violations; the willfulness of the violations; or whether the violations were caused by unwarranted failure of the permittee. The permittee must also state the mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension, any other alleged relevant facts, and whether a hearing on the show cause order is desired. This proposed language at 310 IAC 0.6–1–5(e) is substantively identical to 43 CFR 4.1192 which sets forth the required contents of a show cause answer in the Federal rules. The Director, therefore, finds that proposed 310 IAC 0.6–1–5(e) can be approved.

(d) 310 IAC 0.6–1–5(f), Timeline for Director's Decision

Indiana proposes to require the director of the IDNR to submit within 45 days of the permittee's receipt of a show cause order, a written recommendation to the Natural Resource Commission (Commission) that the permit be suspended or revoked if the permittee has not filed an answer to the show cause order. There is no Federal counterpart to the State's proposed 45 day timeline for the director of IDNR to submit a written recommendation to the Commission in situations where the permittee fails to respond to a show cause order. However, the Director finds that 310 IAC 0.6–1–5(f) contains the same or similar procedures as those found in section 521(a)(4) of SMCR and at 43 CFR 4.1190 through 4.1196, governing surface coal mining permit suspension and revocation proceedings.

(e) 310 IAC 0.6–1–5(g), Determination by the Administrative Law Judge

Indiana proposes to add language that would require an administrative law judge to consider the factors set forth in 310 IAC 12–6–6.5, the suspension or revocation of permits, in proceedings to suspend or revoke a permit. Since 310 IAC 12–6–6.5 (a), (b), and (c) contain language which is substantively identical to that contained in the Federal regulations at 30 CFR 843.13(a) (1), (2) and (3), governing factors which support the issuance of a show cause order, the Director finds that the language added to 310 IAC 0.6–1–5(g) can be approved.

Indiana further proposes new language that will require, upon a determination by the administrative law judge that a pattern of violations exists or has existed, that the judge shall order the permit either suspended or revoked. In making a determination that a pattern of violations exists or existed, the administrative law judge need not find that all violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern. If the permit is suspended, the minimum suspension period shall be three days unless the administrative law judge finds that imposition of the suspension period would result in manifest injustice or would not further the purpose of Indiana's State regulatory program. Preconditions to be satisfied prior to the suspension being lifted may be imposed by the administrative law judge. This proposed lanaguage is substantively identical to 43 CFR 4.1194 (a)–(b) and can, therefore, be approved.

Proposed 310 IAC 0.6–1–5(g)(2) states that, if the administrative law judge determines the facts alleged in the order are true, the administrative law judge shall enter findings and a non-final order under IC 4–21.5–3–27 for final action by the Commission that the permit be suspended or revoked. In making this non-final order, the administrative law judge shall consider the factors in 310 IAC 12–6–6.5, the State's rules which govern the suspension or revocation of permits. The administrative law judge is required to issue the findings and a non-final order within 60 days after conclusion of the hearing. Indiana also proposes to add language to subsection (h) of 310 IAC 0.6–1–5 requiring the Commission to issue a final order within 60 days after the conclusion of the administrative law judge's hearing or 60 days after the answer is filed, if no hearing is requested. The State's proposed rules provide the same concurrent time allotment to both the administrative law judge and the Commission to render a decision which creates the possibility that the administrative law judge could use all the allotted time for issuance of a non-final order leaving no time for the Commission's issuance of a final order. This problem was brought to Indiana's attention in a July 23, 1993, letter (Administrative Record No. IND–1284) to which Indiana did not respond. The Federal rules at 30 CFR 843.13(c) provide that within 60 days after the hearing and within the time limits set forth in 43 CFR part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. 43 CFR 4.1194(c) states that the decision of the administrative law judge shall be issued within 20 days following the date the hearing record is closed by the administrative law judge or within 20 days of receipt of the answer, if no hearing is requested by any party and the administrative law judge determines that no hearing is necessary. The Director finds that Indiana must reconcile the time periods for its administrative law judge non-final order and the Commission final order so that a final decision is made no later than 60

days after the conclusion of the administrative law judge hearing. Additionally, the State proposes at subsection (h) that the 60 day period may be waived for good cause or extended upon written consent of the State and the operator. This provision is inconsistent with 30 CFR 843.13(c) which provides for no such waiver of the 60-day time period. For these two reasons, the Director finds that proposed 310 IAC 0.6–1–5(h) is less effective than the Federal rules and cannot be approved. Therefore, the required amendment at 30 CFR 914.16(d) cannot be removed.

Indiana proposes to revise 310 IAC 0.6–1–5(i) by making the Commission rather than the IDNR responsible for serving parties with a copy of the final order of the commission and by providing that following notification a party may apply for judicial review under IC 4–21.5. Indiana has added the language "under IC–4–21.5" to reference Indiana's Administrative Adjudication Act. The Director finds that these revisions clarify responsibilities and procedures under the Indiana program and can, therefore, be approved.

2. 310 IAC 0.6–1–13 Awards of Litigation Expenses

The proposed provisions at 310 IAC 0.6–1–13 concern the award of costs and attorney's fees for a proceeding under the Indiana Surface Mine Coal Reclamation Act, Oil and Gas Code, and Entomology and Plant Pathology Code. Paragraph (b) has been revised to provide that no award for costs and expenses, including attorney's fees shall be entered under IC 13–8–15–7 or IC 14–7–11–5, unless there is a finding that the person against whom the award is made acted for the purpose of harassing or embarrassing an opposing party. IC 13–8–15–7 pertains to oil and gas and IC 14–7–11–5 pertains to entomology and plant pathology. All references to the Indiana Surface Mining Control and Reclamation Act (I–SMCRA) have been removed. The proposed revision, therefore, does not apply to the State's surface coal mining program. Furthermore, revisions to paragraph (c) only apply to those persons who initiate or participate in proceedings under IC 13–8–5–7 which pertains to oil and gas.

Proposed paragraphs (d), (e), (f) and (g) are applicable to proceedings under I–SMCRA. Under proposed paragraph (d), appropriate costs and expenses, including attorney's fees, may be awarded to any person from the permittee, if the person initiates or participates in an administrative proceeding reviewing enforcement and a finding is made by the administrative law judge or Commission that a violation of IC 13–4.1, 310 IAC 12 or permit has occurred, or that an imminent hazard existed; and that the person made a substantial contribution to the full and fair determination of the issues. A contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Appropriate costs and expenses may also be awarded under the proposal to: (1) A person, from the department, other than to a permittee or the permittee's authorized representative, who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that the person made a substantial contribution to a full and fair determination of the issues; (2) a permittee from the department if the permittee demonstrates that the department issued a cessation order, notice of violation, or an order to show cause why a permit should not be suspended or revoked in bad faith and for the purpose of harassing or embarrassing the permittee; (3) a permittee from a person where the permittee initiated a proceeding under IC 13–4.1–11 or participated in the proceeding in bad faith for the purpose of harassing or embarrassing the permittee; and (4) to the department where it demonstrates that a person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department. The above provisions of proposed paragraph (d) concerning the award of costs and expenses, including attorney's fees, are substantively identical to 43 CFR 4.1294 (a)(1) and (b) through (e) can, therefore, be approved.

As a result of this approval, the Director finds that the required amendment at 30 CFR 914.16(e) has been satisfied and can now be removed.

3. 310 IAC 0.7–3–5 Delegations for Programs Administered by the Division of Reclamation

Indiana proposes to revise 310 IAC 0.6–1–5(b) by removing language which created a two-tiered hearing procedure for the forfeiture of bonds. While there is no Federal counterpart to 310 IAC 0.6–1–5(b), the Director finds that the proposed change is not inconsistent with SMCRA or the Federal regulations.

4. 310 IAC 12–6–6.5 Suspension or Revocation of Permits

Indiana proposes to revise 310 IAC 12–6–6.5 (c), (d) and (e) by removing language which created a two-tiered hearing procedure. These deletions reflect proposed changes to 310 IAC 0.6–1–5 which created a hearing procedure that is the same as or similar to its Federal counterpart. The Director finds that the proposed changes render the procedures in 310 IAC 12–6–6.5 the same as or similar to those contained in 30 CFR 843.13 and are necessary in order for Indiana's rules to be internally consistent.

IV. Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. The U.S. Department of Agriculture, Forest Service; U.S. Department of Agriculture, Soil Conservation Service; and the U.S. Department of Interior, Bureau of Mines responded without substantive comment.

One individual responded to OSM's invitation for public comment by commenting on proposed 310 IAC 0.6–1–13(d) which concerns awards of litigation expenses. In the State's proposal, appropriate costs and expenses including attorney's fees, may be awarded under IC 13–4.1–11–9 "only" as set forth in the rule. The Federal counterpart at 43 CFR 4.1294 states that appropriate costs and expenses, including attorney's fees may be awarded as set forth in the rule. The commenter believed the State's use of the term "only" appeared more restrictive than the Federal counterpart and that this could discourage citizen participation. As previously indicated, the Director has determined that the proposed language at 310 IAC 0.6–1–13 is substantively identical to 43 CFR 4.1294. The use of the term "only" does not make the State's rule more restrictive than its Federal counterpart since the Federal and State provisions are substantively identical in content, and since the criteria contained in 43 CFR 4.1294 are the only criteria contained in the Federal regulations which pertain to the award of attorney fees in administrative proceedings.

The same commenter asked why the State indicated on the side-by-side submitted to OSM that there was no Federal counterpart to 310 IAC 0.7–3–5(a)(1) since the Federal rules do contain a counterpart to permit termination where no mining has started in a certain period. 310 IAC 0.7–3–5 applies to the delegation of programs administered by the division of reclamation. There is no Federal counterpart to the State's rules governing the delegation of authority.

There is, as the commenter points out, a Federal rule at 30 CFR 773.19(e) which requires that a permit be terminated if the permittee has not begun the surface coal mining and reclamation operations covered by the permit within three years of the permit's issuance. In any event, this provision is not being amended as a part of this rulemaking.

V. Director's Decision

Based upon the above findings, the Director is approving, with an exception, program amendment number 93–2 as submitted by Indiana on February 24, 1993. The Director has determined that the amendment which revises 310 IAC 0.6–1–5, 310 IAC 0.6–1–13, 310 IAC 0.7–3–5, and 310 IAC 12–6–6.5 is consistent with SMCRA and no less effective than the Federal rules. The exception is proposed 310 IAC 0.6–1–5(g)(2) and (h) to the extent that these provisions: (1) Provide for concurrent time periods for the administrative law judge to issue findings and a non-final order and for the Commission to issue a final order, and (2) allow for the waiver and extension of the 60 day time period for the Commission to issue a final order. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. However, by letter dated March 26, 1993 (Administrative Record No. IND 1227), EPA submitted its concurrence without comment.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not operational until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 10, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. Section 914.15 is amended by adding a new paragraph (YY) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(YY) The following amendment (Program Amendment Number 93–2) to the Indiana regulatory program, as submitted to OSM on February 24, 1993, is approved with an exception, effective November 18, 1993: The approved amendment to the Indiana Administrative Code (IAC) at 310 IAC 0.6–1–5, 310 IAC 0.6–1–13, 310 IAC 0.7–3–5, and 310 IAC 12–6–6.5 pertains to show cause orders and adjudicatory proceedings for the suspension and revocation of surface coal mining permits. OSM is not approving 310 IAC 0.6–1–5(g) (2) and (h) to the extent that these provisions provide for the waiver and extension of the 60 day time period for the Commission to issue a final order and for concurrent time periods for rulings by the Commission and administrative law judge.

3. Section 914.16 is amended by revising paragraph (d) and removing and reserving paragraph (e) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(d) By July 1, 1994, Indiana shall submit for OSM approval, an

amendment to its permanent regulatory program which provides for adjudicative proceedings for suspension or revocation of permits which are no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

(e) Removed and reserved.

* * * * *

[FR Doc. 93-28369 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-05-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

Cost of Living Adjustment of the Mechanical Royalty Rate; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published November 1, 1993 (58 FR 58282), relating to the cost of living adjustment of the mechanical royalty rate.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Barbara N. Gray, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009, (202) 606-4400.

SUPPLEMENTARY INFORMATION: In the Cost of Living Adjustment of the Mechanical Royalty Rate; Final Rule, in the issue of Monday, November 1, 1993 (58 FR 58282), rule document 93-26883, beginning on pages 58282 and 58283, please make the following corrections:

1. On page 58282, in column 3, in **SUMMARY**, lines 6 and 7, "1993. The rate is increased to either 6.61 cents, or 1.3 cents per minute of playing," should read, "1993. The rate is increased to either 6.60 cents, or 1.25 cents per minute of playing."

2. On page 58283, in column 1, lines 8 and 9, "effective January 1, 1994, shall be 6.61 cents, or 1.3 cents per minute of playing," should read, "effective January 1, 1994, shall be 6.60 cents or 1.25 cents per minute of playing."

3. On page 58283, in column 2, in § 307.3(f), line 5, "shall be either 6.61 cents, or 1.3 cents," should read, "shall be either 6.60 cents, or 1.25 cents."

Dated: November 15, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93-28430 Filed 11-17-93; 8:45 am]

BILLING CODE 1410-09-M

POSTAL SERVICE

39 CFR Part 20

Implementation of Mexico Direct Service

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: Mexico Direct service is a new type of international mail service that is available only to customers with operations in both the United States and Mexico that agree to tender to the Postal Service during a 60-day period at least 10,000 items meeting the applicable makeup and preparation requirements for Mexican domestic mail. The Postal Service transports these items to Mexico for entry into Mexico's domestic mail system. The charge for Mexico Direct service is $1.01 per pound. The customer also is responsible for paying the applicable Mexican domestic postage. Details about each Mexico Direct mailing must be specified in a service agreement between the Postal Service and the customer. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect on November 17, 1993. Comments must be received on or before December 17, 1993.

ADDRESSES: Manager, International Product Management, U.S. Postal Service, Washington, DC 20260-2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5300, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Rainer Hengst, (202) 268-6095.

SUPPLEMENTARY INFORMATION: Under article 25 of the Universal Postal Convention, a postal administration is not obligated to deliver mail that senders resident in its territory post in large quantities in a foreign country. A postal administration may invoke this provision not only against mail sent by a company organized under the laws of the administration's territory, but also against mail sent by a company organized under the laws of a foreign country if the company does business in the administration's territory.[1] Consequently, a company with commercial activity in both the United States and another country may be unable to use the Postal Service to mail items to addressees in that country even if the company's operations justify its posting the items in the United States.

Due in large part to the proximity and size of the Mexican consumer market, many U.S. companies either already have established, or are in the process of establishing, operations in Mexico. These companies send a variety of mail to their Mexican customers, including direct mail pieces, parcels containing merchandise, and bills. Whether the companies produce such mail in the United States or Mexico depends on a number of factors. For instance, a company sending bills to its Mexican customers may require data processing capabilities that are available only in the United States. Similarly, a company sending advertising mail to Mexican customers may need to print its promotional material in the United States. In both cases, it may make economic sense for the company to post its Mexico-bound mail in the United States. However, since the Mexican Postal Service may consider the company to be a resident of Mexico by virtue of its Mexican operations, the company may have no choice but to post its mail in Mexico.

Several U.S. companies with operations in Mexico have asked the Postal Service to develop a means for them to post their Mexico-bound mail in the United States. In response, the Postal Service has worked with the Mexican Postal Service to develop a way for the companies to meet their mailing needs. As a result of discussions between the two administrations, the Postal Service is implementing Mexico Direct service. Regulations for this new service appear in Section 610 of the International Mail Manual.

Under Mexico Direct service, customers are able to tender items prepared as Mexican domestic mail to the Postal Service. The Postal Service transports the items to Mexico, where they are presented to the Mexican Postal Service and entered into Mexico's domestic mail system. The charge for this service is $1.01 per pound or fraction of a pound (plus the applicable Mexican domestic postage). Postage is paid on the total gross weight of the mailing, which includes the weight of the Mexico Direct items plus the weight of the mailing equipment used to prepare the items.

Mexico Direct service is available only to customers with operations in both the United States and Mexico. In addition, the Postal Service's agreement with the Mexican Postal Service

[1] A postal administration invoking article 25 typically detains the incoming international mail and refuses to deliver it until the sender pays the applicable domestic postage.

requires that this be a bulk service. Consequently, the customer must agree to send at least 10,000 Mexico Direct items during a 60-day period.

Mexico Direct customers are responsible for ensuring that their items meet the Mexican Postal Service's applicable makeup and preparation requirements for Mexican domestic mail and for paying the applicable Mexican domestic postage. As part of the service, the Postal Service will provide customers with information received from the Mexican Postal Service regarding makeup and preparation requirements. Further, the two administrations have agreed to work together to develop a mechanism whereby the Postal Service will be able to collect Mexican domestic postage from Mexico Direct customers and remit it to the Mexican Postal Service. Depending on the form that mechanism takes, those customers may be charged an additional fee to cover the Postal Service's costs of providing Mexican postage payment service.

A customer interested in using the service must contact the Postal Service at least 21 days before a planned Mexico Direct mailing date. At that time, the customer must provide the following information to the Postal Service:

(1) The customer's name and address;

(2) The planned mailing date;

(3) Where the mail will be tendered to the Postal Service;

(4) The type of items that will be contained in the planned mailing;

(5) The size and weight of items that will be contained in the planned mailing;

(6) The number of items that will be contained in the planned mailing;

(7) How the customer intends to sort its items;

(8) The mailing equipment that the customer intends to use to prepare its items; and

(9) How the customer intends to pay postage to the Mexican Postal Service.

Upon receipt of this information, the Postal Service will contact the Mexican Postal Service to ascertain whether the planned mailing is acceptable and, if it is not, how the mailing can be made acceptable. The Postal Service will inform the customer of the Mexican Postal Service's response. If the Postal Service and the Mexican Postal Service both agree to accept the mailing, the Postal Service and the customer will enter into a service agreement that stipulates the following information about the mailing:

(1) The mailing date;

(2) Where and when the customer is tendering the mail to the Postal Service;

(3) The total weight of the mailing;

(4) How the items are to be prepared;

(5) How the items are to be sorted; and

(6) How the customer is paying postage to the Mexican Postal Service.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by titling the chapter "Special Programs" and by adding new section 610 to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

610 MEXICO DIRECT

611 Description.

Mexico Direct service is an international mail service that is available only pursuant to a service agreement between the Postal Service and a qualifying mailer. This service enables a mailer to tender items meeting the applicable makeup and preparation requirements for Mexican domestic mail to the Postal Service. The Postal Service transports the items to Mexico for entry into Mexico's domestic mail system. The mailer is responsible for ensuring that the items meet the Mexican Postal Service's applicable makeup and preparation requirements and for paying for applicable Mexican domestic postage.

612 Qualifying Mailers.

To qualify, a mailer must have operations in both the United States and Mexico. In addition, the mailer must agree to send at least 10,000 Mexico Direct items during a 60-day period.

613 Postage

613.1 Rate.

The charge for this service is $1.01 per pound or fraction of a pound (plus the applicable Mexican domestic postage). Postage is paid on the total gross weight of the mailing, which includes the weight of the Mexico Direct items plus the weight of the mailing equipment used to prepare the items.

613.2 Postage Payment Method.

Mailers must pay through an advance deposit account or affix postage stamps or meter postage to the mailing statement.

613.3 Mailing Statement.

Compute postage on the mailing statement provided by the Postal Service. A separate mailing statement must be completed for each mailing and must be presented at the time of mailing.

614 Preparation Requirements.

Mexico Direct items must be prepared in sacks weighing at least 30 pounds each or in trays, in accordance with the terms of the service agreement.

615 Prenotification.

A qualifying mailer interested in using the service must contact the Postal Service at least 21 days before a planned Mexico Direct mailing date. (Communications should be directed to International Product Management, U.S. Postal Service, Washington, DC 20260–2410; (202) 268–2275 or –2276.) At that time, the customer must provide the following information to the Postal Service:

a. The customer's name and address.

b. The planned mailing date.

c. Where the mail will be tendered to the Postal Service.

d. The type of items that will be contained in the planned mailing.

e. The size and weight of items that will be contained in the planned mailing.

f. The number of items that will be contained in the planned mailing.

g. How the customer intends to sort its items.

h. The mailing equipment that the customer intends to use to prepare its items.

i. How the customer intends to pay postage to the Mexican Postal Service.

616 Service Agreement.

Upon receipt of this information, the Postal Service will contact the Mexican Postal Service to ascertain whether the planned mailing is acceptable and, if it is not, how the mailing can be made acceptable. The Postal Service will

inform the customer of the Mexican Postal Service's response. If the Postal Service and the Mexican Postal Service both agree to accept the mailing, the Postal Service and the customer will enter into a service agreement that stipulates the following information about the mailing:

a. The mailing date.

b. Where and when the customer is tendering the mail to the Postal Service.

c. The total weight of the mailing.

d. How the items are to be prepared.

e. How the items are to be sorted.

f. How the customer is paying postage to the Mexican Postal Service.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93-28398 Filed 11-17-93; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO-102-F]

RIN 0938-AF59

Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule would address the provisions of section 1834(a)(12) of the Social Security Act that authorizes us to designate one carrier for one or more regions to process all claims within that region. It incorporates in regulations the four designated carriers that will process claims for durable medical equipment, prosthetics, orthotics, supplies and certain other items covered under Part B of Medicare. We expect the above changes to lead to more efficient and economical administration of the Medicare program.

EFFECTIVE DATE: These regulations are effective on December 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Lisanne Bradley, (410) 966-3359, for carrier jurisdiction for claims for durable medical equipment, prosthetics, orthotics and supplies, and other issues involving suppliers.

Larry Pratt, (410) 966-7403, for criteria and standards for evaluating designated carriers processing durable medical equipment, prosthetics, orthotics, and supplier claims.

Juliette Jenkins, (410) 966-6997, for questions relating to the medical review of claims for durable medical equipment, prosthetics, orthotics and supplies.

Nancy Siebert, (410) 966-6012, for questions about the regional carriers and other questions relating to claims for durable medical equipment, prosthetics, orthotics and supplies.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(a) of the Social Security Act (the Act) authorizes the Secretary to enter into contracts with carriers for the payment of claims for Part B Medicare-covered services and items. The statute does not place any restriction on the area that a carrier must serve. Consequently, we have contracts for carriers to process claims in areas that are multi-State, Statewide, or lesser areas. In addition, section 1842(g) of the Act requires the Railroad Retirement Board (RRB) to contract with a carrier or carriers to process claims for services or items furnished to qualified railroad retirement beneficiaries entitled to Medicare in accordance with regulations prescribed by the Secretary.

Our experience has been that there is diversity among carriers in their interpretation of coverage policies, local medical review policies, and pricing for similar items and services. To some extent a carrier's performance is affected by the nature of its workload. That is, the more unusual a piece of equipment or supply is in an area, the more difficult it is for a carrier to make a coverage or pricing determination. To the extent that carrier determinations reflect local conditions, diversity is desirable, but to the extent that local norms result in unwarranted variations in payment amounts, utilization parameters, or claims documentation policies for items furnished nationally, such diversity is undesirable.

Claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) are submitted to carriers by suppliers. The Medicare regulations (42 CFR 400.202) define "supplier" as "a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." Section 400.202 also defines "provider" as a "hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services."

In practice, before August 17, 1992, an entity, including a provider, that wished to become a supplier to Medicare beneficiaries did so merely by submitting claims for Medicare covered items and services. Most carriers required some identifying information from a supplier before it received a billing number, but there were no national requirements that a DMEPOS supplier had to meet. The absence of a well-defined process for issuing supplier numbers and the diversity in handling claims have resulted in some abuses under the Medicare program. Some suppliers exploited carrier jurisdiction policies by submitting claims only to those carriers whose claims review policies result in more inclusive or expansive determinations of Medicare coverage, or in higher payment amounts, for the items they supply.

Section 1834(a)(12) of the Act authorizes the Secretary to "designate, by regulation under section 1842, one carrier for one or more entire regions to process all claims within the region for covered items under this section." When read in conjunction with sections 1834(a)(13) and (h)(3), the covered items include all covered durable medical equipment (DME), prosthetics, prosthetic devices, and orthotics. Other items for which claims may be processed by regional carriers include: home dialysis supplies and equipment; surgical dressings; immunosuppressive drugs; parenteral and enteral nutrients, equipment and supplies; and other items that we may designate, including those provided by a physician for home use, but not those items covered "incident to" a physician's service or bundled into a facility payment.

II. Provisions of the Final Rule With Comment Period

We published a final rule with comment period in the **Federal Register** on June 18, 1992 (57 FR 27290), that amended 42 CFR parts 405, 420, 421, and 424. The final rule had an effective date of August 17, 1992, with the comment period ending on August 17, 1992. The disclosure of ownership provisions were applied to new suppliers on August 17, 1992, and for all other suppliers on January 1, 1993. The supplier standards provisions were

applied to all suppliers on August 17, 1992. The requirement to use beneficiary residence claims jurisdiction for claims submitted to regional carriers were effective on July 1, 1993. This criterion will not be implemented until October 1, 1993, since it took longer to award the contracts than we anticipated. Claims will be transferred to the four durable medical equipment regional carriers (DMERCs) over a 5-month period beginning October 1, 1993.

The June 1992 final rule—

• Modified regulations to provide that claims for DMEPOS and certain other items covered under Part B of Medicare be processed by designated carriers.

• Specified the jurisdictions each designated carrier will serve, and changed the method by which claims for DMEPOS are allocated among the carriers from "point of sale" to "beneficiary residence."

• Established certain minimum standards for suppliers for purposes of obtaining supplier billing numbers.

• Incorporated in regulations certain supplier disclosure requirements imposed under section 1124A of the Act, as amended by section 4164 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), as a supplier standard that must be met before a supplier billing number is issued or renewed.

• Described the criteria and standards to be used beginning October 1, 1993, for evaluating the performance of designated carriers processing claims for DMEPOS in the administration of the Medicare program.

• Established that DMEPOS claims for RRB beneficiaries entitled to Medicare be processed by the DMERCs.

• Made the following technical changes:

— It revised the definition of "locality" to specify that a locality is the geographical area for which the carrier derives the reasonable charges or fee schedule amounts for services or items, and can include a State or larger area.

— It clarified that a regional DMEPOS carrier is exempt from the requirements of § 421.200 regarding carrier functions that apply to other carriers, by adding the phrase "other than a regional DMEPOS carrier." The DMERCs are bound, instead, by their contracts, which include most of the same functions.

— It allowed us to assign to DMERCs the processing of claims for Part B items not bundled into a physician or facility payment or provided as an integral part of a physician's service. (Claims for items sold or rented by a physician to his or her Medicare patients for home use will be processed by the DMERCs.)

• Added definitions for the acronym "DMEPOS" and the term "supplier". Defined "supplier" as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries under the standards of § 424.57(c), and an "enrolled supplier" is a supplier that has an active billing number.

III. Analysis of and Responses to Public Comments

In response to the June 1992 final rule with comment period, we received 22 timely items of correspondence. Comments were submitted from Medicare carriers, a Medicaid agency, various associations and organizations representing facilities and suppliers, medical and other professional individuals, and law firms. Some of the comments duplicated previous comments we received in response to the proposed rule we published on November 6, 1991 (56 FR 56612). A summary of individual comments and responses to our rule are discussed below:

Regionalization

Comment: Four commenters continue to recommend that the existing specialty carriers for parenteral and enteral nutrition (PEN) claims be retained.

Response: As we have previously responded (57 FR 27291), it would not be cost effective for us to retain these special arrangements when PEN claims can be processed just as correctly, but more efficiently, by the four DMERCs. One of the DMERCs is currently a PEN specialty carrier and will assist the other DMERCs in maintaining the national PEN program.

Comment: Another commenter again requested that there be a specialty carrier arrangement for home dialysis supplies.

Response: This arrangement would also not be an efficient or cost effective plan for the Medicare program. Claims for home dialysis supplies are very similar to other claims to be processed by DMERCs. The more claims that are pooled together, the lower the cost of processing a claim.

Comment: One commenter asked that suppliers be allowed to submit all their claims to one DMERC.

Response: Based on the residence of the beneficiary, suppliers must submit proper claims to one of four DMERCs. Suppliers may submit claims electronically or on paper. Suppliers who submit claims electronically may submit all of their claims to one DMERC, no matter where their customers reside. The DMERC receiving the electronic submissions will forward claims (also electronically) to the appropriate DMERCs for processing and payment, although we will not be able to send electronic remittance notices for claims processed by other than the receiving DMERC. Pricing will continue to be done on a State-by-State basis and coverage and utilization rules will be established for each DMERC. A DMERC for one region will not maintain pricing and policy for another region.

Comment: One commenter relayed the following comments:

• It is too burdensome for doctors of medicine, osteopathy, and optometry to submit claims to the DMERCs for V code items such as cataract lenses and frames when they have to submit claims for professional services to local carriers.

• Submission of V code claims to the DMERCs is confusing for beneficiaries and carriers.

• Implementation of the OBRA '90 requirement, which limits the number of cataract lenses or eyeglasses per beneficiary to "one per lifetime" is difficult to implement.

Response: The V code situation is no different from that of claims for supplies submitted by physicians for items that they have sent home with beneficiaries, such as surgical dressings and ostomy bags. Since physicians are in competition with non-physician suppliers for these supply items, just as they are with non-physician suppliers that sell eyeglass frames, etc., it is proper that all claims for these items be adjudicated by the same processors. We do not believe that this is confusing for beneficiaries since the DMERCs will inform them that all items used at home are processed by the DMERC for their area. Local carriers will simply deny V code claims. Regionalization of V codes will not inhibit the implementation of the "one per lifetime" rule since the Common Working File (CWF) stores data on Medicare beneficiaries residing within the area, and contains information on all cataract patients.

Competition for Regional Carrier Contracts

Comment: One carrier believes the Request for Proposals (RFP) precluded its submission of a proposal.

Response: A full and open competition was held for the four regional carriers, and all potential offerors were given a chance to comment on a pre-solicitation notice before the issuance of the RFP. We believe the specific criteria, as well as the weights for those criteria, published in the RFP did not preclude the participation of any entity qualifying as a carrier.

Claims Jurisdiction Policy

Comment: One commenter asked that there be an exemption from basing the claims jurisdiction on a beneficiary's residence when the beneficiary resides within 60 miles of the border of a region or has more than one domicile or quasi-domicile.

Response: We do not agree with the ommenter. Those exceptions would be ery difficult to implement and monitor. nstead, we have structured the regions o limit the number of suppliers perating over regional borders. Also, nly a small percentage of DMEPOS is urchased or rented by "snowbirds" vho tend to be healthier than their less nobile counterparts. The small numbers f claims in each category do not justify he operational expense and effort that vould be needed to implement the xceptions.

tandardization

Comment: Over half of the ommenters restated that the transition DMERCs should be done in onjunction with national tandardization of DMEPOS coverage uidelines and utilization parameters.

Response: As we previously xplained in the June 1992 final rule (57 R 27298), in order to require tandardization of DMEPOS coverage uidelines and utilization parameters, e would have to engage in a long and umbersome process involving ublication of each decision in the ederal Register. Instead, the Medical irector for each DMERC will determine e guidelines and parameters for his or er region after taking into account any ational coverage policies and iscussions with the other DMERC Medical Directors. We believe that the egional guidelines and parameters will e very similar in the four regions.

Comment: Two commenters ecommended that we establish national ricing, with one suggesting local eriations, for DMEPOS items.

Response: As we stated in our esponse to similar comments to the nal rule (57 FR 27299), we are limited the pricing areas prescribed by tatute. We cannot establish national ricing without authorizing legislation.

isclosure of Ownership and Control

Comment: One supplier asked that we ot require information on ubcontracting entered into before ublication of the final rule.

Response: Section 1124A of the Act oes not allow us to exclude this nformation. Section 1124A specifically equires a "disclosing part B provider," s defined in that section, to identify each person with an ownership or control interest in the provider or in any subcontractor that the provider directly or indirectly has a 5 percent or more ownership interest.

Comment: One commenter asked that we define "significant business transaction" and shorten the period for reporting a transition from 5 to 3 years.

Response: The term "significant business transaction" is defined in § 420.201 "as any business transaction or series of transactions during any one fiscal year, the total of which exceeds the lesser of $25,000 and 5 percent of the total operating expenses of the provider." This definition is unchanged by this regulation.

The 5-year requirement for reporting a "significant business transaction" is consistent with the reporting requirements for transactions for other Medicare providers. The 3-year period applies to the reporting of ownership or control interests (section 1124A(a)(2)(A) of the Act).

Comment: One commenter asked that we specify what records must be kept in order to comply with disclosure rules.

Response: No particular types of records are required.

Comment: Two other commenters insisted that disclosure of ownership requirements not be imposed on suppliers that do not accept assignment.

Response: Section 1833(e) of the Act gives us the general authority to obtain any information we need to pay part B claims correctly. We believe that this authority extends to ownership information, which can be relevant in determining whether there are outstanding overpayments for individuals involved with a supplier. We also believe that the disclosure provision in section 4164(b) of OBRA '90 also provides authority, as specified in section 1124A of the Act, to request information from all suppliers. The statute states that "No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information * * *." Under the statute, a "disclosing part B provider means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B * * *." Even suppliers that do not "participate," that is, agree always to accept assignment, may accept assignment on any claim. The statute does not require that more than one assigned claim be presented, but does require that full disclosure be made before payment of that claim. Therefore, it is reasonable to require disclosure routinely from all suppliers. It is also much more administratively efficient, since over 90 percent of all DMEPOS claims are, indeed, assigned.

We have made disclosure a supplier standard. All entities, including individuals selling personal property, must attest that they have made full and accurate disclosure in order to qualify as a Medicare supplier and to obtain and retain a billing number. However, claims submitted by beneficiaries for used equipment purchased from an individual selling personal property (for example, at a yard or garage sale) will be processed by the DMERCs, subject to all other claims processing rules such as physician certification of medical necessity.

Supplier Standards

Comment: Two commenters repeated their comments on the proposed rule that suppliers of DMEPOS should be held to health and safety standards.

Response: We explained in the June 1992 final rule (57 FR 27296) that we do not believe it would be appropriate to establish standards other than those business standards we have established for suppliers, since we only pay for the items themselves and not for the associated services. We also believe that those health and safety standards might be inappropriately stringent for small businesses causing them to have to discontinue their participation in the Medicare program and limiting access for Medicare beneficiaries.

Comment: Two commenters asked that there be a supplier standard that requires the acceptance of assignment on all claims for dually-eligible Medicare and Medicaid recipients.

Response: We do not have the statutory authority to implement this requirement.

Comment: One commenter requested that we modify the supplier standard on equipment returns to eliminate as a reason for return "not what the beneficiary thought they were purchasing", unless it was the supplier's mistake. They also want a time frame after which used items cannot be returned.

Response: Much of the "accepts return" standard merely acts as a warranty for areas where there are restricted warranties. The major innovation in this standard is to assure that beneficiaries understand what they are purchasing or renting. We believe that this is an appropriate business standard to impose on suppliers. They are in the best position to explain whatever options their physicians' prescriptions allow and the use, maintenance, purpose, etc., of the item.

We also do not believe that any given time limit would be appropriate for all types of items. Most defects or mistakes should be immediately apparent; others may not be discovered until after a period of reasonable use.

Supplier Numbers

Comment: One commenter asked that supplier number revocation notices include the reasons for the revocation and that before revocation an intermediate sanction, such as a temporary suspension, be imposed.

Response: Revocation notices include the reasons for the revocation, as well as how to appeal the decision. Intermediate sanctions are not appropriate. The supplier standards define those entities for which Medicare allows payment for covered items and services. If an entity does not meet those standards, it cannot be paid. Suspension of payment merely would delay when an entity is paid.

Comment: One commenter believed that the 8-week period for final administrative review of a National Supplier Clearinghouse decision, with the concurrence of HCFA, to deny or terminate a supplier billing number, is too long. The commenter would prefer that either the administrative review period be shortened to 1 week or that claims be paid during the intervening 8 weeks.

Response: We do not agree with the commenter. Action to deny or terminate a supplier billing number is taken in only the most egregious cases. It would be inappropriate to continue to pay the suppliers, especially since, if the decision is upheld, there would be no monies coming due to the supplier from which to withhold the 8-week overpayment.

Complaint Log

Comment: One commenter asked that we clarify the amount of time that complaint files must be kept by suppliers.

Response: We recommend that complaint files, like any Medicare-related records, be kept for up to 7 years from the filing of a complaint, since the statute of limitations for fraud cases arising under the False Claims Act is 6 years. These files should help a supplier show its business practices for the entire period covered by any fraud complaint and the time it may take to prosecute the complaint.

Comment: One commenter thought there should be a limit on the amount of time beneficiaries have to lodge complaints about rented or purchased items.

Response: We do not agree that there should be a time limit. However, complaints about a newly purchased or rented item, depending on the seriousness of the complaint, are more compelling than a complaint on an item purchased 5 years ago.

Comment: Two commenters stated that some sort of due process procedures should be met before a DMERC can impose on a supplier the requirement to keep a fully documented complaint log. Three commenters stated that the complaint log requirement should be imposed only when there are repeated complaints of the same nature after the supplier has received verbal and written warnings.

Response: We do not view requiring a complaint log as a punishment but rather as an administrative requirement that will protect Medicare beneficiaries, the supplier, and the Medicare program when there are questions about the supplier's business practices. Some complaints or series of complaints are so serious that they will require a DMERC to act immediately. If appropriate, DMERCs will use verbal and written warnings. When there are questions about the business, it is a good business practice to keep detailed records of alleged problems.

Transition to DMERCs

Oversight

Comment: Two commenters asked that we oversee closely the transition to DMERCs.

Response: We agree with the commenters. Each DMERC has a detailed implementation plan that is being closely monitored by us.

Comment: Another commenter asked that administration of the DMERCs be handled by HCFA's central office.

Response: The project officer for each DMERC will be the Associate Regional Administrator for Medicare in the lead regional office for that DMERC. The following regional offices are lead regions:

- Region A DMERC—Philadelphia region.
- Region B DMERC—Chicago region.
- Region C DMERC—Dallas region.
- Region D DMERC—Seattle region.

Our central office will continue technical coordination and will monitor the implementation process.

Losing Carriers

Comment: Several of the commenters seemed to believe that local carriers would be "losing their contracts" when the DMEPOS claims are transferred.

Response: This is not true. DMEPOS claims are about 5 percent of the average carrier's workload. Local carriers will continue to process all other types of Part B claims and to be subject to claims processing standards.

Comment: Since reviews and hearings would be handled by the local carrier or DMERC that processed the underlying claim, a commenter was concerned that local carriers might put a low priority on processing these reviews and hearings and that they might take years to resolve.

Response: Again, because these are carriers subject to evaluation and contract renewal each year we do not believe this will occur. If there is evidence of "slow downs", we should be notified.

Phase In

Comment: Two commenters repeated their request that the DMERCs be phased in by type of product rather than State.

Response: As we responded in the final rule with comment (57 FR 27293), we believe that phase in by product would impose a hardship on suppliers that provide more than one type of product. Also, it would be more costly for the Medicare program, which would have to continue the DMEPOS program in all local carriers until the last claims are transferred to the DMERCs.

Comment: Another commenter asked how multi-State suppliers would be handled in the transition.

Response: We will designate one DMERC as the National Supplier Clearinghouse for processing all supplier number applications and for housing files on all DMEPOS suppliers. The National Supplier Clearinghouse will, when re-enrolling all suppliers, ask multi-State suppliers if they wish to transfer all their claims to the DMERCs during the first month of regional processing. Suppliers whose claims constitute no more than 10 percent of all DMEPOS claims will be chosen for processing during the first month. All of their claims from the first date of processing will be handled by the DMERCs. All other multi-State suppliers will continue to bill as they have been billing. As a local carrier to which they have been billing is phased out of DMEPOS processing, the claims that they would have submitted to that carrier must be submitted to the appropriate DMERC(s). A multi-State supplier may, during the various transition months, be billing both local and regional carriers.

Information Transfer

Comment: One commenter emphasized the need to ensure that there is adequate transfer of beneficiary

information, provider numbers, coverage guidelines, and customary charge profiles to new carriers.

Response: The RFP clearly outlined the procedures that must be followed to perform a successful transition. Some of the necessary information, such as customary charge profiles, must be transferred from the local carriers. Beneficiary history and entitlement information is obtainable from the Common Working File. New national supplier numbers will be issued. In the absence of national coverage determination guidelines and medical review policies, a regional carrier will develop its own, in consultation with the other DMERCs.

Public Relations

Comment: One commenter asked that we closely monitor transition education for suppliers, beneficiaries, physicians, and carrier staff.

Response: The RFP was very explicit on these requirements. Their fulfillment, as outlined in each transition plan, will be closely monitored.

Payment Amounts and Policy

Comment: One commenter asked about how regional pricing and DMERC coverage and medical review policy would be implemented by carriers whose DMEPOS claims have not yet been incorporated into DMERC processing.

Response: Beginning January 1, 1993, the basis for pricing for items paid on the basis of reasonable charges was standardized to Statewide localities. These prices, as well as the fee schedule prices for DMEPOS, will be carried over and used by the DMERCs. PEN pricing is made on a national basis, and will continue to be, after transition to the DMERCs. The DMERCs will be establishing new coverage and medical review policies. These will not be used by the local carriers, which will continue to use their own policies on any DMEPOS claims that they process during the transition period.

Grandfathering

Comment: One commenter asked that beneficiaries be allowed to choose whether or not their claims are "grandfathered", by the DMERCs; that is, processed under the medical review guidelines of the local carrier that had previously processed their claims.

Response: We believe this would be inappropriate and would lead to inequitable results. Instead, each DMERC will determine, in consultation with the other DMERCs, a beneficiary-specific "grandfathering" policy for a limited time. This policy will take into account the types of DMEPOS involved, the beneficiary's condition, and whether or not the beneficiary resides at home or in a nursing home.

PEN Claims

Comment: One commenter stated that DMERC staff should receive thorough training on PEN issues with input from the PEN industry. The association further requested that there be separate medical review staff for PEN claims.

Response: DMERC staff will receive thorough training on PEN and other benefits. Some DMERCs may choose to request PEN industry input to this training. Each DMERC will determine whether it will have medical review staff who specialize in PEN claims.

Comment: A commenter asked that DMERCs implement a streamlined process for approving new PEN products.

Response: We will develop a process with the DMERCs to assure timely determination of coverage for PEN and other DMEPOS items. Regional and national coverage decisions will be announced in quarterly newsletters that are published by each DMERC for its area, as well as by written response to those who request the decision.

Electronic Claims

Comments: One commenter asked that we correct the modifications of fields made by local carriers to the national standard format (NSF) adopted by us for submission of Part B electronic claims, before transition to the regional carriers.

Response: All local carriers are required to accept the NSF without modifications. Suppliers can change to using the NSF now, so that the conversion to regional processing will be easier.

Comment: Another commenter asked that we modify the NSF certificate of medical necessity for PEN claims or use another existing PEN software package rather than NSF.

Response: It is most efficient for Medicare to use one national format, and we have chosen the NSF. A PEN certification form is being developed under the NSF.

Non-Calendar Month Billing

Comment: One commenter asked that suppliers that bill for a month's worth of supplies, when the start of the billing period does not coincide with the first day of the month, be allowed to bill their existing local carriers, as usual, for the month before their claims are transferred to the DMERCs.

Response: We agree with the commenter.

Advance Payments

Comment: Six commenters wanted assurance that advance payments would be available during the transition to the DMERCs, both for claims payable by the local carriers before transition to the DMERCs and for claims payable by the DMERCs.

Response: As we stated in the June 1992 final rule (57 FR 27292), there will be no special advance payment rules for DMEPOS claims. We are developing a regulation that will prescribe the conditions under which Medicare will make advance payments. We will issue instructions in the Medicare Carriers Manual before the transition to the new regional carriers. These instructions will prescribe how to handle advance payments, to the extent permissible, during the interim period before publication of the final regulation.

Supplier Review Council

Comment: Two commenters suggested that there be a supplier council to review and support the DMERC transition plan and implementation.

Response: We are interested in support from the supplier community during the transition to regional DMEPOS processing. We are particularly interested in any perceived problems with the transition plan and process. However, we do not believe that it would be appropriate for suppliers or their representatives to participate in the government's transition team or process.

DMERC Operations

Policy

Comment: One commenter asked that the beneficiary and supplier communities be given 45 days notice of any HCFA directive and a penalty for retroactive implementation. Two commenters requested that there be no retroactive changes in coverage, payment, etc.

Response: We do not believe that one rule would be correct for all types of directives. Some HCFA directives are due to court orders or legislative and budget changes. If they require immediate implementation, the effect may, in fact, be retroactive for suppliers that submit claims between HCFA's notice to the carriers and the carrier's notice to the suppliers. Other HCFA directives are the result of changes in regulations. Before implementing a regulation change, we publish a proposal of our intentions and generally allow a 60-day public comment period.

Except in unusual circumstances, a final regulation is not effective until 30 days after its publication in the **Federal Register**. Still other directives are the result of administrative changes, some of which are transparent to beneficiaries and suppliers. The degree of impact on the supplier and beneficiary communities generally dictates the amount of notice that is given for these directives. In addition, carriers set their own policies in certain areas when no national coverage policy is available. Carrier-developed coverage and medical review policy is subject to notice and comment requirements. Currently, a 45-day comment period is required; 30 days notice of a change is also required. Changes in pricing due to inherent reasonableness determinations have similar notice and comment requirements. Other types of changes, such as those due to mistakes in pricing that need to be corrected, are not subject to notice and comment requirements, since immediate correction of processing errors is in the best interest of the Medicare program.

Comment: Two commenters asked that the DMERCs be required to publish the utilization parameters and screens.

Response: We currently require publication in carrier bulletins of our policy for establishing utilization parameters and screens according to which claims are adjudicated. We are currently studying the effect the release of the parameters would have on utilization.

Supplier Review

Comment: One supplier commented that all suppliers under special review or operating outside normal parameters should be notified by the DMERCs.

Response: Many of those suppliers will be notified and asked to provide information or an explanation. However, we do not generally notify a supplier that is under review for suspected fraud, unless we confirm the supplier is acting inappropriately.

Supplier Relations

Comment: One commenter asked that we require that the carrier medical directors "directly consult" with representatives of the supply industry and beneficiaries twice per year: that is, physicians, nursing home administrators, suppliers, carriers, home health agencies, and consumers.

Response: The DMERCs are required by the RFP to conduct training and/or provide information to all parts of the DMEPOS industry, beneficiaries, physicians, etc. The plans will differ somewhat among the regions depending on variables such as the size of the region and the cooperation of local carriers, intermediaries, and professional and beneficiary representative associations. In addition, the DMERCs are required to consult with representative organizations on all new medical review policy.

Beneficiary Data

Comment: Two commenters again asked that suppliers be given access to the Common Working File or other beneficiary system to confirm beneficiary eligibility.

Response: There are always privacy considerations in the release of beneficiary information contained in the Common Working File system. We will be initiating next year several tests to determine the effects of disclosing beneficiary information to participating doctors (and one supplier) meeting predetermined requirements.

Comment: Another commenter asked that we establish a system that suppliers could use to confirm a beneficiary's residence.

Response: We previously stated in the June 1992 final rule (57 FR 27294) that we do not believe this is necessary. Permanent residence is defined as the address at which a beneficiary intends to spend over 6 months of the calendar year. If a beneficiary moves to another address with the intent to stay at that address for over 6 months of the calendar year, then that address becomes the permanent residence. Thus, only the beneficiary can designate his or her permanent residence. A supplier must obtain permanent residence information from its customer, the beneficiary, or his or her authorized representative.

Crossover Claims

Comment: Three commenters asked that we require the DMERCs to furnish deductible and coinsurance information via electronic media to State Medicaid agencies and that they also provide State Medicaid agencies with copies of provider memoranda and pricing information.

Response: Each DMERC is required to negotiate crossover agreements with each Medicaid agency in its region in sufficient time to implement those agreements before they begin processing claims. During those negotiations, each State Medicaid agency will be able to come to agreement with the region's DMERC about what information, in addition to the claims, they would like to receive from the DMERC.

Criteria and Standards for Evaluating DMERC Performance

Additional Performance Standards

Comment: One commenter suggested a performance standard for the timely response to requests for information under the Freedom of Information Act (FOIA).

Response: Requests for information under the FOIA that are received directly by our contractors are responded to within 6 days after the requests are reviewed and approved for release either by our regional office or our central office. Therefore, we do not believe it would be appropriate to require a performance standard for our contractors for this activity.

Comment: Three commenters suggested a performance standard for the accuracy with which the DMERC identifies a claim as "clean".

Response: "Clean" claims are defined in sections 1816(c)(2)(B)(i) and 1842(c)(2)(B)(i) of the Act as "a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim". We do not believe that there is a significant problem among our contractors in identifying claims as "clean claims." However, we will continue to monitor our contractors on this issue and, if circumstances change, we will further evaluate the situation.

Comment: Two commenters suggested performance standards to evaluate the capability of the DMERCs to perform certain functions, that is, automated crossovers, system/software testing, and retention of staff knowledgeable in the home medical equipment field.

Response: Minimum standards were included in the RFP. Those standards will be incorporated into the DMERC's contract. If the DMERCs do not meet the RFP standards, they are subject to contract termination. The above capabilities were appropriately evaluated as a part of the procurement process used for selecting the DMERCs.

Comment: Five commenters suggested performance standards for timely claims processing, correct payment of fees, timely processing of reviews and hearings, and timely implementation of our directives.

Response: These suggestions have already been made a part of proposed criteria and standards. The timeliness of claims processing is evaluated under the Efficiency Criterion, Standard 1 (95.0 percent of clean claims processed within mandated timeframes and 97.0 percent of all claims must be processed

within 60 days). The correct payment of fees is evaluated under the Quality Criterion, Standard 1. (Claims must be processed at an accuracy rate of 98.5 percent.) The timeliness of processing reviews and hearings is evaluated under the Service Criterion, Standard 1 (95.0 percent of reviews and hearings must be accurate and timely). Our directives are issued to Medicare contractors with specific implementation dates. None of our directives are retroactively applied.

Comment: One commenter suggested that we conduct customer satisfaction surveys regarding the DMERC's handling of inquiries.

Response: While customer satisfaction surveys currently are not a part of the criteria and standards, we are proposing to include a national survey of physician satisfaction in the evaluation of Medicare carriers for FY 1994. Consideration will be given to developing a customer satisfaction survey for evaluating the DMERCs after we have had an opportunity to study the results from the national physician survey.

Comment: One commenter suggested that we establish a performance measure of provider interaction in setting coverage and medical necessity policies.

Response: This suggestion has already been included as a part of the DMEPOS criteria and standards under the Service Criterion, Standard 3 (Respond to Beneficiary and Supplier Education and Training Needs).

Comment: One commenter suggested an evaluation of the clarity and accuracy of communications including education materials and DME-specific Explanation of Medicare Benefits.

Response: This suggestion has also been included as a part of Standard 3 of the Service Criterion.

Revisions/Clarifications to Proposed Criteria and Standards

Comment: One commenter suggested tighter claims processing timeliness standards.

Response: We believe that requiring DMERCs to process 95.0 percent of clean claims within mandated timeframes (currently set at 15 to 24 days) to be reasonable and appropriate in light of similar timeframes for processing of all other Part B claims.

Comment: One commenter suggested that we evaluate the DMERCs' responsiveness to inquiries by posing as beneficiaries or suppliers.

Response: As a part of our evaluation of the DMERCs' performance in responding to beneficiary and supplier inquiries, Standard 1 of the Service Criterion, we propose the use of questions called in to the DMERCs to test the accuracy of responses on a variety of topics. However, we believe it would be inappropriate to "pose" as a beneficiary or supplier.

Comment: One commenter asked how we would evaluate the processing of specific claim types, for example, PEN, DME, prosthetics, orthotics, and other claim types.

Response: All claim types will be evaluated under the criteria and standards together without distinction for the type of service or supply billed.

Comment: One commenter asked for definitions of "mandated timeframes" and "clean claims."

Response: As previously noted, the term "clean claim" is defined in sections 1816 (c)(2)(B)(i) and (c)(2)(B)(i) as "a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment". The term "mandated timeframes" is used to refer to the timeframes established in sections 1816(c)(2)(B)(ii) and 1842(c)(2)(B)(ii). These timeframes may change as new legislation is enacted. The claims processing timeliness performance standards use the terms "clean claim" and "mandated timeframe" to automatically apply whatever specific changes may occur in legislation.

Performance Standards for Local Carriers During Transition

Comment: One commenter suggested that local carriers should be persuaded to continue to expedite appeals and hearings in a reasonable timeframe.

Response: Part B carriers will be evaluated under the Contractor Performance Evaluation Program for their processing of all reviews and hearings, including DMEPOS claims previously processed, during Fiscal Year 1994. We will be closely monitoring the performance of a DMERC's Part B contractors in a number of key areas related specifically to the handling of DMEPOS claims and corollary issues. We do not anticipate any increase in the amount of time that it takes to expedite appeals and hearings.

Relative Weight of Proposed Performance Standards

Comment: One commenter suggested that we publish the weights of the performance standards.

Response: The criteria and standards reflect an evaluation of the most important functions to be performed by the DMERCs. They are not intended to evaluate every activity performed by the carriers. Thus, all performance standards are given equal value; no points or weights are assigned to the individual standards. All standards are pass or fail, requiring the carriers to meet all performance requirements to "pass" the standard.

IV. Provisions of the Final Regulations

The provisions of this final rule that differ from the June 1992 final rule follow.

- In § 421.210(e)(2), we have identified the four DMERCs that will process DMEPOS claims for all Medicare beneficiaries residing in their respective regions (the boundaries of the four regions for processing DMEPOS claims is defined in § 421.210(c)), including those entitled to benefits under the Railroad Retirement Act. Those DMERCs will be The Travelers Insurance Company (Region A), which will be processing claims in Pennsylvania; Associated Insurance Companies, Inc.—AdminaStar (Region B), which will be processing claims in Indiana; Blue Cross and Blue Shield of South Carolina (doing business as Palmetto Government Benefits Administrators) (Region C), which will be processing claims in South Carolina; and Connecticut General Life Insurance Co. (a CIGNA Company) (Region D), which will be processing claims in Tennessee.

In § 421.210(e)(3), we have indicated that Blue Cross and Blue Shield of South Carolina (Palmetto Government Benefits Administrators) has been selected to serve as both the National Supplier Clearinghouse and the Statistical Analysis DMERC (SADMERC).

The regionalization of DMEPOS claims processing presents the opportunity to consolidate the identification and ownership data of all DMEPOS suppliers in the Medicare program. The consolidated supplier files will allow a central entity, called the National Supplier Clearinghouse, to identify and associate suppliers which are serving multiple areas.

The SADMERC will have four primary functions:

—To coordinate the interpretation of certain DMEPOS codes and modifiers.

—To analyze and distribute national DMEPOS claims history data and store up to 3 years of those data.

—To establish and distributer to the DMERCs certain national pricing files.

—To conduct comprehensive postpayment review of national suppliers.

- We have added a new § 421.212, which states that the RRB contracts with the DMERCs.

V. Collection of Information Requirements

This final rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider carriers to be small entities, therefore an RFA is not required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. Because claims for DMEPOS submitted by hospitals will not be moved to regional carriers, there will be no impact on hospitals.

This final rule identifies the four DMERCs that will process DMEPOS claims for all Medicare beneficiaries residing in their respective regions, including those beneficiaries entitled to Medicare as Railroad Retirement beneficiaries.

We believe naming the four DMERCs will lead to more efficient and economical administration of the Medicare program. In addition, there will be additional savings attributable to both the prevention of fraud and the more effective and timely identification of fraud.

Although we have the authority under section 1842 of the Act to select carriers non-competitively, we chose to use a competitive process. A pre-solicitation notice for comment was issued in January, 1992. An RFP was issued in May 1992. We received proposals from qualified offerors including some Medicare carriers. The offerors were not restricted to a particular region, and several did apply to be the DMERC for more than one region.

General criteria for designating the DMERCs are included in § 421.210(d); specific criteria were included in the RFP. Technical excellence was a primary consideration in the selection process. We expect to achieve a greater degree of effectiveness and efficiency of the Medicare program as measured by—

- Timeliness of claims processing;
- Cost per claim;
- Claim processing quality;
- Experience in claims processing and in establishing local medical review policy; and
- Other criteria that HCFA believes to be pertinent.

The DMERC contracts are for a 2-year period with an option for two 1-year extensions. The contracts, though they were effective January 1, 1993, allow a 9-month implementation period. Therefore, the DMERCs are scheduled to begin processing DMEPOS claims on October 1, 1993. The National Supplier Clearinghouse contract is for 1 year, with three 1-year extensions, and the Statistical Analysis DMERC contract is for 2 years, with two 1-year extensions.

Section 421.212 of this final rule states that the RRB contracts with DMERCs for processing Medicare claims for Railroad Retirement beneficiaries for the same contract periods as the contracts entered into between HCFA and the DMERCs. This arrangement will promote efficiency by subjecting claims for DMEPOS services provided to Railroad Retirement beneficiaries to the same Medicare review policy and pricing schedules. By using the DMERCs for RRB claims, suppliers furnishing services to railroad retirees will be able to submit that limited number of claims via the electronic media approved for submission for Medicare claims to the DMERCs. Claims for DMEPOS items to railroad retirees account for approximately 4 percent of the total DMEPOS claims.

This final rule will not meet the $100 million criterion nor will it meet the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 is amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834 (a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–l.

2. In § 421.210, paragraph (e)(2) is revised, and new paragraphs (e)(3) and (e)(4) are added to read as follows:

§ 421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics and supplies.

* * * * *

(e) *Carrier designation.*

* * * * *

(2) The regional carriers designated to process DMEPOS claims (as defined in paragraph (b) of this section) for all Medicare beneficiaries residing in their respective regions (as designated in paragraph (c) of this section), including those entitled under the Railroad Retirement Act, are the following:

(i) The Travelers Insurance Company (Region A), which will be processing claims in Pennsylvania.

(ii) Associated Insurance Companies, Inc.—AdminaStar (Region B), which will be processing claims in Indiana.

(iii) Blue Cross and Blue Shield of South Carolina (doing business as Palmetto Governments Benefits Administrators) (Region C), which will be processing claims in South Carolina.

(iv) Connecticut General Life Insurance Co. (a CIGNA Company) (Region D), which will be processing claims in Tennessee.

(3) Blue Cross and Blue Shield of South Carolina (Palmetto Government Benefits Administrators) has been

selected to serve as the National Supplier Clearinghouse and the Statistical Analysis DME regional carrier.

(4) The contracts for the four DME regional carriers will be periodically recompeted. The National Supplier Clearinghouse and Statistical Analysis DME regional carrier do not constitute separate contracts, but are contract amendments to one of the DME regional carrier contracts. The National Supplier Clearinghouse and Statistical Analysis DME regional carrier contract amendments will also be periodically recompeted.

* * * * *

3. A new § 421.212 is added to read as follows:

§ 421.212 Railroad Retirement Board contracts.

In accordance with this subpart C, the Railroad Retirement Board contracts with DMEPOS regional carriers designated by HCFA, as set forth in § 421.210(e)(2), for processing claims for Medicare-eligible Railroad Retirement beneficiaries, for the same contract period as the contracts entered into between HCFA and the DMEPOS regional carriers.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: August 13, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-28160 Filed 11-17-93; 8:45 am]

BILLING CODE 4120-01-P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final rule.

SUMMARY: The Commission revises its regulations pertaining to railroad and water carrier uniform bills of lading and livestock contracts. The purpose of the revision is to clarify the terms, to remove obsolete references and to permit railroads and shippers mutually to make changes to the language on the front of the bill of lading, as set forth below. The intended effect is to make the rules understandable and to bring information requirements into conformity with modern billing and accounting practice.

EFFECTIVE DATE: December 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660 or Andrew J. Nosacek (202) 927-5318; TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register**, (58 FR 34775) on June 29, 1993. Additional information is contained in the Commission's decision served November 18, 1993. 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) 289-4357/4329. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

We reaffirm our initial finding that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We reaffirm our initial conclusion that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of this action is to clarify language in the existing regulations and to reduce a regulatory burden. The economic impact on small entitles, if any, is not likely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1035

Bills of lading, Railroads, Water carriers.

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble and the Commission's decision, the Interstate Commerce Commission amends title 49, chapter X, part 1035 of the Code of Federal Regulations as follows:

Part 1035 is revised to read as follows:

PART 1035—BILLS OF LADING

Sec.
1035.1 Requirement for certain forms of bills of lading.
1035.2 Modification of front of uniform bill of lading.
Appendix A to Part 1035—Uniform Straight Bill of Lading.
Appendix B to part 1035—Contract Terms and Conditions.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

§ 1035.1 Requirement for certain forms of bills of lading.

(a) All common carriers, except express companies, engaged in the transportation of property other than livestock and wild animals, by rail or by water subject to the Interstate Commerce Act are required to use straight bills of lading as prescribed in Appendix A and B to this part, or order bills of lading as prescribed in Appendix A and B to this Part, except that order bills of lading shall:

(1) Be entitled "Uniform Order Bill of Lading" and be designated as "Negotiable" on the front (appendix A to this part);

(2) Indicate consignment "to the order of * * *" on the front (appendix A to this part); and

(3) Provide for endorsement on the back portion (appendix B to this part).

(b) All such bills of lading:

(1) May be either documented on paper or issued electronically;

(2) May be a copy, reprographic or otherwise, of a printed bill of lading, free from erasure and interlineation;

(3) May vary in the arrangement and spacing of the printed matter on the face of the form.

§ 1035.2 Modification of front of uniform bill of lading.

Notwithstanding any other provision of § 1035.1(a), with respect to the information called for, the front portion only (appendix A to this part) of a bill of lading may deviate from the language prescribed in this part so long as the deviation conforms with approved national standards for the electronic data interchange or other commercial requirements for bill of lading information; *provided* that no such deviation in the language shall affect the obligations of any shipper to provide information absent the consent of such shipper nor shall such deviation be deemed to alter any rights or obligations conferred by statute or regulation on either carriers or shippers with respect to the preparation or issuance of bills of lading.

Appendix A to Part 1035

Uniform Straight Bill of Lading

Original—Not Negotiable

Shipper's No _____

Agent's No _____

Company _____

Received, subject to the classifications and tariffs in effect on the date of this Bill of Lading:

at_____, 19__

from _____

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

[Mail or street address of consignee—For purposes of notification only.]

Consigned to _____

Destination _____

State of _____

County of _____

Route _____

Delivering Carrier _____

Car Initial _____

Car No _____

Trailer Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

Container Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

No. packages	Description of articles, special marks, and exceptions	*Weight (subject to correction)	Class or rate	Check column	
					Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
					The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
					..... (Signature of consignor)
					If charges are to be prepaid, write or stamp here, "To be Prepaid."
					Received $_____ to apply in prepayment of the charges on the property described hereon.
					..... Agent or Cashier Per_____ (The signature here acknowledges only the amount prepaid.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding—

_____per_____

Charges advanced: _____

Shipper _____

Agent _____

Per _____

Per _____

Permanent post office address of shipper _____

Appendix B to Part 1035

Contract Terms and Conditions

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in

possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier, may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it, and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage cased by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish

possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions of this section shall apply, except as may be inconsistent with part III of the Interstate Commerce Act.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc." and of other statutes of the United States according carriers by water the protection of limited liability as well as the following subdivisions of this section: and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenance, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading

shall be enforceable according to its original tenor.

[FR Doc. 93-28403 Filed 11-17-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 111293A]

Groundfish of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas in the Gulf of Alaska (GOA). This action is necessary to fully utilize the allocation of the total allowable catch (TAC) of Pacific cod for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Area of the GOA.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 15, 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 GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fishery for Pacific cod in the GOA by vessels catching Pacific cod for processing by the offshore component was previously closed under § 672.20(c)(2)(ii) in the final 1993 initial specifications of groundfish harvest (58 FR 16787, March 31, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the remaining allocation of the TAC of Pacific cod for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas of the GOA is in excess of the amounts necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is rescinding those closures and is reopening directed fishing for Pacific cod in the Western and Central GOA by vessels catching Pacific cod for processing by the offshore component effective at 12 noon, A.l.t., November 15, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: November 15, 1993.

Joe P. Clem,

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

[FR Doc. 93-28433 Filed 11-15-93; 4:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 221
Thursday, November 18, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 93–17]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 225, and 263

[Docket No. R–0766]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, and 364

RIN 3064–AB13

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[OTS 93–101]

RIN 1550–AA54

Standards for Safety and Soundness

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") solicit comments on all aspects of proposed safety and soundness standards required to be prescribed by regulation pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act)). The standards are intended to enable the agencies to address problems at banks, thrifts, and depository institution holding companies before the problems cause significant deterioration in the financial condition of the institution or holding company. Public comment is invited on all aspects of this proposal.

DATES: Written comments must be received on or before January 3, 1994.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Communications Division, 250 E Street SW., Washington, DC 20219, attention: Docket No. 93–17. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

Board: Comments, which should refer to Docket No. R–0766, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Hoyle L. Robinson, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. [FAX number (202)898–3838]. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Comments should be directed to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 93–101. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: *OCC:* Emily R. McNaughton, National Bank Examiner (202/874–5170), Office of the Chief National Bank Examiner; David Thede, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David Wright, Supervisory Financial Analyst (202/728–5854), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Robert W. Walsh, Examination Specialist (202/898–6911) or Michael D. Jenkins, Examination Specialist (202/898–6896), Division of Supervision; Lisa M. Stanley, Senior Counsel (202/898–7494), Jeffrey M. Kopchik, Counsel (compensation standards) (202/898–3872), or Nancy L. Alper, Counsel (enforcement) (202/898–3720), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Robert Fishman, Senior Program Manager (202/906–5672), Deirdre Kvartunas, Program Analyst (202/906–7933), Policy Office, Cheryl Martin, Regional Coordinator (202/906–7889), Regional Operations; Kevin Corcoran, Assistant Chief Counsel for Business Transactions (202/906–6962), Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

Section 132 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102–242, added a new section 39 to the FDI Act (12 U.S.C. 1831p–1) which requires each agency to prescribe by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it is the primary Federal regulator. Section 39 was subsequently amended in the compensation area by section 956 of the Housing and Community Development Act of 1992, Public Law 102–550.

Three types of standards must be prescribed: (1) Operational and managerial; (2) asset quality and earnings; and (3) compensation. Stock valuation standards must be prescribed to the extent feasible.

Section 39(a) requires the agencies to prescribe by regulation operational and managerial standards relating to: (1) Internal controls, information systems, and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39.

Section 39(b) requires the agencies to prescribe by regulation standards specifying: (1) A maximum ratio of classified assets to capital; (2) minimum earnings sufficient to absorb losses without impairing capital; and (3) to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of institutions and holding companies.

If an agency determines that an institution or holding company fails to meet any standard prescribed under sections 39(a) or 39(b), the institution or company must submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution or company fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution or company to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

Section 39(c) requires the agencies to prescribe by regulation standards prohibiting as an unsafe and unsound practice excessive compensation or compensation that could result in a material financial loss to an institution. This subsection also requires that the agencies prescribe standards specifying when compensation is excessive.

II. Advance Notice of Proposed Rulemaking

In July 1992, the agencies published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) requesting public comments on all aspects of the safety and soundness standards to be prescribed pursuant to section 39 of the FDI Act. See 57 FR 31336, July 15, 1992. In addition, for each safety and soundness standard, the ANPR requested comment on specific questions asked by the agencies.

The agencies received over 400 comment letters in response to the ANPR, though some letters were submitted to more than one agency. The majority of comments were received from insured depository institutions. With respect to each of the three principal areas in which regulatory standards must be prescribed, commenters strongly recommended that the agencies adopt general rather than specific standards in order to avoid regulatory micromanagement of the banking and thrift industries.

The comments are discussed in further detail below in the description of the proposed rule.

III. Proposed Rule

A. Summary and Purpose

In enacting section 39, Congress sought to protect the deposit insurance funds. Section 39 requires the agencies to identify and address problems at institutions or holding companies before capital becomes impaired. The agencies have proposed standards under section 39 that they believe serve this end without dictating how institutions are to be managed and operated. The proposed standards are specific enough to identify emerging safety and soundness problems and require submission of a compliance plan before those problems become serious; however, the standards do not specify each operational and managerial procedure an institution must have in place. Where possible, the standards establish the ends that proper operations and management shall achieve, while leaving the means to each institution. Where the agencies do establish features that an institution's systems must include, these features are of a basic type.

The proposed standards do not represent a change in the agencies' policies; rather, these standards represent the fundamental standards used by the agencies to assess the operational and managerial quality of an institution. Thus, under the proposed regulations, the agencies believe that well-managed institutions generally should not find it necessary to amend their operations in order to comply with the operational and managerial standards. The agencies request comment on whether the proposed standards would require institutions to amend their operations in order to comply.

The agencies expect that violations of the standards promulgated pursuant to section 39 generally will be detected during examinations and inspections of institutions and companies. Violations of the earnings standard (and, for OTS, the classified assets to total capital ratio), however, may be detected as a result of the submission of a report of condition or thrift financial report or through off-site monitoring of the institution or company.

B. Effect on Existing Authority

Compliance with the standards required by section 39 would not preclude a finding that an institution is engaged in an unsafe or unsound practice or is in an unsafe or unsound condition. Accordingly, supervisory action may be taken against an institution or company that has not been cited for a deficiency under section 39.

Conversely, failure to comply with the safety and soundness standards established pursuant to section 39 (except for the standard prohibiting payment of excessive compensation) would not necessarily constitute an unsafe or unsound practice. An agency may request submission of a plan to achieve compliance pursuant to section 39 without taking any additional supervisory or enforcement action.

C. Operational and Managerial Standards

The proposed operational and managerial standards address an institution's general practices. The agencies believe that section 39 allows the agencies to evaluate an institution's overall practices in order to determine whether those practices are sound in principle and whether procedures are in place to ensure that they are applied in the normal course of business. Thus, for example, in the areas of credit underwriting or loan documentation, an institution would not fail one of these standards merely because it had failed to document one loan properly or had used poor underwriting standards in making a single loan. Instead, the agencies would consider each institution's performance in the aggregate.

Recognizing that smaller institutions may require less sophisticated systems and practices given the relatively limited types of activities in which they engage, the proposal states that internal controls and information systems, internal audit systems, and credit underwriting practices shall be appropriate to the size of the institution and the nature and scope of its activities. The proposal also states that an institution shall manage its interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities.

1. Internal Controls, Information Systems, and Internal Audit Systems

The ANPR sought comment on the appropriate level of specificity for standards governing internal controls, information systems, and internal audit systems. Commenters strongly preferred that standards in this area be general, in order to enable each institution to comply with the standards by using control systems that are tailored to its individual operating environment. The proposed standards describe the functions that adequate internal controls and information systems must be able to perform.

Section 39(a)(1)(A) requires the agencies to prescribe standards relating to internal controls, information systems, and internal audit systems in accordance with section 36 of the FDI Act (12 U.S.C. 1831m). Section 36 requires certain institutions' management to submit to the agencies and to any State bank or State thrift supervisor an annual report containing a statement of management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting. Section 36 also requires the independent public accountant for certain institutions to attest to, and report separately on, management's assertions in the internal control report in accordance with generally accepted standards for attestation engagements.

The agencies are proposing to prescribe the functions that adequate internal controls and information systems must be able to perform, rather than providing types of controls or systems that must be present in every case. Thus, for example, internal controls must provide for effective risk assessment, though each institution may establish its own type of controls to meet this requirement. Similarly, each institution must have an organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies, though the institution is free to choose its own organizational structure.

The proposed regulations address internal audit systems separately. In this area, the agencies believe that there are necessary components of an adequate internal audit system. The proposed regulations require that an institution's internal audit system: (1) Provide for those performing internal audits to be qualified and independent; (2) include testing and review of internal controls and information systems; (3) adequately document the tests performed and their findings, as well as any corrective actions taken as a result of the audit; and (4) provide for the results of the audit to be reviewed and acted upon by management.

The agencies are aware that many institutions use data processing service organizations to execute and record transactions, maintain related records and process related data. The determination of whether an institution's independent auditor needs to review a service organization's operations, as they relate to the institution's internal controls, should be made in accordance with generally accepted auditing standards.

2. Loan Documentation

Commenters were strongly opposed to any item-by-item listing of requirements for loan documentation, favoring general standards instead. Commenters also felt that the standards had to be sufficiently general to allow for different treatment according to loan type and amount.

The proposed regulations do not specify in detail what loan documentation must contain. Instead, they specify what loan documentation must enable an institution to do. Thus, documentation practices at an institution will not be evaluated against a checklist of requirements but instead will be evaluated based on whether they: (1) Enable the institution to make an informed lending decision and to assess risk as necessary on an ongoing basis; (2) identify the purpose of the loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrower is legally enforceable; (4) demonstrate appropriate administration and monitoring of a loan; and (5) take account of the size and complexity of a loan. The agencies believe that the proposed regulations provide a standard against which compliance can be measured, while at the same time allowing for differing approaches to loan documentation.

On March 30, 1993, the agencies issued a joint policy statement regarding documentation of small and medium-sized business and farm loans. Under that policy statement, well-managed, well or adequately capitalized institutions are allowed to establish a "basket" of small and medium-sized business and farm loans that will not be subject to examiner criticism based on documentation. Under the proposed safety and soundness regulation, the interagency policy statement would continue to apply. The OTS has amended its current loan documentation regulation to conform to the interagency policy statement.

The OTS's current loan documentation regulation at 12 CFR 563.170(c)(1)–(7) establishes detailed loan documentation requirements that may not be necessary in light of the standards proposed in this rulemaking. The OTS specifically requests comment on changes to the loan documentation rule that would be appropriate to eliminate unnecessarily detailed and burdensome regulatory requirements.

3. Credit Underwriting

Commenters overwhelmingly favored general credit underwriting standards rather than an item-by-item listing of requirements that must be met for each extension of credit.

In the proposal, the agencies have established the general parameters of safe and sound credit underwriting practices. The standards would require each institution to establish and maintain prudent credit underwriting practices that: (1) Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made; (2) consider the nature of the markets in which loans will be made; (3) provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed; (4) establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors; (5) take adequate account of concentration of credit risk; and (6) are appropriate to the size of the institution and the nature and scope of its activities.

4. Interest Rate Exposure

Several commenters suggested that the standard for interest rate exposure focus on an institution's management system for controlling interest rate

exposure. Commenters generally opposed any absolute limit on interest rate exposure under section 39, with some noting that section 305 of FDICIA already addresses that issue. Many commenters argued that the financial condition of the institution should be considered in the standards, with better capitalized institutions allowed to take greater risk. Some commenters also felt that smaller institutions should be allowed to take greater risk, as they pose a lesser risk to the deposit insurance funds and do not have the resources for sophisticated systems to manage interest rate risk.

Recognizing that many smaller institutions do not need a sophisticated system for quantifying interest rate risk, the agencies have not proposed to require such systems in all cases. Rather, institutions would be required to manage interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities. Larger institutions that are exposed to significant interest rate risk would be expected to maintain a more formal system for the measurement and management of such risk. Under section 305 of FDICIA, which requires amendment of the risk-based capital standards to take account of interest rate risk, some institutions may be required to quantify interest rate risk.

5. Asset Growth

A large number of commenters asked that the agencies rely on current policies and regulations regarding asset growth and on existing capital standards. The commenters also strongly supported reliance on existing laws and regulations regarding asset growth through merger. The agencies considered existing policies and regulations in drafting the proposed regulations.

The agencies have not proposed a quantitative limit on asset growth. A quantitative limit for all institutions regardless of size and financial condition would be overly restrictive and inconsistent with safety and soundness. Further, the agencies do not believe that it would be feasible to establish a separate quantitative limit for each distinguishable class of institution. Moreover, asset growth does not necessarily cause safety and soundness problems; rather, unplanned or poorly managed asset growth is cause for concern.

Under the proposal, an institution would be required to base its asset growth on a plan that reflects consideration of (1) the source, volatility and use of the funds that support asset growth; (2) any increase in credit risk or interest rate risk as a result of growth; and (3) the effect of growth on the institution's capital. Asset growth by an institution would be evaluated against the institution's plan.

6. Compensation, Fees and Benefits

Subsection (a) of section 39 requires the agencies to establish operational and managerial standards relating to compensation, fees and benefits. This mandate is distinguishable from that of subsection (c) of section 39, which requires the agencies to prohibit as an unsafe and unsound practice any compensation that is excessive or could lead to a material financial loss to an institution.

The proposed regulations would require that each institution maintain safeguards to prevent the payment of compensation, fees, or benefits that are excessive or could lead to material financial loss. Because section 39(a) provides that operational and managerial standards in the compensation area are to be prescribed in accordance with section 39(c), the agencies' proposed operational and managerial standard is tailored to prevent the payment of compensation, fees, and benefits prohibited under section 39(c). The agencies do not believe that it would be appropriate to define how institutions are to set compensation. Instead, the proposal would require that the method selected be designed to prevent payment of compensation, fees, or benefits that are excessive or could lead to material financial loss.

D. Asset Quality, Earnings, and Stock Valuation Standards

Section 39(b) requires the agencies to establish a maximum ratio of classified assets to capital, to require minimum earnings sufficient to absorb losses without impairing capital, and to establish, to the extent feasible, a minimum ratio of market to book value. These quantitative standards are somewhat different from the operational and managerial standards because they are designed to detect a deterioration in the overall financial condition of an institution or holding company rather than the existence of operational or managerial deficiencies. Specifically, these standards are meant to alert institutions and the agencies to developing conditions that warrant submission of a compliance plan to the appropriate agency for evaluation. The proposed quantitative standards are meant to supplement, rather than replace, the detailed analyses of these areas that occur during the examination. Therefore, institutions that meet these standards may still be advised at the end of an examination that earnings or asset quality are not adequate and that problems need to be addressed.

1. Maximum Ratio of Classified Assets to Capital

In the ANPR, the agencies sought comment on various aspects of the maximum ratio of classified assets to capital required by section 39, including what types of capital should be included in the ratio and whether classified assets should be weighted for purposes of calculating the ratio. Commenters strongly favored use of existing measures so as to reduce complexity. Some commenters also favored weighting the classified assets according to their probability of loss. With regard to the denominator of the ratio, commenters stressed that the allowance for loan and lease losses, which is currently excluded from tier 1 capital (core capital for OTS), should be included in order to capture capital set aside for losses inherent in the loan portfolio.

The agencies are proposing a maximum ratio whose numerator includes all classified assets on a non-weighted basis and whose denominator includes total capital plus any allowance for loan and lease losses (general valuation allowance for thrifts) otherwise excluded from total capital. The required maximum ratio would be 1.0. Although the agencies are proposing a maximum ratio of 1.0, the agencies have considered other ratios including 0.50 and 0.75. The agencies are particularly interested in receiving comment on the appropriate maximum ratio.

Under this proposed ratio, the numerator should include only assets classified as substandard and doubtful. Assets classified as loss are considered only to the extent that related losses have not been recognized.

The agencies have decided not to propose a weighted measure of classified assets. In trials of ratios using both weighted and non-weighted classified assets, the agencies found that substantially the same institutions were identified under each approach. Because both approaches yield similar results, the agencies have proposed the simpler, non-weighted ratio, which should be less burdensome for institutions to calculate and monitor. However, the agencies seek comment on the relative accuracy of the two measures.

The agencies emphasize that section 39(b) requires the agencies to prescribe a *maximum* ratio of classified assets to

capital. Because it is a maximum ratio, institutions should generally strive to operate at ratios well below the maximum ratio. Regardless of the ratio adopted by the agencies, the agencies will continue to exercise supervisory judgment and to require corrective action through existing supervisory and enforcement means, as appropriate.

The agencies further emphasize that this ratio is only one of many factors considered in determining the overall financial condition of an institution. Thus, the agencies may require an institution to take steps to reduce its ratio of classified assets to capital even though the institution is operating with a ratio that is less than the maximum ratio that is ultimately required in the agencies' final regulations. In order to clarify this point, the proposed standard expressly preserves the agencies' existing authority to require an institution to maintain a ratio of classified assets to capital that is less than the maximum required under section 39.

2. Minimum Earnings Standard

In the ANPR, the agencies sought comment on various aspects of the minimum earnings standard required by section 39, including the appropriate measure for earnings and the time period for determining whether minimum earnings have been achieved. Commenters suggested various definitions of "earnings," including average return on equity, earnings or losses prior to taxes, retained earnings, and net income after dividends. There was no consensus on a time period for measuring earnings, and recommendations included one, two, three and five year periods.

The proposed standard requires that an institution continue to meet minimum capital standards assuming that any losses experienced over the past four quarters were to continue over the next four quarters. Specifically, if an institution has an aggregate net loss over the past four quarters, the institution's capital ratios would be recalculated under the assumption that those losses will continue over the next four quarters.

The agencies believe that this standard would identify institutions that are currently operating above minimum capital standards but whose earnings are not sufficient to avoid impairing capital. The agencies also believe that this standard is relatively simple to calculate and administer.

The agencies recognize that some institutions may not meet this standard due to accounting losses that are one-time events unlikely to recur, such as charges to earnings for retiree health benefits. In such instances, an institution's compliance plan could consist of an explanation of the circumstances surrounding the event, and in general no further action would be required.

3. Minimum Ratio of Market Value to Book Value

In the ANPR, the agencies requested comment on whether a minimum ratio of market value to book value for publicly traded institutions was feasible. The commenters concluded in overwhelming numbers that such a minimum ratio was not feasible, setting forth a variety of practical and theoretical problems with such a ratio.

Clearly, a minimum market value to book value ratio is technically possible, but the agencies do not believe that technical possibility is what Congress had in mind in directing the agencies to establish such a ratio "if feasible." Accordingly, the agencies view the statutory language as a directive to consider whether adoption of such a ratio is a reasonable means to advance the objectives sought by Congress.

In light of the comments and their own experience, and for the reasons set forth below, the agencies believe that establishing a minimum market value to book value ratio for publicly traded institutions is not a feasible means to the end desired by Congress: Identifying problems at insured depository institutions and holding companies in their early stages and correcting such problems through a compliance plan. Therefore, no such ratio is included in the proposed regulations.

The agencies believe that a market-to-book ratio would not be an operationally reliable indicator of safety and soundness. In the long run, the market value of an institution or holding company is dependent on financial condition and performance. However, in the short run, market value may also be affected by factors unrelated to the institution's or holding company's condition and performance. These include the attractiveness of institution or holding company stocks relative to other competitors and industries; the performance of the general stock market; industry conditions; random fluctuations; an institution's perceived potential for takeover; merger, acquisition or other rumors; international factors; weakness in the dollar; or the regional economic outlook. Thus, a safe and sound institution could well be found in violation of a minimum market-to-book ratio as a result of factors that are not necessarily indicative of an institution's condition.

A requirement that an institution submit a compliance plan if it fails to meet the ratio would also not be feasible. A publicly traded institution or holding company does not have direct control over the market's evaluation of its stock's value. This is especially true for distressed institutions or holding companies that may not be able in the short run to persuade investors to bid higher for shares or to purchase newly issued stock. Moreover, in an attempt to gain compliance, some institutions might take "quick fix" actions such as asset sales that could erode the institution's long-term value.

The agencies believe that implementation of a minimum market value to book value ratio could have unintended consequences that could actually reduce the safety and soundness of the banking and thrift industries.

- Such a ratio might be considered a "penalty" and therefore discourage mutual institutions from converting to a stock form of ownership and discourage closely held institutions from exposing their stock to the public market. This would give non-public companies a perceived advantage over public companies because they would not have to meet the minimum ratio.
- Market speculators might take advantage of the standard by short selling distressed company stocks, especially those with thinner markets. Market manipulators could attempt to push an institution's stock price below the regulatory standard and expect the market to respond by pushing the price down even further, to the speculator's advantage. The agencies believe such speculative actions could adversely affect an institution's safety and soundness by limiting its access to liquidity and the capital markets.
- A sharp decline in the stock market might cause numerous institutions to fail to meet the standard, which could hinder institutions from providing liquidity to the market when it was needed.

During examinations and off-site monitoring of publicly traded institutions, the agencies currently consider stock price changes, market price to book value ratios, bond ratings and other indicators of the market's assessment of an institution's performance. Although the agencies believe that a minimum market to book ratio is not feasible to implement as a regulatory standard, they will continue to consider these factors.

E. Compensation That Is Excessive or That Could Lead to Material Financial Loss

Commenters strongly supported the use of the factors set forth in section 39(c) as the sole standard in defining excessive compensation. Commenters felt that regulations specifying in more detail when compensation would be considered excessive would constitute micro-management of an institution's management practices. The agencies have relied upon the statutory language in formulating the standard under this section.

Under the proposal, compensation would be considered excessive if it were unreasonable or disproportionate to the services actually performed by the individual being compensated. In making that determination, the agencies will consider all relevant factors, including those set out in section 39(c)—(1) the compensation history of the individual and other individuals with comparable expertise at the institution, (2) the financial condition of the institution, (3) comparable compensation practices at comparable institutions, and (4) any connection between the individual and any wrongdoing at the institution.

F. Coverage of Holding Companies

Section 39(a) requires the appropriate Federal banking agency to establish operational and managerial standards for depository institution holding companies as well as depository institutions. Section 39(b) requires that a maximum ratio of classified assets to capital, minimum earnings sufficient to avoid impairing capital, and a minimum ratio of market to book value (to the extent feasible) be prescribed for depository institution holding companies. Section 39(c), governing compensation, does not apply to holding companies, and commenters strongly opposed the establishment of compensation standards for depository institution holding companies.

1. Bank Holding Companies

As the appropriate Federal banking agency for bank holding companies, the Board is proposing regulations to apply section 39 (a) and (b) to those companies. First, the Board is proposing to require that each bank holding company ensure that each of its subsidiary insured depository institutions is in compliance with the applicable safety and soundness standards adopted pursuant to section 39. Second, rather than adopt a separate set of operational and managerial standards for bank holding companies, the Board's proposal applies to bank holding companies the same standards regarding internal controls, information systems, internal audit systems, interest rate exposure, asset growth, and compensation, fees, and benefits that it is proposing to apply to state member banks. In doing so, the Board is proposing to apply such standards only when relevant to the operations of the holding company and thereby avoid imposing an unnecessary burden on small and shell bank holding companies.

Two of the operational and managerial standards required to be established by section 39(a)—those regarding credit underwriting and loan documentation—may not apply to all bank holding companies. The Board's proposed regulation makes clear that if a bank holding company does not extend credit at the holding company level, then the credit underwriting and loan documentation standards are not applicable to the holding company, and the holding company will not be expected to have practices or policies in these areas.

For the same reason that the agencies have determined that establishing a maximum ratio of market value to book value for depository institutions would not be feasible, the Board believes that such a ratio would not be feasible for bank holding companies. The Board is proposing to apply the same maximum ratio of total classified assets to total capital and the requirement of minimum earnings sufficient to avoid impairing capital to both bank holding companies and state member banks. For purposes of calculation of those ratios, the Board will examine a bank holding company on a consolidated basis. The Board believes that applying those ratios only at the holding company level could paint a false picture of the safety and soundness of the holding company and create perverse financial incentives, such as an incentive to leave classified assets at an insured depository institution rather than upstreaming them to the holding company, where the deposit insurance fund is not at risk.

Bank holding companies with less than $150 million in assets that meet the requirements of the Federal Reserve's reporting exemption do not report consolidated capital or earnings figures. Thus, applying to these companies the standards for minimum earnings and maximum classified assets applicable to insured depository institutions would require the imposition of consolidated reporting. In order to avoid imposing such a significant reporting burden on these companies, and because, in the case of small bank holding companies, substantially all of the consolidated institution's classified assets and earnings are derived from their subsidiary institutions, the Board is proposing a different standard for them: if any subsidiary depository institution of a bank holding company with less than $150 million in assets is in violation of the quantitative standards, then the bank holding company will be found to be in violation. The Board believes that this standard would identify bank holding companies with insufficient earnings or an excess of classified assets.

In applying section 39 to bank holding companies, the Board does not propose to apply safety and soundness standards to the non-U.S. operations of bank holding companies that are foreign banks, companies that own foreign banks, or non-U.S. subsidiaries of foreign banks. The operations of foreign banks would be covered by the proposed rule to the extent that they are conducted through a U.S.-incorporated company that owns an insured bank. The Board seeks comment on this issue.

2. Savings and Loan Holding Companies

As the appropriate Federal banking agency for savings and loan holding companies, the OTS is proposing regulations for savings and loan holding companies that focus on savings and loan holding company activities most likely to cause losses at a holding company's subsidiary savings association.

In the view of the OTS, the safety and soundness standards developed for savings and loan holding companies under section 39 should be consistent with the current statutory framework that defines savings and loan holding company regulation. Many of the areas listed in section 39, while readily applicable to depository institutions, have no meaningful applicability to savings and loan holding companies. For example, neither the Savings and Loan Holding Company Act (SLHCA) nor any other statute has ever established a framework for capital requirements for savings and loan holding companies. Nor is there a legislative framework to subject the assets of savings and loan holding companies to classification or to regulate the loan documentation, credit underwriting, interest rate risk exposure or asset growth of savings and loan holding companies.

Given the ability of savings and loan holding companies to conduct a broader range of activities than bank holding companies, such standards would be impractical, if not impossible, to apply and would not effectively focus on

reducing risk to the deposit insurance funds.

The OTS is proposing that each savings and loan holding company shall: (1) Ensure that transactions and relationships between the holding company and its subsidiary savings association satisfy applicable fiduciary standards and do not have a detrimental effect on the savings association's safe and sound operation; (2) not engage in any activity, or cause its subsidiary savings association to engage in any activity, that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association; (3) not take any action that would impede the ability of its subsidiary savings association to comply with the requirements of section 39 or fully implement any safety and soundness compliance plan required of the savings association; and (4) take any corporate actions necessary to enable the subsidiary savings association to take actions required by a safety and soundness compliance plan.

The OTS believes these standards are consistent with the objectives of section 39 and the statutory framework for savings and loan holding company regulation, and further the goal of resolving problems of insured depository institutions at the lowest possible long-term loss to the deposit insurance funds. Commenters are specifically requested to address whether other standards, consistent with the requirements of section 39, would better accomplish these goals.

G. Procedures for Submission of Compliance Plans and Issuance of Orders

Section 39(e) of the FDI Act requires that the agencies establish deadlines for submission and review of compliance plans. The deadlines must provide institutions and companies with reasonable time to submit compliance plans in the event that a deficiency is detected under the operational and managerial standards or asset quality and earnings standards. The deadlines must also require the agencies to act on such plans expeditiously. The proposed regulations provide for an institution or company to file a compliance plan within 30 days of such plan being requested by the appropriate Federal banking agency, although the agency may extend or shorten the time for filing. The agency would then generally have 30 days to review the plan. The proposed regulations provide that a compliance plan under section 39 may, with the permission of the agency, be part of a capital restoration plan submitted pursuant to section 38 of the FDI Act (prompt corrective action), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection.

In the event that an institution or company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted compliance plan within the time allowed by the agency, section 39 provides that the agency must order the institution or company to correct the deficiency and may: (1) Restrict asset growth; (2) require the institution or company to increase its ratio of tangible equity to assets; (3) restrict the rates of interest that the institution or company may pay; or (4) take any other action that would better carry out the purpose of prompt corrective action. In certain cases, the agency is required to take one or more actions.[1] Orders issued pursuant to section 39 are enforceable under section 8 of the FDI Act.

Section 39 does not provide for any prior notice or administrative review of an agency order. However, given the potential effect of such an order on the institution or company subject to the order, the agencies are proposing to give the institutions and companies prior notice of, and an opportunity to respond to, a proposed order.

The proposed procedures are modelled after those adopted by the agencies for issuance of prompt corrective action directives pursuant to section 38 of the FDI Act. Under the proposed procedures, the appropriate agency generally must provide written notice to an institution or company prior to issuing an order. The notice would describe the action contemplated by the agency. The institution or company would then be provided at least 14 calendar days to submit written arguments and evidence in response to the proposed order. Failure to file a timely response would constitute consent to issuance of the order and a waiver of the opportunity to appeal. The agency would consider the submission in determining whether to issue the order.

Under the proposed rules, the agencies would reserve the right to issue orders that are effective immediately. In these cases, the institution would have an opportunity to seek modification or rescission of the order on an expedited basis. An institution or company that appeals an immediately effective order would be required to file a written appeal within 14 calendar days of receiving the notice, and the agency would be required to consider the appeal within 60 days of its receipt.

The agencies intend to establish appropriate delegations in accordance with their own procedures. In connection with this proposal, the FDIC is proposing to revise its regulation governing delegations of authority.

H. Other Issues

1. Implementation at Holding Company Level

The ANPR sought comment on the extent to which a multi-bank or thrift holding company may establish safety and soundness standards for its subsidiary institutions so long as the standards are affirmed by the boards of the subsidiary institutions. Almost all of the commenters responding to this question supported the procedure based on the reasoning that such a procedure would allow, but not require, the holding company to establish some or all of the required standards at the holding company level, thereby creating uniformity when desired and avoiding duplication among subsidiary institutions.

Commenters also suggested allowing a bank holding company to implement section 39 at the bank holding company level in exchange for an enforceable commitment to serve as a source of strength for its depository institution subsidiaries and a reaffirmation of the liability of each of its subsidiary depository institutions pursuant to section 5(e) of the FDI Act.

Under the proposed regulation, a holding company could establish policies and practices for the entire organization, with each of the subsidiary depository institutions affirming those policies and practices. Furthermore, once a safety and soundness deficiency is detected at an institution—particularly with regard to asset quality and earnings standards—an acceptable compliance plan submitted or affirmed by the institution could include a commitment by the institution's holding company to take action to ensure that the deficiency is remedied.

[1] One such case where section 39 requires supervisory action is where the institution has, during the prior 18-month period, experienced extraordinary growth, as defined by the appropriate agency. The Board, the OCC, and the FDIC are proposing a regulatory definition of extraordinary growth, while the OTS expects to rely on existing guidance. The OTS' Regulatory Bulletin 3a-1 "Policy Statement on Growth for Insured Institutions" states that the OTS determines whether an institution has undergone excessive growth on the basis of the institution's management and asset quality, capital adequacy, interest rate risk profile and operating controls and procedures.

Some commenters also suggested that a bank holding company be allowed to implement, and be held responsible for, the practices and policies that comply with the standards prescribed under section 39. The agencies note that under such a scenario the primary regulator of the depository institution would still be required to review and act on any compliance plan. The agencies seek comment on how a holding company might ensure, and be held responsible for, compliance with the standards in section 39—in particular, what parts of section 39 could be covered and how compliance could be monitored and enforced.

2. Incorporation by Reference

The ANPR also sought comment on the issue of whether existing guidelines, opinions, advisories and other literature should be incorporated into certain operational and managerial standards. Commenters were divided on the extent to which existing guidance should be incorporated. In establishing standards in the proposed regulations, the agencies have reviewed existing guidance as well as the comments. The proposal does not incorporate existing guidance by reference, as the agencies believe that subsequent changes to existing guidance would then require notice and comment, greatly complicating the administration of that guidance. However, the agencies will use existing and future supplemental supervisory guidance in this area where appropriate. The agencies have also proposed in their operational and managerial standards that institutions ensure compliance with applicable laws and regulations.

3. Recordkeeping and Reporting

The agencies request comment on whether the proposed standards, if adopted, would increase the recordkeeping or reporting requirements imposed on depository institutions and depository institution holding companies by the agencies.

IV. Regulatory Flexibility Act

Each agency has concluded after reviewing its proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulations. The agencies therefore hereby certify pursuant to section 605(a) of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

V. Executive Order 12866

The OCC and the OTS have determined that their final regulations do not constitute "significant regulatory actions."

List of Subjects

OCC

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Board

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 263

Administrative practice and procedure.

FDIC

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Penalties.

12 CFR Part 364

Banks, Banking, Safety and soundness.

OTS

12 CFR Part 570

Accounting, Administrative practices and procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

Authority and Issuance

Office of Comptroller of the Currency
12 CFR Chapter I

For the reasons set out in the preamble, chapter I of title 12 is proposed to be amended by adding a new part 30 to read as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

Subpart A—Standards

Sec.
30.1 Authority, purpose, scope and preservation of existing authority.
30.2 Definitions.
30.3 Operational and managerial standards.
30.4 Asset quality and earnings standards.
30.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

Subpart B—Procedures

30.11 Scope.
30.12 Purpose.
30.13 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.
30.14 Filing of safety and soundness compliance plan.
30.15 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
30.16 Enforcement of orders.

Authority: 12 U.S.C. 1831p–1.

Subpart A—Standards

§ 30.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial, asset quality and earnings standards for all national banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to a national bank. These standards are designed to identify potential safety and soundness concerns at national banks and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance fund.

(c) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the OCC to address unsafe or unsound practices, violations of law, unsafe or unsound

conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

(d) *Insured Federal branches and agencies.* The safety and soundness standards in this part apply to insured Federal branches and agencies of foreign banks in accordance with 12 U.S.C. 3102(b).

§ 30.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813, 1831p–1).

(b) *Classified assets* means assets classified, in the most recent examination conducted by the OCC, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR part 3.

(e) *Net income or loss* means net income or net loss as reported in the report of condition required to be filed with the OCC.

(f) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a national bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a national bank includes:

(1) A principal shareholder of a company of which the national bank is a subsidiary; and

(2) A principal shareholder of any other subsidiary of that company.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR 3.2(c), as reported in the most recent quarterly report of condition.

(h) *Total assets* means the amount of total assets as defined in 12 CFR part 3, as reported in the most recent quarterly report of condition.

(i) *Total capital* means the amount of total capital as defined in 12 CFR 3.2(e), as reported in the most recent quarterly report of condition.

§ 30.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A national bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A national bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the national bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A national bank shall establish and maintain loan documentation practices that:

(1) Enable the national bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A national bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the national bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the national bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A national bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the national bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A national bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the national bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A national bank shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the national bank, in accordance with § 30.5 of this part.

§ 30.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital—*

(1) *In general.* A national bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the

authority of the OCC to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A national bank shall have minimum earnings sufficient to absorb losses without impairing capital. A national bank's earnings are sufficient to absorb losses without impairing capital if:

(1) The national bank is in compliance with the minimum capital requirements established in 12 CFR part 3; and

(2) The national bank would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a national bank would remain in compliance with minimum capital requirements under this paragraph, the OCC will deduct the dollar amount of any net loss experienced by the national bank over the most recent four quarters from the national bank's Tier 1 capital and total assets and calculate the national bank's capital ratios.

§ 30.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the national bank;

(3) The financial condition of the national bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the national bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the national bank; and

(7) Any other factors the OCC determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a national bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and 12 CFR part 325.

Subpart B—Procedures

§ 30.11 Scope.

The rules and procedures set forth in this subpart apply to national banks that are subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p–1).

§ 30.12 Purpose.

Section 39 of the FDI Act requires the OCC to establish safety and soundness standards for national banks. Pursuant to section 39, a national bank must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act (12 U.S.C. 1818) may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the national bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

§ 30.13 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a national bank has failed to satisfy the safety and soundness standards set out in subpart A of this part.

(b) *Request for compliance plan.* If the OCC determines that a national bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the OCC shall request by letter or through a report of examination or report of inspection the submission of a compliance plan, and the national bank shall be deemed to have notice of the deficiency three days after mailing of the letter by the OCC or delivery of the report of examination or inspection.

§ 30.14 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A national bank shall file a written safety and soundness compliance plan with the OCC within 30 days of receiving a request for a compliance plan pursuant to § 30.13(b) of this part, unless the OCC notifies the national bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a national bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act (12 U.S.C. 1818), a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the OCC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the national bank will take to correct the deficiency.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the OCC shall provide written notice to the national bank of whether the plan has been approved or seek additional information from the national bank regarding the plan. The OCC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a national bank fails to submit an acceptable plan within the time specified by the OCC or fails in any material respect to implement a compliance plan, then the OCC shall, by order, require the national bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B) (12 U.S.C. 1831p–1(e)(2)(B)). Pursuant to section 39(e)(3) (12 U.S.C. 1831p–1(e)(3)), the OCC may be required to take certain actions if the national bank commenced operations or experienced a change in control within the past 24-month period, or the national bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any calendar quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Holding Company Act, Bank

Merger Act, National Bank Act, or Federal Reserve Act will be excluded.

(e) *Amendment of compliance plan.* A national bank that has filed an approved compliance plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the national bank shall implement the compliance plan as previously approved.

§ 30.15 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) In general. The OCC shall provide a national bank prior written notice of the OCC's intention to issue an order requiring such national bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The national bank shall have such time to respond to a proposed order as provided by the OCC under paragraph (c) of this section.

(2) Immediate issuance of final order. If the OCC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a national bank immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A national bank that is subject to such an immediately effective order may submit a written appeal of the order to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the order, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the national bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the national bank subject to the order may file with the OCC a written response to the notice.

(c) *Response to notice*—(1) Time for response. A national bank may file a written response to a notice of intent to issue an order within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the safety and soundness of the national bank or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the national bank regarding the proposed order.

(d) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the national bank; or

(3) Seek additional information or clarification of the response from the national bank, or any other relevant source.

(e) *Failure to file response.* Failure by a national bank to file with the OCC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any national bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OCC, the order shall continue in place while such request is pending before the OCC.

§ 30.16 Enforcement of orders.

(a) *Judicial remedies.* Whenever a national bank fails to comply with an order issued under section 39, the OCC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act (12 U.S.C. 1818(i)(2)(A)), the OCC may assess a civil money penalty against any national bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: November 2, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System
12 CFR Chapter II

For the reasons outlined in the preamble, the Board proposes to amend 12 CFR parts 208, 225, and 263 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248 (a) and (c), 321–338, 461, 481–486, 601, and 611, 1814, 1823(j), 1831o, 1831p–1, 3906–3909, 3310, 3331–3351; 15 U.S.C. 78b, 78o–4(c)(5), 78q, 78q–1, 78w, 781(b), 781(i), and 1781(g).

2. A new Subpart D, comprising §§ 208.60 through 208.64, is added to part 208 to read as follows:

Subpart D—Safety and Soundness Standards

Sec.
§ 208.60 Authority, purpose, scope and preservation of existing authority.
§ 208.61 Definitions.
§ 208.62 Operational and managerial standards.
§ 208.63 Asset quality and earnings standards.
§ 208.64 Prohibition on compensation that constitutes an unsafe and unsound practice.

Subpart D—Safety and Soundness Standards

§ 208.60 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the Board pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial,

asset quality and earnings standards for all state member banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to a bank. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance funds.

(c) *Preservation of existing authority.* Neither section 39 nor this subpart in any way limits the authority of the Board to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board.

§ 208.61 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Federal examination or State examination that is acceptable to the Board pursuant to section 10(d)(3) of the FDI Act, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Director* shall have the meaning described in 12 CFR 215.2(c).

(e) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(f) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR part 208, appendix A.

(g) *Net income or loss* means net income or net loss as reported in the quarterly report of condition.

(h) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(i) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR part 208, appendix A, and as reported in the most recent quarterly report of condition.

(j) *Total assets* means the amount of total assets as defined in 12 CFR part 208, appendix A, and as reported in the most recent quarterly report of condition.

(k) *Total capital* means the amount of total capital as defined in 12 CFR part 208, appendix A, as reported in the most recent quarterly report of condition.

§ 208.62 Operational and managerial standards.

(a) *Internal controls and information systems.* A State member bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A state member bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A State member bank shall establish and maintain loan documentation practices that:

(1) Enable the bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A State member bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A State member bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A State member bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A State member bank shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the bank, in accordance with § 208.64 of this part.

§ 208.63 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) *In general.* A State

member bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the authority of the Board to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A State member bank shall have minimum earnings sufficient to absorb losses without impairing capital. A State member bank has minimum earnings sufficient to absorb losses without impairing capital if:

(1) The bank is in compliance with the minimum capital requirements established in 12 CFR part 208, appendix A; and

(2) The bank would, if its net income or loss over the last four quarters continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a bank would remain in compliance with minimum capital requirements under this paragraph (b)(2), the Board will deduct the dollar amount of any net loss experienced by the bank over the most recent four quarters from the bank's Tier 1 capital and total assets and calculate the bank's capital ratios.

§ 208.64 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the bank;

(3) The financial condition of the bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the bank; and

(7) Any other factors the Board determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a State member bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and part 325 of this title.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. A new Subpart I, comprising § 225.81, is added to part 225 to read as follows:

Subpart I—Safety and Soundness Standards

Sec.
§ 225.81 Safety and soundness standards.

Subpart I—Safety and Soundness Standards

§ 225.81 Safety and soundness standards.

(a) *Obligation to ensure compliance.* If a safety and soundness deficiency is detected pursuant to section 39 of the FDI Act at one of its subsidiary insured depository institutions, a bank holding company shall ensure that the subsidiary insured depository institution returns to compliance with the safety and soundness standards.

(b) *Applicability of operational and managerial standards to holding companies*—(1) In general. The standards for safety and soundness regarding internal controls, information systems, internal audit systems, interest rate exposure, asset growth, and compensation, fees, and benefits prescribed pursuant to section 39(a) of the FDI Act for state member banks and § 208.62 of this chapter shall apply to a bank holding company in the same manner and to the same extent as a State member bank.

(2) Standards relating to credits. The standards for safety and soundness regarding credit underwriting and loan documentation prescribed pursuant to section 39(a) of the FDI Act for State member banks pursuant to §§ 208.62 (c) and (d) of this chapter shall apply to a bank holding company in the same manner as a State member bank to the extent that the holding company engages in credit underwriting at the holding company level.

(3) Standards for asset quality and earnings—(i) *Applicability.* Except as provided in paragraph (b)(3)(iii) of this section, the maximum ratio of total classified assets to total capital and the requirement of minimum earnings sufficient to avoid impairing capital prescribed pursuant to section 39(a) of the FDI Act for State member banks and §§ 208.63 (a) and (b) of this chapter shall apply to a bank holding company in the same manner and to the extent as a State member bank.

(ii) *Measurement.* For purposes of paragraph (b)(3)(i) of this section, total classified assets, total capital, Tier 1 capital, and net income (loss) shall be measured on a consolidated basis.

(iii) *Standard for bank holding companies with assets under $150 million.* For a bank holding company with assets of less than $150 million:

(A) *Asset quality.* The holding company shall be found to have exceeded the maximum ratio of classified assets to capital if any of its subsidiary depository institutions exceeds the maximum ratio of classified assets to capital applicable to that institution; and

(B) *Earnings.* The holding company shall be found to have violated the requirement of minimum earnings sufficient to avoid impairing capital if any of its subsidiary depository institutions is in violation of the minimum earnings requirement applicable to that institution.

(c) *Procedures for correcting a deficiency.* In taking any action under section 39 that is within the Board's discretion to take in connection with a bank holding company, the Board shall follow the procedures for requesting a safety and soundness compliance plan, ordering correction of a safety and soundness deficiency, and taking corrective action based on the failure to submit and implement a compliance plan that are prescribed under subpart I of part 263 of this chapter.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. A new Subpart I, comprising §§ 263.300 through 263.305, is added to part 263 to read as follows:

Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

Sec.
263.300 Scope.
263.301 Purpose.
263.302 Determination of failure to meet safety and soundness standard and request for compliance plan.
263.303 Filing of safety and soundness compliance plan.
263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
263.305 Enforcement of orders.

Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

§ 263.300 Scope.

The rules and procedures set forth in this subpart apply to State member banks and bank holding companies that are subject to the provisions of section 39 of the FDI Act.

§ 263.301 Purpose.

Section 39 of the FDI Act requires the Board to establish safety and soundness standards. Pursuant to section 39, a bank or company must submit a compliance plan if it violates a safety and soundness standard under section 39(a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, a bank or company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

§ 263.302 Determination of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank or bank holding company has failed to satisfy the safety and soundness standards set out in part 208, subpart D, and part 225, subpart I of this chapter.

(b) *Request for compliance plan.* If the Board determines that a State member bank or bank holding company has failed a safety and soundness standard pursuant to paragraph (a) of this section, the Board shall request by letter or through a report of examination or report of inspection the submission of a compliance plan, and the bank or bank holding company shall be deemed to have notice of the deficiency three days after mailing of the letter by the Board or delivery of the report of examination or report of inspection.

§ 263.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A State member bank or bank holding company shall file a written safety and soundness compliance plan with the Board within 30 calendar days of receiving a request for a plan pursuant to § 263.302(b) of this part, unless the Board notifies the bank or bank holding company in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State member bank or bank holding company is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act, a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the Board, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the State member bank or bank holding company will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the Board shall provide written notice to the bank or bank holding company of whether the plan has been approved or seek additional information from the bank or bank holding company regarding the plan. The Board may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—

(1) *Supervisory actions.* If a State member bank or bank holding company fails to submit an acceptable plan within the time specified by the Board or fails in any material respect to implement a compliance plan, then the Board shall, by order, require the bank or bank holding company to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3) of the FDI Act, the Board may also be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any calendar quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Holding Company Act, Bank Merger Act, National Bank Act, or Federal Reserve Act will be excluded.

(e) *Amendment of compliance plan.* A State member bank or bank holding company that has filed an approved compliance plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or bank holding company shall implement the compliance plan as previously approved.

§ 263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The Board shall provide a bank or bank holding company prior written notice of the Board's intention to issue an order requiring such bank or bank holding company to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank or bank holding company shall have such time to respond to a proposed order as provided by the Board under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the Board finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank or bank holding company immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A State member bank or bank holding company that is subject to such an immediately effective order may submit a written appeal of the order to the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the

order, unless the Board permits a longer period. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank or bank holding company;

(2) A description of any restrictions, prohibitions, or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank or bank holding company subject to the order may file with the Board a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank or bank holding company may file a written response to a notice of intent to issue an order within the time period set by the Board. Such a response must be received by the Board within 14 calendar days from the date of the notice unless the Board determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or bank holding company regarding the proposed order.

(d) *Consideration of response.* After considering the response, the Board may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response from the bank or bank holding company, or any other relevant source.

(e) *Failure to file response.* Failure by a bank or bank holding company to file with the Board, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank or bank holding company that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the Board, the order shall continue in place while such request is pending before the Board.

§ 263.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a State member bank or bank holding company fails to comply with an order issued under section 39, the Board may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the Board may assess a civil money penalty against any State member bank or bank holding company that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: November 4, 1993.

William W. Wiles,

Secretary to the Board of Governors of the Federal Reserve System.

Federal Deposit Insurance Corporation 12 CFR Chapter III

For the reasons outlined in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR parts 303 and 308 and to add 12 CFR part 364 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

2. In § 303.9, a new paragraph (o) is added to read as follows:

§ 303.9 Delegation of authority to act on certain enforcement matters.

* * * * *

(o) *Compliance plans under section 39 of the Act (standards for safety and soundness) and part 308 of this chapter.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans or to make any other determinations with respect to the implementation of compliance plans pursuant to part 308, subpart R, of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to:

(i) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(ii) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(iii) Act on requests for modification or rescission of an order.

(3) The authority delegated under paragraph (o)(1) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is consistent with the Act.

(4) The authority delegated under paragraph (o)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the Act or that the issuance of a final order is consistent with section 39 of the Act or that the stipulated section 39 order is consistent with section 39 and is an order which has become final for purposes of enforcement pursuant to the Act.

PART 308—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1815(e), 1817(a) and 1818(j), 1818, 1820, 1828(j) 1829, 1831i, 1831o, 1831p–1; 15 U.S.C. 781(h), 78(m), 78n(a), 78n(c), 78n(d), 78n(f), 78(o), 78o–4(c)(5), 78(p), 78(q), 78q–1, 78s.

4. A new subpart R is added to part 308 to read as follows:

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

Sec.
§ 308.300 Scope.
§ 308.301 Purpose.
§ 308.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.
§ 308.303 Filing of safety and soundness compliance plan.
§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
§ 308.305 Enforcement of orders.

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

§ 308.300 Scope.

The rules and procedures set forth in this subpart apply to insured State nonmember banks and to State-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

§ 308.301 Purpose.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards. Pursuant to section 39, a bank must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 308.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection, or any other information that becomes available to the FDIC, determine that a bank has failed to satisfy the safety and soundness standards set out in part 364 of this chapter.

(b) *Request for compliance plan.* If the FDIC determines that a bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC shall request, by letter or through a report of examination or report of inspection, the submission of a compliance plan and the bank shall be deemed to have notice of the deficiency three days after mailing of the letter by the FDIC or delivery of the report of examination or report of inspection.

§ 308.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—*

(1) *In general.* A bank shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 308.302(b) of this part, unless the FDIC notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the bank of whether the plan has been approved or seek additional information from the institution or company regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan—*

(1) Supervisory actions. If a bank fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) Extraordinary growth. For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank that has filed an approved compliance plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order—*

(1) In general. The FDIC shall provide a bank prior written notice of the FDIC's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) Immediate issuance of final order. If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A bank that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter,

within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the agency, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice—*

(1) Time for response. A bank may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 308.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

5. A new part 364 is added to read as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.

364.1 Authority, purpose, scope and preservation of existing authority.
364.2 Definitions.
364.3 Operational and managerial standards.
364.4 Asset quality and earnings standards.
364.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

Authority: 12 U.S.C. 1819 (Tenth), 1831p–1.

§ 364.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the FDIC pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1), as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial, asset quality and earnings standards for insured State nonmember banks and, except for the earnings standard, for State-licensed insured branches of foreign banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to those institutions. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance funds.

(c) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the FDIC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC.

§ 364.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Federal examination or State examination that is acceptable to the FDIC pursuant to section 10(d)(3) of the FDI Act (12 U.S.C. 1820(d)(3)), as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Director* shall have the meaning described in 12 CFR 215.2(c).

(e) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(f) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 325, subpart A.

(g) *Net income or loss* means net income or net loss as reported in the quarterly report of condition.

(h) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(i) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR part 325 and as reported in the most recent quarterly report of condition.

(j) *Total capital* refers to that term as described in Table I of the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to 12 CFR part 325, subpart A), as reported in the most recent quarterly report of condition.

(k) *Total assets* means the amount of total assets as defined in 12 CFR part 325, as reported in the most recent quarterly report of condition.

(l) In the case of a State-licensed insured branch of a foreign bank, the following terms shall have the meaning described in this paragraph:

(1) *Board of directors* means the managing official in charge of the insured foreign branch.

(2) *Total capital* means that portion of the assets maintained pursuant to 12 CFR 346.20 which exceeds 100 percent of the preceding quarter's average book value of the branch's liabilities or, in the case of a newly-established branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly-owned subsidiaries.

§ 364.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A bank shall establish and maintain loan documentation practices that:

(1) Enable the bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A bank shall maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the bank, in accordance with § 364.5 of this part.

§ 364.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) In general. A bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) Preservation of authority. Nothing in section 39 or this part shall limit the authority of the FDIC to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A bank shall have minimum earnings sufficient to absorb losses without impairing capital. A bank's earnings are sufficient to absorb losses without impairing capital if:

(1) The bank is in compliance with the minimum capital requirements established in 12 CFR part 325; and

(2) The bank would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a bank would remain in compliance with minimum capital requirements under this paragraph, the FDIC will deduct the dollar amount of any net loss experienced by the bank over the most recent four quarters from the bank's Tier 1 capital and total assets and calculate the bank's capital ratios.

(c) *State-licensed insured branches.* Paragraph (b) of this section shall not apply to State-licensed insured branches of foreign banks.

§ 364.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the bank;

(3) The financial condition of the bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the bank; and

(7) Any other factors the FDIC determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC pursuant to section 38(i)(2)(F) (12 U.S.C. 1831o(i)(2)(F)) of the FDI Act and part 325 of this chapter.

By Order of the Board of Directors.

Dated at Washington, DC, this 9th day of June, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Office of Thrift Supervision
12 CFR Chapter V

For the reasons outlined in the preamble, the Office of Thrift Supervision proposes to add 12 CFR Part 570 to read as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 570—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.

570.1 Authority, purpose, scope and preservation of existing authority.
570.2 Definitions.
570.3 Operational and managerial standards.
570.4 Asset quality and earnings standards.
570.5 Prohibition on compensation that constitutes an unsafe and unsound practice.
570.6 Safety and soundness standards for savings and loan holding companies.
570.7 Determination and notification of failure to meet safety and soundness standards and request for compliance plans.
570.8 Filing of safety and soundness compliance plan.
570.9 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
570.10 Enforcement of orders.

Authority: 12 U.S.C. 1831p–1.

§ 570.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the OTS pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose.* (1) This part establishes operational, managerial, asset quality and earnings standards for all savings associations, and standards that prohibit as an unsafe and unsound practice the payment of compensation, fees or benefits that are excessive or could lead to material financial loss to a savings association. This part also establishes safety and soundness standards for savings and loan holding companies. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance fund.

(2) Pursuant to section 39, a savings association or savings and loan holding company must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, a savings association or savings and loan holding company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

(c) *Scope.* This part implements the provisions of section 39 of the FDI Act as they apply to savings associations and to any company that controls a savings association.

(d) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the OTS to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS.

§ 570.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813; 12 U.S.C. 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Thrift Financial Report or the most recent Federal examination or State examination that is acceptable to the OTS pursuant to section 10(d)(3) of the FDI Act, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder of the savings association, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Core capital* means the amount of core capital as defined in 12 CFR 567.5(a), as reported in the most recent quarterly Thrift Financial Report.

(e) *Director* shall have the meaning described in 12 CFR 215.2(c).

(f) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(g) *Ineligible allowance* means any general valuation allowance not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR 567.6.

(h) *Net income or loss* means net income or net loss as reported in the quarterly Thrift Financial Report.

(i) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(j) *Total assets* means the amount of total assets as reported in the most recent quarterly Thrift Financial Report.

(k) *Total capital* means the amount of total capital as defined in 12 CFR 567.5(c).

§ 570.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A savings association shall have internal controls and information systems that are appropriate to the size of the savings association and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A savings association shall have an internal audit system that is appropriate to the size of the savings association and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the savings association's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A savings association shall establish and maintain loan documentation practices that:

(1) Enable the savings association to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A savings association shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the savings association will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the institution and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A savings association shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the savings association and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A savings association's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the association's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A savings association shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the savings association, in accordance with § 570.5 of this part.

§ 570.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) *In general.* A savings association shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the authority of the OTS to require a savings association to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A savings association shall have minimum earnings sufficient to absorb losses without impairing capital. A savings association has minimum earnings sufficient to absorb losses without impairing capital if:

(1) The savings association is in compliance with the minimum capital requirements established in 12 CFR part 567; and

(2) The savings association would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a savings association would remain in compliance with minimum capital requirements under this paragraph, the OTS will deduct the dollar amount of any net loss experienced by the savings association over the most recent four quarters from the savings association's core capital and total assets and calculate the savings association's capital ratios.

§ 570.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the savings association;

(3) The financial condition of the savings association;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the savings association;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the savings association; and

(7) Any other factors the OTS determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a savings association is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and part 325 of this title.

§ 570.6 Safety and soundness standards for savings and loan holding companies.

(a) Each savings and loan holding company shall:

(1) Ensure that transactions and relationships between the holding company, its directors, officers, principal shareholders, or uninsured subsidiaries and its subsidiary savings association satisfy applicable fiduciary

standards and do not have a detrimental effect on the savings association's safe and sound operation;

(2) Not engage in any activity, or cause its subsidiary savings association to engage in any activity, that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association;

(3) Not take any action that would impede the ability of its subsidiary savings association to comply with the requirements of this part or fully implement any safety and soundness compliance plan required of the savings association under § 570.7 of this part; and

(4) Take any corporate actions necessary to enable its subsidiary savings association to take actions required by the savings association's safety and soundness compliance plan.

§ 570.7 Determination and notification of failure to meet safety and soundness standards and request for compliance plans.

(a) *Determination of failure to meet safety and soundness standard.* The OTS may, based upon an examination or any other information that becomes available to the OTS, determine that a savings association has failed to satisfy the safety and soundness standards set out in §§ 570.3, 570.4 and 570.5 of this part or that a savings and loan holding company has failed to satisfy the safety and soundness standards set out in § 570.6 of this part.

(b) *Request for compliance plan.* If the OTS determines that a savings association or savings and loan holding company has failed a safety and soundness standard pursuant to paragraph (a) of this section, the OTS shall request by letter or through a report of examination the submission of a compliance plan, and the savings association or savings and loan holding company shall be deemed to have notice of the deficiency three days after mailing of the letter by the OTS or delivery of the report of examination.

§ 570.8 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A savings association or savings and loan holding company shall file a written safety and soundness compliance plan with the OTS within 30 days of receiving a request for a compliance plan pursuant to § 570.7 of this part, unless the OTS notifies the savings association or savings and loan holding company in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a savings association or savings and loan holding company is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act, a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination, it may, with the permission of the OTS, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the savings association or savings and loan holding company will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this section, the OTS shall provide written notice to the savings association or savings and loan holding company of whether the plan has been approved or seek additional information from the savings association or holding company regarding the plan. The OTS may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan.* If a savings association or savings and loan holding company fails to submit an acceptable plan within the time specified by the OTS or fails in any material respect to implement a compliance plan, then the OTS shall, by order, require the savings association or holding company to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3) of the FDI Act, the OTS may also be required to take certain actions if the savings association commenced operations or experienced a change in control within the previous 24-month period, or the savings association experienced extraordinary growth during the previous 18-month period.

(e) *Amendment of compliance plan.* A savings association or savings and loan holding company that has filed an approved compliance plan may, after prior written notice to and approval by the OTS, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the savings association or holding company shall implement the compliance plan as previously approved.

§ 570.9 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The OTS shall provide a savings association or savings and loan holding company prior written notice of the OTS's intention to issue an order requiring such savings association or holding company to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The savings association or holding company shall have such time to respond to a proposed order as provided by the OTS under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the OTS finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OTS may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a savings association or savings and loan holding company immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39.

(3) *Appeal.* A savings association or holding company that is subject to such an immediately effective order may submit a written appeal of the order to the OTS. Such an appeal must be received by the OTS within 14 calendar days of the issuance of the order, unless the OTS permits a longer period. The OTS shall consider any such appeal, if filed in a timely manner, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OTS, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the savings association or savings and loan holding company;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OTS proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the savings association or holding company subject to the order may file with the OTS a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A savings association or savings and loan holding company may file a written response to a notice of intent to issue an order within the time period set by the OTS. Such a response

must be received by the OTS within 14 calendar days from the date of the notice unless the OTS determines that a different period is appropriate in light of the safety and soundness of the savings association or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the OTS is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or savings and loan holding company regarding the proposed order.

(d) *OTS* consideration of response. After considering the response, the OTS may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the savings association or holding company; or

(3) Seek additional information or clarification of the response from the savings association or savings and loan holding company, or any other relevant source.

(e) *Failure to file response.* Failure by a savings association or savings and loan holding company to file with the OTS, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any savings association or savings and loan holding company that is subject to an order under this section may, upon a change in circumstances, request in writing that the OTS reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OTS, the order shall continue in place while such request is pending before the OTS.

§ 570.10 Enforcement of orders.

(a) *Judicial remedies.* Whenever a savings association or savings and loan holding company fails to comply with an order issued under section 39, the OTS may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or savings and loan holding company that violates or otherwise fails to comply with any final order issued under section 39 and against any savings association-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: June 17, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93-27936 Filed 11-17-93; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 0714-01-P, 0720-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-93-1680; FR-3216-P-01]

RIN 2502-AF63

Single Family Mortgage Insurance—Reimbursement Limitation for Preservation and Protection Expenditures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the amount mortgagees may claim in insurance benefits for FHA single family mortgages by reducing the reimbursable amount for preservation and protection of properties to two-thirds of the costs incurred by the mortgagee. The reason for this proposed rule change is to improve the efficiency of the single family mortgage insurance program.

DATES: Comment due date: January 18, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Deputy Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3046. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend the regulations governing FHA-insured mortgages for single family homes, authorized by title II of the National Housing Act (12 U.S.C. 1709). Under the FHA program, home mortgages are insured through revolving funds, which provide the money to pay insurance claims to lenders upon default of the mortgages. The funds are replenished by insurance premiums paid by mortgagors to obtain the insurance, and by income from the investment of proceeds from the sales of homes that HUD acquires upon payment of insurance claims to the lenders.

This proposed rule would amend the regulations governing reimbursement of expenses paid for the preservation, protection and operation of the properties until conveyance to HUD. The purpose of these amendments is to improve the efficiency of the program, thereby protecting the insurance funds and assuring the availability of the program for use by future homebuyers. In developing the final rule, the Department will analyze public comments and all other available data to assure the effectiveness of the proposed changes in improving the efficiency of the program.

Currently, HUD regulations (24 CFR 203.402(g)) authorize the Department to reimburse a mortgagee 100% for all reasonable expenses paid for the preservation, protection, and operation of properties until conveyance to HUD. There is little incentive for mortgagees to keep costs down. In many cases, the maximum allowable amounts become the claimed amount without an attempt to secure the same services for lower amounts. Moreover, HUD has experienced problems with mortgagees exceeding established limits without approval, and submitting claims for inappropriate expenditures. These practices indicate that many mortgagees

are not attempting to keep costs to a minimum.

The Department believes that placing a two-thirds reimbursement limitation on preservation and protection expenses will provide a strong financial incentive for mortgagees to monitor their preservation and protection expenditures more carefully. The cost-sharing aspect of this proposed rule should encourage tighter internal controls within a mortgagee's own operation to prevent higher than necessary expenses and result in a decrease on the demands on HUD's insurance funds. This change is also consistent with FHA's cost-sharing practice of limiting mortgagees to a two-thirds reimbursement of foreclosure costs in single family claims. Moreover, the Department believes that this proposed rule change will provide a further incentive for mortgagees to make sound underwriting decisions on FHA-insured mortgages so as to lower the probability of a foreclosure claim. However, because the changes proposed in this rule are discretionary changes, these changes would apply prospectively only.

This proposed rule would place a two-thirds reimbursement limitation on preservation and protection expenses, which include the costs of performing an inspection as required by 24 CFR 203.377, the costs of determining whether the property is vacant or abandoned, the costs of evicting occupants, and the costs of removing personal property from the property. Mortgagees will continue to be responsible for maintaining the same level of preservation and protection services and the Department will continue to hold mortgagees accountable for the security of the property pending conveyance to the Secretary.

II. Other Matters

A. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "ADDRESSES."

B. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. Specifically, the requirements of this proposed rule are directed to lenders, and do not impinge upon the relationship between Federal government and State and local governments.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is expected to encourage greater efficiency and economies among lenders in expending funds on preserving and protecting houses prior to their conveyance to HUD. While lenders will assume a portion of these costs, the costs associated with preservation are not expected to have a significant economic impact on lenders participating in the program.

F. Regulatory Agenda

This proposed rule was listed as sequence number 1505 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56423) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

G. The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.120, 14.121, 14.123.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 would be amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d)). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. In § 203.402, paragraph (g) would be revised, paragraph (q) would be removed, and paragraph (r) would be redesignated to be paragraph (q), to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(g)(1) For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before November 19, 1992, reasonable costs paid by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating or preserving the property, or removing debris from the property.

(2) For mortgages insured under firm commitments issued on or after November 19, 1992, but before [insert effective date of the final rule], or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, but before [insert effective date of the final rule], reasonable costs paid by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359.

(3) For mortgages insured under firm commitments issued on or after [insert effective date of the final rule], or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after [insert effective date of the final rule], reasonable costs paid by the mortgagee, with the approval of the Secretary, in an amount not to exceed two-thirds of such costs, for the purpose of protecting, operating or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359.

(4) Reasonable costs incurred by the mortgagee in protecting, operating or preserving the property include the costs of performing inspections required by § 203.377, the costs of determining whether the property is vacant or abandoned, the costs incurred in evicting occupants, and the costs incurred in removing personal property from acquired properties.

* * * * *

Dated: November 12, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93-28387 Filed 11-17-93; 8:45 am]

BILLING CODE 4210-27-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4801-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Witco Chemical Corporation site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Witco Chemical Corporation (Witco) site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey Department of Environmental Protection and Energy (NJDEPE) have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and NJDEPE have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Witco site from the NPL may be submitted on or before December 17, 1993.

ADDRESSES: Comments may be mailed to: John Osolin, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 747, New York, New York 10278.

Comprehensive information on the Witco site is contained in the EPA Region II public docket, which is located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. Osolin at (212) 264-9301.

Background information from the Regional public docket is also available for viewing at the Witco site's Administrative Record repository located at: Oakland Public Library, Municipal Plaza, Oakland, New Jersey 07436, (201) 337-3742. Hrs. M-TH 10 a.m.-9 p.m. F&SA 10 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: John Osolin at 212-264-9301.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Witco site, Oakland, New Jersey, from the NPL and requests public comment on this deletion. The NPL is appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the Witco site for thirty (30) days after publication of this notice in the Federal Register until December 17, 1993.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Witco site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1)(i)-(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with NJDEPE, will consider whether any of the following criteria has been met:

1. Responsible or other parties have implemented all appropriate response actions required; or

2. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states: "Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up to Date" on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Witco site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. NJDEPE has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on November 18, 1993, and concluding on December 17, 1993.

4. The Region has made all relevant documents available in the Regional Office and the local site information repositories.

The comments received during the comment period will be evaluated before the final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Witco Site, Oakland, New Jersey from the NPL.

Witco has owned and operated a technical research facility for the development of specialty chemicals at this 9-acre site on Bauer Drive in Oakland, New Jersey from 1966 through the present. From 1966 through 1984, the company neutralized laboratory wastewater in a 2,000 gallon underground acid neutralizing tank, and then discharged it to a series of underground seepage pits.

On March 10, 1982, representatives of NJDEPE's Division of Water Resources performed an inspection at the facility to review operations and wastewater management practices for compliance with the New Jersey Water Pollution Control Act.

On April 2, 1982, NJDEPE issued a directive requiring that Witco take measures to cease the unpermitted discharge of industrial wastewaters to ground water at the site. On July 16, 1982, NJDEPE further directed Witco to submit a plan for the elimination of the discharge of industrial wastewaters into ground water and to implement a hydrogeological study to investigate possible soil and ground-water contamination.

On April 14, 1982 and November 18, 1982, NJDEPE collected seepage pit, soil and ground-water samples at the facility. Compounds detected include petroleum hydrocarbons, chloroform, toluene, carbon tetrachloride, chlorobenzene, benzene, xylene and ethylbenzene.

In response to NJDEPE's directive, Witco initiated a hydrogeological investigation in November 1982 which included the installation and sampling of four ground-water monitoring wells. In addition, three soil borings and two sludge samples from the seepage pit system were collected and analyzed. The analyses revealed that the ground water, soil and sludge were contaminated with petroleum hydrocarbons and various organic compounds including toluene, carbon tetrachloride, chloroform, xylene, benzene and chlorobenzene.

In February 1984, Witco replaced its underground seepage pit system with a 6,000 gallon capacity fiberglass tank with associated line connections, pumps and level gauges. This tank is used for the accumulation of laboratory wastewaters prior to off-site disposal. The system has been in operation at the facility from February 1984 through the present.

On August 28, 1985, EPA performed a Site Investigation at the facility to evaluate potential contamination due to the previous operation of the underground seepage pit system. Ground water, soil and surface water were sampled and analyzed. Compounds detected during the Site Investigation include 2-butanone, dieldrin, 4,4'-DDE, 4,4'-DDT and benzo(a)pyrene.

On November 30, 1987, Witco initiated activities at the site including excavation and stockpiling of soils, removal of sludge from the six seepage tanks, and removal and disposal of the seepage tanks. These activities were completed in January 1988. Soils that were shown by Witco's analyses to contain greater than 100 parts per million of petroleum hydrocarbons were removed and disposed of off site. Witco reported that approximately 720 cubic yards of soil and other debris, and fourteen 55-gallon drums of sludge were disposed of off site. Ground-water samples from monitoring wells at the facility were collected and analyzed by Witco on five occasions from February 1987 to June 1988 as part of a voluntary monitoring program. The removal and disposal of materials from the site and the collection and analyses of samples were conducted voluntarily by Witco and were not subject to EPA or NJDEPE oversight or verification.

The site was proposed for inclusion on the Superfund National Priorities List (NPL) by a notice published in the **Federal Register** (53 FR 23988), on June 24, 1988. On October 4, 1989, the site was formally placed on the NPL by a notice published in the **Federal Register** (54 FR 41000–41015).

In June 1989, EPA notified Witco of its potential Superfund liability with respect to the site. EPA offered Witco the opportunity to conduct or finance the Remedial Investigation and Feasibility Study (RI/FS) for the site and Witco agreed. Witco and EPA entered into an Administrative Order on Consent (Order) which provided for Witco's performance of the RI/FS with oversight by EPA. The Order became effective on August 29, 1989.

Witco contracted with Roy F. Weston, Inc. (Weston) to conduct an investigation to characterize the geology, ground-water hydrology and the chemical quality of the soil and ground water at the site. The investigation included the installation of additional monitoring wells and piezometers, drilling of soil borings, collection of soil samples, and four rounds of ground-water samples. All samples were analyzed for volatile organic compounds, inorganic compounds, base-neutral and acid extractable organic compounds (BNAs), pesticides and polychlorinated biphenyls (PCBs). The analytical results indicated no significant levels of contaminants in site soils or surface water, and although there were sporadic detections of contaminants in site ground water, no discernible contaminant plume was found.

Based on the results of the RI, it appears that the removal of the seepage pits and surrounding soil, undertaken by Witco in 1987, effectively remediated the contamination at the Witco Site. Therefore, on September 28, 1992, EPA signed a Record of Decision (ROD) for this site, selecting "No Further Action" to address the site. The ROD also calls for the implementation of a limited ground-water monitoring program. EPA will monitor the residential well located at 18 Bailey Avenue, once a year for a period not less than five years. This well was selected because it is the only residential well downgradient of the Site which is located between the site and Oakland Public Supply Well #5. In the unlikely event that site-related contamination has migrated off the site, the monitoring program will not only ensure that this residential well has not been impacted, but will provide an early

warning for the public water supply, should any such contamination migrate toward Oakland Public Supply Well #5.

Because the "No Further Action" remedy does not result in hazardous substances, pollutants, or contaminants (attributable to on-site activities) remaining on-site above health-based levels, the five-year review does not apply.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and NJDEPE have determined that the response actions are protective of human health and the environment.

Dated: September 8, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93-27987 Filed 11-17-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93-62; DA 93-1350]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 60 day extension for filing comments and reply comments in response to the Notice of Proposed Rule Making (NPRM). This extension is in response to requests filed by CBS, Inc. ("CBS"), Capital Cities/ABC Inc. ("Capital Cities") and Hammett and Edison, Inc. The additional time will allow for further analysis with respect to recent data and information relevant to the Commission's implementation of new radiofrequency exposure guidelines.

DATES: Comments are due by January 11, 1994. Reply comments are due by February 10, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653-8169.

SUPPLEMENTARY INFORMATION: 1. On November 2, 1993, CBS Inc. ("CBS") and Capital Cities/ABC Inc. ("Capital Cities"), licensees of AM, FM and television broadcast stations, filed with the Commission a "Request for Extension of Time" in the above-named proceeding. CBS and Capital Cities requested that the Commission extend, by a period of sixty (60) days, the time for filing comments and reply comments. A similar request was filed by Hammett and Edison, Inc., a broadcast consulting firm, on November 2, 1993.

2. The deadline originally established for filing comments was August 13, 1993, and the date for reply comments was September 13, 1993. Previously, on August 3, 1993, the Commission granted a request filed by the National Association of Broadcasters (NAB) for an extension of time of ninety (90) days for filing comments and reply comments.[1] This action established a new deadline for filing comments on November 12, 1993, and a new deadline for reply comments of December 13, 1993.

3. The previous extension was granted to allow NAB time to complete a study commissioned to develop non-measurement based techniques for determining compliance with new guidelines for human exposure to radiofrequency (RF) fields proposed for adoption by the Commission.[2] The Commission has proposed to incorporate into its rules the newly revised standard of the American National Standards Institute (ANSI) developed by the Institute of Electrical and Electronics Engineers (IEEE) and designated IEEE C95.1-1991 (also ANSI/IEEE C95.1-1992).[3] CBS and Capital Cities have requested the latest extension in order to complete their analysis of recent data and information, including results from the NAB study and experimental results from the laboratory of Dr. Om P. Gandhi, that have become available relative to broadcaster compliance with the new guidelines.

4. CBS, Capital Cities, and Hammett and Edison note that the new information with respect to the consequences of the proposed guidelines has only recently become available. CBS and Capital Cities state that preliminary assessment of this information suggests that adoption of the guidelines, especially those that relate to induced RF currents, may significantly impact broadcasters. Hammett and Edison also have indicated that the new data is likely to affect implementation requirements for broadcasters. CBS and Capital Cities maintain that additional time is necessary to consider the implications of the new data, both to determine whether further study is required and to assess the effect that the proposed guidelines will have on broadcast operations.

5. CBS and Capital Cities believe that additional time is required to allow broadcasters to conduct field measurements to evaluate the new theoretical and experimental results. They also point out that the equipment necessary to make such measurements has not been readily available commercially, further justifying the need for additional time.

6. The Commission does not routinely grant requests for extensions of time.[4] However, we recognize the complexity of the issues raised by the new exposure guidelines and the difficulties in developing reasonable methods by which compliance can be evaluated. In this regard, it is clear to us that there is a need for additional data and analysis, particularly with respect to the new guidelines for induced and contact currents. If by granting this request for an extension meaningful insights can be gained into these issues, it appears that such an extension will benefit all concerned parties.

7. An extension could delay somewhat the implementation schedule for new guidelines. However, by providing further opportunity to acquire information needed for accurate and reasonable procedures and methods, an extension may actually facilitate the process of guideline implementation. It appears that there is adequate justification to support these requests, and we believe that the public interest will best be served by an extension.

8. Accordingly, *it is ordered* that, The deadline for filing comments is extended to January 11, 1994, and the deadline for filing reply comments is extended to February 10, 1994. This action is taken pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 93-28382 Filed 11-17-93; 8:45 am]

BILLING CODE 6712-01-M

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[1] See Order Extending Time for Comments and Reply Comments, ET Docket 93-62, 8 FCC Rcd 5528 (1993).

[2] See Notice of Proposed Rule Making in ET Docket 93-62, 8 FCC Rcd 2849 (1993).

[3] *Id.*, Note 2 at paragraph 1.

[4] 47 CFR 1.46 (1991).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 93-85; Notice 01]

Negotiated Rulemaking

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

ACTION: Request for comments.

SUMMARY: NHTSA is requesting comments on which of its contemplated future rulemaking proposals would be suitable candidates for development through the use of the negotiated rulemaking process beginning in calendar year 1994. NHTSA is requesting these comments to aid it in complying with the requirement in a recent Executive Order for each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. These comments will help the agency identify possible candidates for negotiated rulemaking.

DATES: Comments must be received by December 17, 1993.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mary Versailles, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992.

SUPPLEMENTARY INFORMATION: On September 30, 1993, the President issued Executive Order 12866, Regulatory Planning and Review, which requires Federal agencies to take various actions to improve the regulatory process. Among those directives is one requiring each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. By memorandum of the same date, the President further ordered each agency to identify, within 90 days (i.e., by December 29, 1993), at least one rulemaking that the agency will develop through the use of negotiated rulemaking during the upcoming year. Alternatively, the agency must explain why it will not be feasible.

Negotiated rulemaking is a supplement to the traditional rulemaking procedures that, if used properly, can result in better rulemaking. In negotiated rulemaking, a regulatory agency arranges for face-to-face negotiations among representatives of affected interests, including the agency, with a goal of arriving at a consensus decision on a recommended approach to a particular problem within the agency's rulemaking authority. The recommendation is then used by the agency as the basis for issuing a Notice of Proposed Rulemaking, if that recommendation is within the agency's statutory authority.

The purpose of this notice is to request interested persons to submit comments that would aid NHTSA in determining which, if any, of the agency's future proposals for rulemaking would be appropriate candidates for a negotiated rulemaking by NHTSA beginning in calendar year 1994. To aid interested persons in preparing their comments, the agency recommends that they consult the list of future NHTSA proposed rulemaking actions listed in the Department of Transportation's recently published Semiannual Regulatory Agenda (58 FR 56632, at 56644; October 25, 1993).

Further, the agency requests that interested persons base their comments on the criteria that should be satisfied in order to have a successful negotiated rulemaking. These criteria relate to the nature both of the interested parties and of the issues. The agency has summarized these criteria below. For additional details, see, David M. Pritzker and Deborah S. Dalton, Negotiated Rulemaking Handbook (1990); and Philip J. Harter, Negotiating Regulations: A Cure for Malaise, 71 Geo. L.J. 1 (1982).

I. Parties

A. *Number.* The negotiation process is appropriate only if the affected interests can be represented by a limited number of participants, no more than 15 to 20.

B. *Well-Organized Interests.* It must be possible to identify people or organizations who can effectively represent each of the affected interests.

C. *Power.* No single interests should be powerful enough to dictate the outcome of the proceeding without incurring an unacceptable sanction from the other parties. Even though a party may have the power to dictate the outcome of a regulation, it may be possible for the negotiation to be successful, if another party can impose an unacceptable sanction (e.g., higher costs or delay).

D. *Opportunity for Gain.* So that parties see it in their interest to negotiate, it must be possible for all parties to win.

E. *Agency is a Willing Participant.* The parties must have a reasonable expectation that the agency will use any consensus reached as the basis of a proposed rule.

II. Issues

A. *Maturity.* The subject matter of the negotiation must be identified, and there must be sufficient information on which to base a decision. A rulemaking is inappropriate if it requires extensive factual research.

B. *Information.* In the alternative, if the agency lacks all the necessary information to develop a proposed rule, negotiated rulemaking can provide a better, less adversarial process for obtaining information in the possession of other affected interests.

C. *Deadline.* There should be a deadline for reaching a decision, to help convince the parties that it is in their interests to compromise instead of having another party make the decision. The deadline could arise from a statute or court order, or alternatively, an artificial deadline can be created (e.g., by NHTSA committing to publish an NPRM by a specific date). However, the deadline must be selected so as to provide sufficient time to negotiate.

D. *Multiple Issues.* The rule should involve diverse issues. This will allow room for compromise or trade in the negotiation process.

E. *Fundamental Values.* The issues should be such that no party will have to compromise a fundamental value. However, it may be possible to agree to negotiate only those issues which do not affect fundamental values and for the agency to tentatively decide the other issues.

If a commenter recommends that a particular rulemaking be developed through negotiated rulemaking, that commenter should show how the parties and issues in that rulemaking would satisfy each of the above criteria.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on November 12, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-28351 Filed 11-12-93; 4:49 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 930939-3239; I.D. 062993B]

Taking and Importing of Marine Mammals; Fisheries Certificate of Origin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposed to amend its regulations to allow importers or brokers to file "Fisheries Certificates of Origin," which are required for importation of certain fish and fish products, using the U.S. Customs Service's Automated Broker Interface system. The purpose of this amendment is to eliminate excess paperwork and minimize the reporting burden, while maintaining an efficient, accurate system to monitor the importation of regulated fish and fish products.

DATES: Written comments must be received on or before December 17, 1993.

ADDRESSES: Comments should be sent to Dr. Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: LT Steven A. Thompson, 310-980-4000.

SUPPLEMENTARY INFORMATION:

Background

NMFS is obligated to monitor the importation of certain fish and fish products to ensure that the products are in compliance with various provisions of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA), the Dolphin Protection Consumer Information Act (Pub. L. 101-627, title IX) (DPCIA), and the International Dolphin Conservation Act (Pub. L. 102-523) (IDCA). These laws reflect the policy of the U.S. Government to ameliorate a worldwide environmental crisis in which marine mammals and other marine life are killed by commercial fishing technology, such as large-scale driftnets and purse seine nets deployed to encircle dolphins.

The MMPA requires that the Assistant Administrator for Fisheries, NMFS (AA), prohibit the importation of yellowfin tuna (*Thunnus albacares*) from nations that have purse seine vessels of greater than 400 short tons carrying capacity operating in the eastern tropical Pacific Ocean (ETP), unless the AA has made a finding to allow importation. A finding can be made only if that nation has both a marine mammal protection program and an incidental mortality of marine mammals comparable to that of the United States.

On November 28, 1990, President Bush signed into law the Fishery Conservation Amendments of 1990, Pub. L. 101-627, title IX of which was the DPCIA. The DPCIA: (1) Regulates the use of labels suggesting that tuna is "dolphin safe;" (2) amends the MMPA to require documentation for the importation of fish or fish products potentially harvested by large-scale driftnet; and (3) authorizes civil penalties for knowing and willful false statements submitted to document the authenticity of "dolphin safe" labels on tuna products.

On September 19, 1991, NMFS published in the **Federal Register** (56 FR 47418) interim final regulations to implement the DPCIA. As part of those regulations, the existent SF 370-1 "Yellowfin Tuna Certificate of Origin" was replaced by the NOAA Form 370 "Fisheries Certificate of Origin" (FCO). The labelling requirements of the DPCIA apply to all tuna products, not just yellowfin tuna. Furthermore, the DPCIA requires documentation of fish species other than tuna, in order to prevent the importation of fish and fish products harvested with large-scale driftnets on the high seas. In addition to the information required on the old SF 379-1, the new FCO provides space to identify the method of harvest, the regulatory category under which the product was entered, and for government certification of the shipment and for endorsement by each importer, exporter, and processor of "dolphin safe" tuna. The FCO provides the U.S. Customs Service (USCS) a tool to monitor and deny entry of those fish products that are prohibited entry into the United States.

Proposal

NMFS would like to eliminate excess paperwork and minimize the reporting burden on all parties involved. The Paperwork Reduction Act requires that all duplication of data collection and all unnecessary paperwork be eliminated. Some, but not all, of the information contained on a properly completed FCO is contained in other import documents. Moreover, the USCS has established an Automated Broker Interface (ABI) to allow electronic filing of importation documentation without submission of the paper forms.

NMFS proposes to allow brokers or importers to use the ABI system in lieu of the paper FCO. This proposal advances USCS's long-range plan to automate the importation process with the goal of eliminating unnecessary paperwork. NMFS has requested, and USCS has agreed, to incorporate the FCO into the ABI system. USCS has agreed to collect the information and to make the information available to NMFS by electronic transfer. This is a mutually beneficial approach. Much of the paperwork required for entry of fish products would be eliminated. NMFS would have the required information, while the need for NMFS to employ data entry personnel would be eliminated. Some of the information collected on the FCO is already collected electronically on Customs Form 7501 or other entry documents. Electronic filing would help to speed the process of bringing imported fish products into the United States and would reduce paper processing by importers, while continuing to allow NMFS to continue to receive all

information required to monitor the importation of the fish and fish products subject to these regulations.

NMFS receives 6,000–8,000 FCOs per year. Most are forwarded by USCS from the entry ports, but some are sent directly from U.S. canneries or import brokers. These documents are reviewed and the information is entered into a database. The forms are then archived.

It is the policy of USCS and the Office of Management and Budget (OMB), the agency charged with paperwork reduction, to: (1) Eliminate the paper form requirement for users of the ABI system to reduce the paperwork burden on the public; (2) prevent duplication of electronic data collection among Federal agencies; and (3) increase the number of entries eligible for paperless processing. This proposal would accomplish these goals.

The ABI system for the FCO will not be ready until the first quarter of 1994. Many details still need to be worked out before initiating electronic filing of the FCO. Recognizing this, NMFS is structuring its regulations to accommodate both the existing paper system and the future electronic filing of the FCO. To facilitate the conversion to electronic filing, the proposed rule would permit electronic filing at any and all points of entry where the ABI system is or may become available. After the ABI system is implemented for the FCO, importers would have the option to file electronically or submit the paper FCO upon entry. If an importer is unable to participate in the electronic filing system, the paper FCO could still be used.

Part of the effect of these rule modifications would be to reduce the filing burden on the import industry, to require some potentially new record keeping by importers and to significantly reduce the time and effort required for importers to make the required filings. The Federal Communications Commission (FCC) evaluated the ABI system before adopting its usage for some of its import requirements, and has estimated that a 40-percent reduction in preparation/submission time, from 5 minutes to 3 minutes per submission, is possible. This translates into a productivity increase from 12 submissions per hour to 20 submissions per hour. This improvement is due primarily to the benefits of automation and to the fact that much of the FCC required data is already collected by USCS for its own purposes. A similar estimate is made for NMFS requirements. NMFS would continue to receive the same information electronically that it now receives on the paper NOAA Form 370.

Importers or their brokers would be required to maintain documentation to verify electronic entries for a period of 5 years after the entry; any FCOs acquired from foreign exporters, invoices, "dolphin safe" certification, etc., must be maintained by the broker or importer. NMFS enforcement officers would have access to these documents, upon request, for routine inspections and when investigating alleged violations of the MMPA or "dolphin safe" labeling violations.

In addition to a reduction in workload for both industry and the Government, the change to electronic filing would enhance the ability of NMFS to enforce rules pertaining to importation of fish products. Enforcement personnel would be able to review filings on a much more timely basis. Once electronic filing is implemented and the increased ability and activity of NMFS enforcement efforts is known, compliance with the rules is expected to increase.

Classification

NMFS has determined that this proposed rule will not have a significant impact on the human environment. From an environmental perspective, this proposed rule is a technical change to the regulations. The overall regulations have been analyzed in Environmental Assessments (EAs) prepared for previous regulations implementing section 101(a) of the MMPA. Therefore, this proposed rule is categorically excluded from the requirement to prepare an EA by section 6.02b.3. (b)(ii)(aa) of NOAA Administrative Order 216–6, and an Environmental Assessment of the proposed action has not been prepared.

The AA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The estimated economic impact on tuna imports, if any, could be expected to result in a slight benefit to importers that would have their paperwork burden decreased. This proposed rule will not result in: (1) An annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 millon or more; or (3) significant adverse effect on competition, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed modifications to the regulations would not have a significant impact on a substantial number of small entities. The only persons affected by this rule would be those who opted to file through the ABI system. No one will be forced to use ABI; rather, it is an option intended to save money for small businesses. The impact, if any, would be the requirement to maintain a file of documentation for each electronic filing for 5 years. Most brokers and importers already maintain such a file in the normal management of their business.

This rule involves collection of information requirements subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget under control number 0648–0040. Public reporting burden is estimated to average 24 minutes per response for the electronic submission of information and 5 minutes for the recordkeeping requirement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to: National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Act Project).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 5, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.3 is amended by adding, in alphabetical order, a definition of *ABI*, to read as follows:

§ 216.3 Definitions.

* * * * *

ABI means Automated Broker Interface, the electronic product-entry

filing system under the control of the U.S. Customs Service, Department of the Treasury.

* * * * *

3. In § 216.34, paragraph (e)(3)(i)(A)(*1*) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) * * *

(*1*) Accompanied by a completed fisheries Certificate of Origin described in paragraph (e)(3)(iii) of this section, or, for points of entry where the ABI system is available, the information required for the Certificate may be filed electronically by the ABI system in lieu of the paper form, provided that the electronic filing is made no later than at the time of entry and, all documentation in support of the ABI entry is maintained by the importer or broker for not less than 5 years and must be available for inspection by NMFS personnel upon request;

* * * * *

[FR Doc. 93-28306 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 221
Thursday, November 18, 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

Forms Under Review by Office of Management and Budget

November 12, 1993

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- National Agricultural Statistics Service Vegetable Surveys

On occasion; Weekly; Seasonally
Farms; Businesses or other for-profit; 17,971 responses; 2,723 hours
Larry Gambrell (202) 720–5778

- Food Safety and Inspection Service

Additional Methods for Destruction of Trichinae in Pork Products
Recordkeeping; Once every 13 weeks
Businesses or other for-profit; 36 responses; 37 hours
Lee Puricelli (202) 720–7163

Reinstatement

- Animal and Plant Health Inspection Service

National Agricultural Pest Information System (NAPIS)
PPQ Forms 391, 395, and 396
On occasion; Semi-annually
State or local governments; 176,200 responses; 1,092 hours
C. David McNeal, Jr. (301) 436–8247

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–28362 Filed 11–17–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Greenhorn Ranger District; Sequoia National Forest, CA; Notice of Intent To Prepare Supplement to Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the Cottonwood and Golf Timber Sales Final Environmental Impact Statement, Greenhorn Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service will prepare a Supplement to the Cottonwood and Golf Timber Sales Final Environmental Impact Statement to provide further information of impacts on the California spotted owl, and current information on reforestation success, on the Sequoia National Forest, Kern County, California.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed supplement to Sandra Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257–2035, telephone (209) 784–1500.

SUPPLEMENTARY INFORMATION: A lawsuit was filed by Sequoia Forest Alliance and Tulare County Audubon Society on April 29, 1993 in the United States District Court for the Eastern District of California. On August 10, 1993, the District Court issued a preliminary injunction prohibiting any further activity on the Cottonwood Timber Sale pending completion of a supplement to the FEIS for the Cottonwood Timber Sale which addressed new information relating to the California spotted owl.

In response to the court's order, existing information will be reanalyzed based on further investigation of the sale and consideration of new information. Although not required by the court's order, the supplement will include additional information on reforestation success for the plantations in the area of the Cottonwood timber sale.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

The draft supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of November 1993. At that time EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period on the draft supplement will be 45 days from the date EPA publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel.* 803 F.2d 1016, 1022 (9th Circuit 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed supplement, comments on the draft supplement to the environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 12, 1993.

Lee R. Belau,

Acting Forest Supervisor.

[FR Doc. 93-28366 Filed 11-17-93; 8:45 am]

BILLING CODE 3410-11-M

Musellshell Ecosystem Management Project; Clearwater National Forest, Clearwater County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposed timber harvest which would remove approximately 8.5 million board feet of timber from about 2,051 acres, build about 1.6 miles of road, and reconstruct about 5.5 miles of road. The proposal also includes fishery and wildlife improvement projects such as installing log wiers, building sediment traps, and closing roads, as well as improving recreation facilities.

The area is located on the Pierce District of the Clearwater National Forest, Townships 35 and 36 North, Range 6 East, Boise Meridian.

The purpose of the proposal, and subsequent effects analysis, is to meet the intent of the Clearwater Forest Plan using an ecosystem management approach for management areas included in the 14,800 acre analysis area. There are six management areas (MA) within the analysis area. MA-E1 emphasizes growth and yield of timber, MA-M2 emphasizes protection of riparian resources, MA-A6 emphasizes recreational activities associated with the Lewis and Clark and Nee-Me-Poo Historical Trails, MA-C3 emphasizes management of big-game winter range not suited for timber production, and MA-A5 manages for developed recreation opportunities.

DATES: Comments concerning the scope of the analysis should be received in writing by January 3, 1994, to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in September 1994. The Final EIS and Record of Decision is expected to be issued in December 1994.

ADDRESSES: Send written comments to Rick Kusicko, Acting District Ranger, Pierce Ranger District, P.O. Box 308, Kamiah, ID 83536.

FOR FURTHER INFORMATION CONTACT: Linda Lilly, EIS Project Team Leader, Pierce Ranger District, P.O. Box 308, Kamiah, ID 83536. (208) 935-2513.

SUPPLEMENTARY INFORMATION: In response to public demand for sustainable forest management, the Forest Service has developed an ecologically-based, integrated resource approach to the management of the National Forest lands. Ecosystem Management means recognizing the complexity and dependencies of resources within ecosystems, so effects to the ecosystems can be predicted and monitored after activities occur. The proposal includes timber harvest as determined by the ecological need of the analysis area. This may vary from slashing non-merchantable dead trees and replanting to clearcuts with reserve trees. Harvesting may not follow traditional unit configuration, or prescription. The natural changes in tree densities, natural history, and health of the landscape will dictate how the areas will be treated. Biological corridors and riparian areas will be considered in that natural landscape, as well as human imposed landscapes and restrictions, such as visual quality corridors, cultural sites, recreation areas etc. The harvesting prescriptions may be dispersed in small clumps, reach across large areas, or meander in and out of each other.

Because instream conditions are not meeting desired conditions for cobble embeddedness, erosion sources in the watershed would be corrected. This may include closing and stabilizing roads that are no longer needed.

Because of the below standard instream conditions in Gold and Musselshell Creeks, the Forest Service may install sediment traps, remove sediment by dredging, exclude grazing along Musselshell Creek through fencing, install woody debris and boulders for summer and winter habitat improvement, and plant riparian areas to provide shade to lower stream temperatures.

Because the old growth patch size is small, and snag retention areas are lacking, the Forest Service would manage biological corridors, and designate five percent or more old growth habitat per 10,000 acre compartment.

Because use is increasing in dispersed camping areas, the Forest Service would install vault toilets in two areas in the analysis area.

Because there are dying stands of white pine and other silvicultural treatment needs in the analysis area, the Forest Service would rehabilitate dying white pine plantations, salvage dead and dying timber, improve the species mix through commercial and precommercial thinning, and harvest stands that have reached maturity while maintaining the old growth component.

Scoping began with the position statement of a previous planned activity called Musselshell Gold, which has been incorporated into the Musselshell EIS. Scoping will continue with the announcement of this new proposal, open houses, and public contracts. Issues emerging from internal and external scoping which will lead to the development of alternatives to this proposal.

The lead agency for this project is the U.S. Forest Service. The Forest Service will cooperate with other County, State, and Federal Agencies who display an interest in the project, and who require assessment and concurrence.

The responsible official for decisions regarding this analysis is James Caswell, Clearwater National Forest Supervisor. His address is 12730 Highway 12, Orofino, ID 83544.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 1994. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in

the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: November 5, 1993.

James L. Caswell,

Forest Supervisor.

[FR Doc. 93–28364 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Bull Sweats Vegetative Treatment; Vegetative Management Including Tree Removal by Commercial Harvesting, Prescribed Fire, Tree Thinning and Temporary Road Construction, Helena National Forest, Lewis & Clark County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare Environmental Impact Statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for a vegetation treatment proposal. This proposal will utilize prescribed fire on grassland/shrubland vegetation types and a combination of prescribed fire and tree removal within the forested vegetation. The proposal will also involve the reconstruction of existing roads and the construction of new roads within the project area. Temporary access roads would be physically closed when no longer needed by this proposal. The project area is located approximately 17 air miles northeast of Helena, Montana.

The Forest Service proposes to treat approximately 1350 acres of grassland/shrub land and forested vegetation through prescribed burning and tree removal. Approximately 1,300 acres would be treated with prescribed burning and 350 acres of timber would be harvested. The 350 acres of timber harvest would be prescribe burned following tree removal to reduce slash and needle cast. Timber would be sold and removed using predominantly unevenaged harvest systems such as individual tree selection and group selection, as well as some commercial thinning. Approximately 0.5 mile of new temporary road construction and 1.7 miles of reconstruction of existing roads is needed to access treatment areas. Following treatment the new roads would be physically closed. New road construction and road reconstruction would occur in the Bull Run Gulch and Dry Gulch vicinity.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan and move selected areas towards the desired conditions identified from the Forest Plan. These needs are supported by the findings of the Big Belts Integrated Resource Analysis. More specifically, the proposal has the following purpose:

1. Treatment of nonforested grassland vegetation through prescribed fire to promote nutrient cycling within the system and reduce the amount of coniferous vegetation that has colonized these sites.

2. Initiate activities to move the age class distribution of forested vegetation towards the desired condition. This will assist in maintaining healthy and sustainable forested ecosystems and long-term sustainability of soils productivity, riparian function, vegetation and wildlife as described in the Helena Forest Plan and further refined in the Big Belts Integrated Resource Analysis. The Big Belts Integrated Resource Analysis determined that the project area has been affected by past forest management practices, primarily fire suppression. Prior to fire suppression frequent fires (in the range of 5 to 25 year recurrence intervals) burned through the area. These fires maintained fuels at low levels and killed most of the smaller trees seedlings which had seeded into the area. The thick barked mature ponderosa pine within the area survived these low intensity firms. This differentiation in tree survival caused by frequent low intensity fires led to the development of a savannah of a widely spaced forest of large old ponderosa pine.

Since fire suppression tree seedlings have survived at rates which are in excess of historical conditions. This has led to the development of densely stocked stands which range in tree size from seedling through sapling, pole, intermediate and dominant size classes. These stands, when they burn, spread the fire through the forest canopy due to the development of these "ladder fuels". This is an event which the forest has not evolved to survive. When such a fire occurs it causes the mortality of a significant portion of the forest overstory. It may take several centuries for the forest to return to the large old forest type following such a fire.

The increase in vegetation density has also resulted in greater competition between trees for available resources such as water, sunlight and nutrients. This competition causes trees to weaken which makes them more susceptible to mortality from insects, diseases and climatic stresses.

The proposed treatments are designed to protect the larger and older trees within stands from mortality in the event of a fire through the removal of ladder fuels. Smaller trees are proposed to be removed leaving the larger trees in a more open grown situation. This treatment would also reduce competition between trees for available resources.

Experience has shown that as we implement the Helena Forest Plan, as would occur in this proposed action, we collect better on-site field information which at times results in Forest Plan amendments. To date, no amendment has been identified or is being proposed relative to this proposal. Further analysis of the proposed action and alternatives to that proposal may result in a decision(s) that include amendments to the Forest Plan.

DATES: Comments concerning the scope of the analysis should be received in writing by December 17, 1993.

ADDRESSES: The responsible official is Tom Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT 59601. Phone: (406) 449–5201.

FOR FURTHER INFORMATION CONTACT: Denis A. Hart, Helena District Ranger, Helena Ranger District, 2001 Poplar Helena, MT 59601. Phone: (406) 449–5490; or Jerry V. Adelblue, Interdisciplinary Team Leader, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601.

SUPPLEMENTARY INFORMATION: The prescribed burning, timber sale(s), temporary road construction, thinning and green firewood cutting would occur on National Forest lands in portions of the Trout Creek, Soup Creek, and Beaver Creek, Sweats Gulch, Cottonwood Gulch, Bridge Gulch, Bridge Creek, Pole Creek, Cabin Gulch, and Bull Run Gulch drainages of the Helena Ranger District. Included in the area being analyzed is all or portions of T.12N., R.2W., Sections 11–14; T.12N; R.1W., Sections 7–9, 16–20, 30–33; T.11N., R 1W., Sections 4,5,8, Montana Principle Meridian.

Portions of the prescribed fire treatment units, temporary road construction and tree removal are

within the Middleman Mountain/Hedges Mountain roadless area (1612/X1613). Approximately 700 acres of prescribed burning, 320 acres of tree removal and 0.5 mile of temporary road construction are proposed in the roadless area. This area has not been proposed for inclusion in the National Wilderness System by the Helena Forest Plan nor has it been included in any of the past legislative wilderness proposals.

The areas of proposed tree removal are within management areas L–2 and T–3 described in the Helena Forest Plan. Prescribed burning is also proposed within management areas L–2, T–2, and W–2. In some cases, combinations of tree removal and prescribed burning are proposed. The Forest Plan direction states that:

L–1 Generally nonforested forage producing areas that forage production is optimized and timber harvest and prescribed fire may be used as tools for this purpose, but not for timber management sake.

L–2 Essentially nonforest lands identified as big game winter ranger within grazing allotments. Prescribed fire may be used to reduce fuels and increase forage.

T–2 Should be maintained or enhanced for big game winter range for which programmed timber harvest and prescribed fire may be used.

T–3 Should be managed in such a way to maintain and/or enhance habitat characteristics favoring elk and other big game species allowing the use of programmed timber harvest and prescribed fire.

W–2 Important spring, summer and fall habitat for big game, such as elk and deer. Forage for both big game and livestock must be provided. Timber harvest and prescribed fire can be used only to maintain or enhance habitat values.

The decisions to be made, based on this environmental analysis, are:

1. Whether or not to treat the forested and nonforested vegetation at this time, and if so, what areas to treat, and what treatment methods would be employed.

2. What roads, trails, and areas need to be closed or restricted to provide for wildlife security and habitat effectiveness.

3. What project specific monitoring, if any, is needed.

If it is decided to treat the vegetation at this time, activities may begin as early as 1995 and take up to 5 years to implement.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986, that provides program goals, objectives and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the Forest Plan and further refined in the Big Belts Integrated Resource Analysis.

The Forest Service is seeking information and comments from Federal, State, local agencies and other organizations or individuals who may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those that have been covered by a relevant previous environmental analysis.

4. Identification of additional reasonable alternatives.

5. Identification of potential environmental effects of the alternatives.

Prescribed harvest treatments for tree removal in this proposal include unevenaged management techniques such as individual tree selection and group selection. Intermediate treatments such as commercial thinning will also be considered. Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments will be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. The effects on forested and nonforested vegetation.

2. The effects on visual resources.

3. The effects on the fisheries and wildlife resources.

4. The effects on the roadless and wilderness character of the Middleman Mountain/Hedges Mountain Roadless Area.

5. The effects on riparian management and function.

6. The effects on the proposed Cabin Gulch Research Natural Area.

7. The effects on air quality.

8. The economic tradeoffs of implementing this proposal.

9. The effects on cultural resources within the project area.

10. The effects upon public safety and adjacent private lands.

The Forest Service will analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with the Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service. This period extends for 30 days from the date of publication of this notice in the **Federal Register**. The second review period is during the 45 day review of the DEIS in and when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 1994. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th cir. 1986) and Wisconsin *Heritages, Inc.* v. *Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is expected to be filed in August 1994.

Dated: November 5, 1993.

Tom Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 93-28321 Filed 11-17-93; 8:45 am]

BILLING CODE 3410-11-M

Environmental Impact Statement; Monongahela National Forest, WV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final legislative environmental impact statement (LEIS) concerning the suitability of twelve rivers in the Monongahela National Forest in West Virginia for inclusion in the National Wild and Scenic Rivers System. The twelve rivers included are Shavers Fork, Dry Fork, Blackwater, Glady Fork, Laurel Fork, Otter Creek, Red Creek, South Branch Potomac, North Fork South Branch Potomac, Seneca Creek, Williams, and North Fork Cherry. The rivers under study are located in the following counties: Grant, Greenbrier, Nicholas, Pendleton, Pocahontas, Randolph, Tucker, and Webster.

The agency invites written comments and suggestions on the suitability of these twelve rivers for designation as wild, scenic, or recreational rivers. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments should be received in writing by December 17, 1993 to ensure timely consideration.

ADDRESSES: Send written comments to Jim Page, Forest Supervisor, Monongahela National Forest, 200 Sycamore St., Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Harry B. Mahoney, River Planner, Monongahela National Forest, 200 Sycamore St., Elkins, WV 26241, (304) 636-1800.

SUPPLEMENTARY INFORMATION: The Monongahela National Forest Land and Resource Management Plan, approved July 7, 1986, directed that National Forest lands within ¼ mile of rivers within the Monongahela National Forest that were listed in the Nationwide Rivers Inventory (NRI) should be managed so that potential wild classification would not be precluded until a future study could be completed. The American Rivers Conservation Council, now America Rivers, Inc., subsequently appealed the Forest Plan because it did not include specific direction for management of wild and scenic rivers, and did not determine eligibility and probable classification, nor schedule a future study. In resolution of this appeal, the Forest Service agreed to determine eligibility and classification of the NRI rivers, to amend the Forest Plan, and to schedule a study of suitability. A coalition of organizations, the West Virginia Rivers Coalition, petitioned the Forest Service to include additional specified rivers, and the West Virginia Chapter of the Sierra Club subsequently asked that two other streams be studied.

The Forest Service evaluated a total of 14 streams within the Forest to determine their eligibility and probable classification for potential inclusion in the National Wild and Scenic Rivers Systems with the participation of rivers interest groups, the West Virginia Division of Natural Resources, West Virginia University, the National Park Service, and interested individuals. An "Evaluation of Eligibility and Probable Classification" of fourteen streams or stream segments within the Forest boundary was distributed to participants in June, 1991. The 14 steams included eight NRI rivers (Cheat, Shavers Fork, Dry Fork, Blackwater, Glady Fork, South Branch Potomac, North Fork South Branch, and South Fork Cherry), four additional streams proposed by the Rivers Coalition (Laurel Fork, Otter Creek, Williams, and North Fork Cherry), and the two streams proposed by the Sierra Club (Red Creek and Seneca Creek). Two streams, the portion of Cheat River inside the Forest boundary and South Fork Cherry, were determined to be ineligible and were dropped from further consideration. The portion of Cheat River in the Forest boundary was identified as a candidate for possible future consideration as part of a longer stream. Portions of Shavers Fork, Glady Fork, and North Fork South Branch were also dropped from further consideration. Three other rivers (Greenbrier, Gauley, and Cranberry), listed as Study Rivers in the Wild and Scenic Rivers Act, had already been studied and were not included in the current study.

The decision to be made is: Which, if any, segments of the 12 rivers under consideration should be recommended to the Congress of the United States for designation under the Wild and Scenic Rivers Act.

The suitability study and environmental impact statement will consider the following rivers or river segments, which have been determined to be eligible for designation, with the probable classifications shown in parentheses:

Shavers Fork

A total of 77.9 miles in two segments consisting of 56.0 miles between the Snowshoe dam and US 33 (Recreational) and 21.9 miles between WV 33/8 and Jobs Run near Porterwood (Scenic). Scenic, recreational, and other values have been identified.

Dry Fork

13.7 miles between the confluence with Laurel Fork and the confluence with Blackwater (Recreational). Recreational values have been identified.

Blackwater

8.7 miles between the Blackwater Falls State Park bridge and Hickory Lick Run near Hendricks (Scenic). Scenic and recreational values have been identified.

Glady Fork

A total of 31.6 miles between the confluence of the East and West Forks near the town of Glady and the confluence with Dry Fork at Gladwin, including 4.5 miles between the forks and Frazier Creek (Recreational), 7.7 miles between Frazier Creek and .5 mile above US 33 (Wild), 4.3 miles from .5 mile above US 33 to Waterfall Run (Recreational), and 15.1 miles between Waterfall Run and Dry Fork (Scenic). Recreational values have been identified.

Laurel Fork

A total of 38.2 miles from the upstream boundary of Laurel Fork South Wilderness to the confluence with Dry Fork including 16.5 miles within the Laurel Fork North and South Wildernesses and Laurel Fork Recreation Area (Scenic), 9.1 miles between Laurel Fork North Wilderness and .5 mile below US 33 (Recreational),

4.9 miles from .5 mile below US 33 to Shears Hollow (Scenic), 6.6 miles between Shears Hollow and private land (Wild), and 1.1 miles to Dry Fork (Recreational). Recreational and scenic values have been identified. The 9.1 miles between the wilderness boundary and .5 mile below US33 were determined to be ineligible by themselves, but are included for study as part of the whole stream.

Otter Creek

A total of 11.0 miles from the upstream boundary of Otter Creek Wilderness and the confluence with Dry Fork, including 10.5 miles within the Wilderness (Scenic) and .5 mile between the Wilderness and Dry Fork (Recreational). Scenic and recreational values have been identified. The lower .5 mile, considered ineligible by itself, has been included as part of the whole stream.

Red Creek

A total of 8.7 miles shown as a perennial stream on the USGS quadrangle (Blackbird Knob) to the downstream boundary of the Dolly Sods Wilderness, including 5.3 miles within the Wilderness (Scenic). Scenic and recreational values have been identified.

South Branch Potomac

A total of 22.5 miles from the Jake Hill Bridge near Upper Tract and the National Forest Boundary near Petersburg, including 10.0 miles from Jake Hill Bridge to Big Bend Recreation Area (Recreational), 9.3 miles from Big Bend to the exit from Smokehole Canyon (Scenic), 3.2 miles from the canyon exit to the Forest boundary (Recreational). Scenic, recreational, geologic, wildlife, and historical values have been identified.

North Fork South Branch

3.2 miles within the Hopeville Canyon between High Ridge Run and the outskirts of the community of Hopeville (Scenic). Scenic and recreational values have been identified. Portions of the North Fork above and below this section were determined to be ineligible due to extensive modification and channelization.

Seneca Creek

A total of 13.0 miles between Trussel Run near Spruce Knob and the downstream boundary of the Spruce Knob-Seneca Rocks National Recreation Area near US 33, including 8.0 miles between Trussel Run and private land near the Falls of Seneca (Wild) and 5.0 miles between the private boundary and the NRA boundary (Recreational). Recreational, scenic, and fish values have been identified.

Williams

26.0 miles from National Forest property boundary above Black Mountain Run to Spice Run above Dyer (Recreational). Scenic and recreational values have been identified.

North Fork Cherry

15.6 miles from Darnell Run to private land .5 miles above Richwood (Recreational). Scenic and recreational values have been identified.

The Forest Service and the State of West Virginia are cooperating in the study of these rivers through the establishment of a Wild and Scenic Rivers Co-Leadership Team for overall direction of the study process. This team consists of representatives from the Forest Service and the West Virginia Divisions of Natural Resources, Environmental Protection, and Tourism and Parks of the Department of Commerce, Labor, and Environmental Resources. Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, individuals, and organizations who may be interested in or affected by this proposed action. The public input will be used in preparation of the draft LEIS.

The Forest Service initiated the suitability phase of the evaluation in the fall of 1991 by distributing a letter requesting issue identification to approximately 1500 individuals, group, and local, state, and federal agencies known or believed to have an interest in management of one or more of the twelve rivers. Meetings were held with several interested groups and individuals, and subsequent public mailings were made.

The following preliminary issues have been identified on the basis of public and agency responses and will be considered along with any additional significant issues identified during formal scoping: (1) Effects of maintenance of free flow on potential impoundments, flood control, and similar projects; (2) potential effects on private lands; (3) potential effects on opportunities for fish habitat improvement; (4) effects on protection, enhancement, and restoration of ecosystem health and other values; (5) effects on national forest management programs; (6) effects on recreation opportunities and quality; (7) effects on local economies; and (8) conflicting interpretations of provisions of the Act regarding water resources projects and maintenance of free flow.

A range of alternatives will be considered including an alternative recommending designation of none of the rivers (no-action alternative) and one recommending designation of all rivers under consideration. Additional alternatives will be considered to reflect identified issues. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

The draft study and LEIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by May 1994. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The comment period on the draft study report and LEIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 f. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the

alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft study and legislative environmental impact statement, comments will be analyzed and considered by the Forest Service in preparing the final study and legislative environmental impact statement. In the final study and LEIS, the Forest Service will respond to comments received (40 CFR 1503.4). The final study and LEIS is scheduled to be completed by the end of December 1994. The Secretary will consider the comments, responses, and consequences discussed in the study, applicable laws, regulations, and policies in making a recommendation to the Congress regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: November 12, 1993.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 93-28334 Filed 11-17-93; 8:45 am]

BILLING CODE 3410-11-M

Management of the Red-cockaded Woodpecker and Its Habitat on National Forests in the Southern Region

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Southern Region of the Forest Service continues to prepare a draft environmental impact statement (EIS) and plans to prepare a final EIS on a proposal to establish Regional standards and guidelines for managing and the red-cockaded woodpecker (RCW) and its habitat; establish criteria to delineate habitat management areas (HMAs) and determine population objectives; establish tentative HMAs; and establish monitoring requirements, in order to provide Regional direction to the affected National Forests within the Southern Region. The purpose is to ensure protection of the RCW and fulfill the responsibility toward recovery of the species. The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Endangered Species Act (ESA).

The USDI, Fish and Wildlife Service is a cooperating agency.

This revised notice contains the following substantial changes: Revised title, revised proposed action (addition of tentative HMAs), revised preliminary alternative #4, changed draft and final EIS dates.

DATES: Comments concerning the original scope of analysis were received in writing by November 29, 1991. Those comments based on the original notice of intent to file this EIS need not be resubmitted as they are being addressed in the draft EIS. The Forest Service invites any new comments based on the revised proposed action and preliminary alternatives. Additional comments, based on this revised notice of intent, along with comments on the draft EIS, will be used to prepare the final EIS. Previous notices relevant to this proposal were published in the **Federal Register:** May 5, 1989, pages 19422-19423; July 24, 1989, pages 30771-30772; October 29, 1991, pages 55657-55658; and October 29, 1991, pages 55656-55657.

ADDRESSES: Send written comments on the revised proposed action and preliminary alternatives to: RCW Team Leader; USDA Forest Service, Southern Region; 1720 Peachtree Rd. NW.; room 718N; Atlanta, GA 30367.

FOR FURTHER INFORMATION CONTACT: Joseph M. Dabney, RCW Team Leader, (404) 347-5097.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to revise the Regional Wildlife Habitat Management Handbook (Handbook), amend the Southern Regional Guide (Regional Guide), and amend affected forest plans with new management direction for the endangered red-cockaded woodpecker (RCW). The proposed action has several elements and levels of implementation. The revised Handbook/Regional Guide amendment would establish criteria to delineate RCW Habitat Management Areas (HMAs) and determine population objectives and establish standards and guidelines for management within HMAs. This direction would be implemented on each affected forest when incorporated in the forest plan by amendment or revision.

Because of the time lag between the Handbook revision/Regional Guide amendment and individual forest plan amendments or revisions, the Forest Service also proposes to amend relevant forest plans with the designation of tentative HMAs in the Record of Decision (ROD) with EIS (This has been added to the proposed action since the original notice of intent was published). These forest plan amendments delineating tentative HMAs would require specific management practices to conserve the RCW and avoid jeopardy to the species. This direction would remain in place until superseded by individual forest plan amendments or revisions that incorporate the revised Handbook/Regional Guide.

The proposed regional direction would apply an ecosystem management approach at the landscape level, focusing on restoration of the habitat conditions under which the RCW evolved. The Revised Handbook would be implemented on National Forest System lands and would not apply to other federal, state, or private lands. Using the revised Handbook/Regional Guide, each affected National Forest within the Southern Region will conduct a Forest-level analyses to determine the effect of allocating land to RCW management and the effect of applying the Regional RCW standards and guidelines on the RCW, its habitat, and other forest resources. The affected National Forests will also develop procedures for implementing the monitoring requirements established through the Regional direction. The Forest-level analyses will be conducted as part of the Forest Plan amendment/revision process in compliance with NEPA, NFMA, and ESA. During Forest-level analyses, if new information surfaces regarding RCW management, reasonable alternatives that deviate from the Regional direction may be developed by the affected National Forests. In this event, consultation with the Fish and Wildlife Service will be required. A "No Jeopardy" opinion will be required for alternatives that deviate from revised Handbook//Regional Guide.

Pursuant to the National Forest System Land and Resource Management Planning regulations (36 CFR part 219), the Regional Guide for the Southern Region (the Guide) was issued in June 1984. This provided Regional standards and guidelines to facilitate land and resource management planning for the National Forests within the Southern Region. The Guide did not include any specific direction for management of the RCW or its habitat. Specific direction for RCW management was issued in the Wildlife Habitat Management Handbook (FSH 2609.23R), which was incorporated by reference into the Guide. The RCW chapter (420) in the Handbook was originally issued in 1975, with revisions in 1979 and 1985.

The 1985 revision was finalized following consultation with Fish and

Wildlife Service. In 1989, analysis of RCW survey information indicated most populations of the endangered RCW were declining in the Southern Region. This evidence prompted a review of management practices which led to the Regional Forester issuing a "Policy on Cutting within ¾ mile of RCW colonies on Existing Timber Sale Contracts" (the policy). The policy, implemented on March 27, 1989, was instituted to ensure Forest Service actions did not jeopardize the species. The policy was continued by the decision notice of June 26, 1989. This completed Phase I of a 3-Phase process initiated to protect the RCW and establish new RCW management direction.

Phase II included an environmental analysis and the preparation of an environmental assessment, "Environmental Assessment for Interim Standards and Guidelines for the Protection and Management of RCW habitat within ¾ mile of Colony Sites" (Interim Guide). The Interim Guide, implemented May 9, 1990, and supplemented May 3, 1991, currently apply to all RCW populations in the Southern Region, except the National Forests in Texas, where a court ordered management plan is still in effect. The Interim Guide will remain in effect until affected National Forests implement the Regional direction through Forest Plan amendments/revisions.

The Forest Service is now conducting Phase III, the establishment of Regional standards and guidelines for the management of the red-cockaded woodpecker (RCW) and its habitat; the establishment of criteria that will be used to delineate HMAs and determine population objectives; the establishment of tentative HMAs; and the establishment of monitoring requirements.

The purpose of the proposed action is to ensure protection of the RCW on affected National Forests in the Southern Region and to fulfill responsibility toward recovery of the species. In addition, a range of preliminary alternatives to the proposed action has been developed.

The proposed action will: (1) Establish Regional standards and guidelines for management of the red-cockaded woodpecker (RCW) and its habitat as follows: (a) Set a maximum percentage of the area within ¼ mile of RCW clusters allowed in the 0–10 and 0–30 age classes at 6.5 percent and 20 percent, respectively, to prevent habitat fragmentation; (b) set minimum rotation ages ranging from 70–120 years, depending on tree species, to ensure trees suitable for cavity development, and (c) set four different management intensity levels based on RCW population size and trend to ensure adequate protection of small, vulnerable populations; (2) establish criteria that will be used to delineate HMAs and determine population objectives to ensure demographic stability; and (3) establish monitoring requirements to determine if the objectives of the new RCW management direction is being met; and (4) establish tentative HMAs.

The preliminary alternatives include: (1) The No Action alternative. This will be a continuation of the Interim Guide which (a) controls habitat fragmentation by setting timber harvest limitations within ¼ mile of RCW clusters, (b) sets a minimum rotation age of 120 years for all pine species, (c) applies the same management intensity to all RCW populations regardless of size, and (d) defines management areas as a ¾ mile radius circle around both active and inactive clusters. (2) An alternative based on the 1985 Handbook which (a) does not set specific criteria to prevent habitat fragmentation, (b) sets minimum rotation ages ranging from 70–100 years, depending upon tree species, (c) applies the same management intensity to all RCW populations regardless of size, and (d) does not specifically define a RCW management area. (3) An alternative similar to the proposed action, with the following exceptions: (a) Controls habitat fragmentation by limiting timber harvest within ¼ miles of RCW clusters. (b) sets minimum rotation ages ranging from 60–200 years based upon tree species and site index, and (c) has 5 different management intensity levels. (4) An alternative that will be similar to alternative three, except there is no planned sustained yield of timber (This alternative has been revised since the original notice of intent was published).

The following preliminary issues, derived from comments received during preparation of the Interim Guide, as well as issues identified during the earlier EIS scoping process, are being considered in the environmental analysis: (1) Economic effects on local communities, (2) effects on RCW habitat resulting from modification of silvicultural practices, (3) effects of direct habitat improvements and population manipulation on the RCW, and (4) effects on other forest resources from RCW management.

The EIS will disclose the direct, indirect, and cumulative effects of implementing the proposed action and the alternatives.

Public participation is especially important at several points during the analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) Identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis, (4) exploring additional alternatives, and (5) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

The Forest Service is interested in comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the revised proposed action and preliminary alternatives. Comments received on previous notices of intent to file this EIS need not be resubmitted as they are being addressed in the draft EIS. Additional comments, based on this revised notice of intent, along with comments on the draft EIS, will be used to prepare the final EIS. Additional public participation will include notifying known interested and affected publics and key contacts in person and/or by mail. News releases will be used to provide general notice to the public.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1, 1993. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft EIS, projected for December 1, 1993, reviewers must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period, so that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft EIS, or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft EIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1994. The responsible official will consider the comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this revision of regional direction. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official is: Marvin C. Meier, Acting Regional Forester; USDA Forest Service, Southern Region; 1720 Peachtree Rd. NW., Atlanta, GA 30367–9102.

Dated: October 26, 1993.

Charles E. Steele,

Acting Regional Forester.

[FR Doc. 93–28322 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement. (Original notice of intent was published December 12, 1990 FR Vol. 55, No. 239, p. 51138–5113, two notice of extension of comment period published November 30, 1992, FR Vol. 57, No. 230, p. 56557 and December 18, 1992, FR Vol. 57, No. 244, p. 60170, and a previous revised Notice of Intent was published May 28, 1992 FR Vol. 57, No. 103 p. 22456).

SUMMARY: The Targhee National Forest, Wyoming, announced (55 FR Doc. 90–29088, December 11, 1990) its intent to prepare an Environmental Impact Statement (EIS) which would analyze a proposal by Grand Targhee Resort for a new Master Development Plan. A Draft EIS was to have been completed by October 1, 1991, and offered for a comment period of 60 days. This was revised for release in July of 1992. A sixty day comment period was to follow. The final EIS was scheduled to be published in February 1993.

Due to unanticipated changes in work priorities and extensive public involvement with this project the Draft EIS was completed September 25, 1993 and allowed a total comment period (including two extensions) of 120 days. The final EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by December 1993 instead of the February 1993 date published in the initial revised notice of intent.

Also, due to a change in personnel, the Responsible Official has changed. The Responsible Official is now William P. LeVere, Acting Forest Supervisor, Targhee National Forest.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Interdisciplinary Team Leader (208) 624–3151, Targhee National Forest, P.O. Box 208, St. Anthony, ID 83445.

Dated: November 3, 1993.

William P. LeVere,

Acting Forest Supervisor.

[FR Doc. 93–28325 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Cannell Meadow Ranger District; Sequoia National Forest, CA; Notice of Intent To Prepare Supplement to Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the Casa-Guard Timber Sale Final Environmental Impact Statement, Cannell Meadow Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service will prepare a Supplement to the Casa-Guard Timber Sale Final Environmental Impact Statement to provide further information of impacts on the California spotted owl, cumulative and inter-sale watershed effects within the Fish Creek watershed, and current information on reforestation success, on the Sequoia National Forest, Tulare County, California.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed supplement to Sandra Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257–2035, telephone (209) 784–1500.

SUPPLEMENTARY INFORMATION: A lawsuit was filed by Sequoia Forest Alliance and Tulare County Audubon Society on April 29, 1993 in the United States District Court for the Eastern District of California. On August 10, 1993, the District Court issued a preliminary injunction prohibiting any further activity on the Casa-Guard Timber Sale pending completion of a supplement to the FEIS for the Casa-Guard Timber Sale which addressed new information relating to the California spotted owl.

In response to the court's order, existing information will be reanalyzed based on further investigation of the sale and consideration of new information. Although not required by the court's order, the supplement will include additional information on reforestation success as well as cumulative and inter-sale watershed effects.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

The draft supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of November 1993. At that time EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period on the draft supplement will be 45 days from the date EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circuit 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment

period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed supplement, comments on the draft supplement to the environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 12, 1993.

Lee R. Belau,

Acting Forest Supervisor.

[FR Doc. 93-28367 Filed 11-17-93; 8:45 am]

BILLING CODE 3410-11-M

Forest Legacy Program Implementation

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Service will hold three listening sessions in the next month to receive comments on the Forest Legacy program. Those who participate are asked to comment on the adequacy of the current program guidelines and possible changes to the guidelines or the authorizing statute, which is subject to reauthorization in 1995. The sessions will be chaired by the Forest Service and facilitated by staff from American Forests, a non-profit forestry organization.

DATES: The meetings will be held November 30, December 6, and December 13, 1993.

ADDRESSES: The meetings will be held at the following times and locations:

November 30—9:30 a.m. to 4:30 p.m., American Forests, 1516 P Street, NW., Washington, DC.

December 6—9 a.m. to 3:30 p.m., Society for the Protection of New Hampshire Forests, 54 Portsmouth Street, Concord, NH.

December 13—9 a.m. to 3:30 p.m., Sacramento Tree Foundation, 201 Lathrop Way, Suite F, Sacramento, CA 95815.

Those who wish to submit written comments in lieu of attending a listening session should submit them to: Director, Cooperative Forestry, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Ted Beauvais, Forest Legacy Program Leader, Cooperative Forestry, Forest Service, USDA, Washington, DC 20090-6090, (202) 205-1190, FAX (202) 205-1271.

Dated: November 19, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93-28399 Filed 11-17-93; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission On Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, December 9, 1993, and reconvene at 9 a.m. and adjourn at 12 p.m. on Friday, December 10, 1993, at the Days Inn-Vanderbilt, West End Room, 1800 West End Avenue, Nashville, Tennessee. The purpose of the meeting is to: (1) To discuss civil rights progress and/or problems in the State; (2) to discuss the status of the Commission and Advisory Committees; (3) to report on the current project, "Racial Tensions in Tennessee"; and (4) hear from local representatives on the SAC's next proposed project on the enforcement of Title VI in Tennessee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). 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 10, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-28412 Filed 11-17-93; 8:45 am]

BILLING CODE 6335-01-P-M

DEPARTMENT OF COMMERCE

1994 Departmental Performance Review Board

Organization/Member/Type of Appointment, and Term Expiration

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Barbara Stafford, Deputy Assistant Secretary for Investigations, Import Administration (NC), 11/95

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Daniel J. McLaughlin, Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commerce Service (NC), 11/95

Henry Misisco, Acting Deputy Assistant Secretary for Basic Industries, Trade Development (C), 11/95

J. Hayden Boyd, Director, Office of Consumer Goods, Trade Development (C), 11/95

National Oceanic and Atmospheric Administration

Diana H. Josephson, Deputy Under Secretary for Oceans and Atmosphere (NC), 11/95

Margaret F. Hayes, Assistant General Counsel for Fisheries, Office of General Counsel (C), 11/95

Lois J. Gajdys, Chief, Management and Budget Office, NWS (C), 11/95

Michael P. Sissenwine, Senior Scientist for Fisheries, NMFS (C), 11/95

Alan R. Thomas, Deputy Assistant Administrator for laboratories, Oceanic and Atmospheric Research (C), 11/95

Melbourne G. Briscoe, Director, Office of Ocean and Earth Sciences, National Ocean Service (C), 11/95

Patent and Trademark Office

Robert M. Anderson, Deputy Assistant Commissioner for Trademarks (C), 11/95

Edward P. Kazenske, Executive Assistant to the Commissioner and Director of Interdisciplinary Programs (C), 11/95

Boyd L. Alexander, Deputy Assistant Commissioner for Information Systems (C), 11/94

Bureau of Export Administration

Sue Eckert, Deputy Assistant Secretary for Planning (NC), 11/95

Frank Deliberti, Director of Export Enforcement (C), 11/95

Robert F. Kugelman, Director of Administration (C), 11/95

Dated: November 5, 1993.

Marcia P. Kirksey,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 93-28324 Filed 11-17-93; 8:54 am]

BILLING CODE 3510-BS-M

Bureau of Export Administration

Action Affecting Export Privileges; Ali Reza Foyuzi Yousefi; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Ali Reza Foyuzi Yousefi with addresses at P.O. Box 1341, Tajresh, Tehran, Iran 19395 and 38 Firouzkh, Tajresh, Tehran, Iran.

On July 26, 1989, Ali Reza Foyuzi Yousefi (hereinafter referred to as "Yousefi") was convicted in the U.S. District Court for the District of South Carolina of, among other crimes, one count of violating section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990 and Supp. 1993)) ("AECA"), by exporting a cathode assembly for a Varian and Associates VA-868A klystron tube from the United States to Switzerland without obtaining the required export license or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. 2401-2420 (1991, Supp. 1993, and Pub. L. 103-10, March 27, 1993)) ("EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1993)) ("the Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Yousefi's conviction for violating section 38 of the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Yousefi permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 26, 1999. I have also decided to revoke all export licenses issued pursuant to the EAA in which Yousefi had an interest at the time of his conviction.

Accordingly, *it is hereby ordered:*

I. All outstanding individual validated licenses in which Yousefi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Yousefi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 26, 1999, Ali Reza Foyuzi Yousefi, with addresses at P.O. Box 1341, Tajresh, Tehran, Iran 19395, and at 38 Firouzkh, Tajresh, Tehran, Iran, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Yousefi by affiliation,

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until July 26, 1999.

VI. A copy of this Order shall be delivered to Yousefi. This Order shall be published in the **Federal Register**.

Dated: November 9, 1993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93-28413 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-427-812]

Postponement of Final Determinations of Sales at Less Than Fair Value; Calcium Aluminate Cement and Cement Clinker From France and Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4207.

POSTPONEMENTS: On October 27, 1993 (58 FR 58683, November 3, 1993), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of calcium aluminate (CA) cement and cement clinker from France. Also on October 27, 1993 (58 FR 58683, November 3, 1993), the Department issued a negative preliminary determination in the antidumping duty investigation of CA flux from France.

On October 29, 1993, the sole respondent, Lafarge Fondu International and Lafarge Calcium Aluminates Incorporated (collectively, Lafarge), requested that the Department postpone the final determination in the investigation of CA cement and cement clinker from France, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended, (the Act). Lafarge made this request in order to prepare for verification. Also on October 29, 1993, the petitioner, Lehigh Portland Cement Company (Lehigh) requested that the Department postpone the final determination in the investigation of CA flux from France, in accordance with section 735(a)(2)(B) of the Act. Lehigh made this request in order to permit ample time for verification. We find no compelling reasons to deny these requests.

For the reasons above, we are postponing the above-referenced final determinations to the full extent authorized under section 735(a)(2) of the Act (19 U.S.C. 1673d(a)(2)). The final determinations will, therefore, be issued not later than March 18, 1994, which is 135 days after the date of publication of the preliminary determinations. Because of the postponement of the final determinations, the current hearing date of December 21, 1993, and the dates for the submission of case and rebuttal briefs have been changed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies now must be submitted to the Assistant Secretary for Import Administration no later than February 8, 1994, and rebuttal briefs no latter than February 15, 1994. We request that parties in these cases provide with briefs an executive summary of no more than two pages on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Department determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearings will be held on February 18, 1994, at 9:30 a.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: November 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-28423 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-810]

Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review: Mechanical transfer presses from Japan.

SUMMARY: In response to requests by the petitioners and two manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers four manufacturer/exporters of the subject merchandise to the United States during the period February 1, 1992, through January 31, 1993. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 8739) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. On February 25, 1993, the petitioners, the Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC), requested a review of Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI), and Hitachi-Zosen Corp. (Hitachi). Komatsu Ltd. (Komatsu), requested to be reviewed on February 25, 1993, and Aida Engineering, Ltd. (Aida), requested to be reviewed on February 26, 1993. All requests were in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act), and § 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on March 26, 1993 (58 FR 16397), covering the period February 1, 1992, through January 31, 1993.

Two of the four companies named in the initiation notice, IHI and Hitachi, had no shipments to the United States during the period of review. We analyzed the responses of Aida and Komatsu to the Department's antidumping questionnaire. The Department has now conducted the review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

This review covers sales by Aida and Komatsu of MTPs from Japan entered into the United States during the period February 1, 1992, through January 31, 1993. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. See "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992. The review also does not cover Aida's FMX series cold forging press, with optional transfer feed unit, which is the subject of a pending scope ruling. If the Department determines that the FMX press is within the scope of the antidumping duty order, we may include sales of FMX presses by Aida in the final results of this administrative review.

Verification

We verified the questionnaire responses of Aida and Komatsu between September 28, 1993, and October 4, 1993, at the companies' offices in Japan.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price for Aida and Komatsu because all sales were made directly to unrelated parties prior to importation into the United States. U.S. price was based on packed, ex-factory, ex-godown, f.o.b. Japanese or U.S. port, or delivered prices, as appropriate. We made deductions, where applicable, for foreign inland freight and insurance, ocean freight, brokerage and handling, stevedoring charges, loading charges, marine insurance, U.S. Customs duties and fees, U.S. inland freight, and supervision of installation charges.

As a result of verification, we adjusted the reported costs in those instances where costs were not appropriately quantified or valued. For Aida, we revised the reported warranty expense to include costs discovered at verification which were not reported in Aida's questionnaire response. For Komatsu, we adjusted the charges for loading, ocean freight, and foreign inland freight, which had been incorrectly reported.

Foreign Market Value

We have preliminarily determined that models of MTPs sold in the home market are not comparable to the U.S. models sold during the period of review. This is due, in large part, to the custom-built nature of MTPs. Accordingly, the Department has used constructed value (CV), as defined in section 773(e) of the Tariff Act, to calculate foreign market value (FMV).

We calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit and packing. We used the respondents' CV data, except in the following instances where the costs were not appropriately quantified or valued:

For Aida:

1. We increased Aida's submitted cost information to account for its understatement of inputs provided by a related party supplier.

For Komatsu:

1. We adjusted the submitted general and administrative (G&A) expenses to exclude the gain on the sale of real estate.
2. We increased Komatsu's submitted cost information to account for its understatement of inputs provided by a related party supplier.

We made circumstance-of-sale adjustments to CV for credit, export proceeds insurance, advertising, warranty expenses and product liability insurance to reflect the differences between the home market and U.S. costs. We made an addition to CV for commissions on the U.S. sales, and subtracted from the CV the amount of home market selling expenses up to the amount of the U.S. commissions. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, the Department preliminarily determines that the following margins exist for the period February 1, 1992 through January 31, 1993:

Manufacturer/exporter	Margin (percent)
Aida Engineering, Ltd.	3.51
Komatsu Ltd.	0.00
Ishikawajima-Harima Heavy Ind.	[1] 0.00
Hitachi-Zosen Corporation	[2] 14.51

[1] No shipments during the period. Rate is from the last final results of review for this company.

[2] No shipments during the period. Rate is the "all others" rate from the less than fair value (LTFV) final determination, since this company was not specifically named in the final determination or a completed review.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44

days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. The all others rate is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 8, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28424 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–009]

Nitrocellulose From France; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on nitrocellulose from France.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 17, 1993.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1983, the Department of Commerce (the Department) published an antidumping duty order on nitrocellulose from France (48 FR 36303). The Department has not received a request to conduct an administrative review of this order for more than four consecutive annual anniversary months (August 3, 1993, was the fifth annual anniversary month).

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On August 3, 1993, the Department published an "Opportunity to Request Administrative Review" for the period August 1, 1992 through July 31, 1993 (58 FR 41239). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than December 17, 1993, domestic interested parties, as defined in § 353.2(k)(3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by August 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this intent to revoke by December 17, 1993, we shall conclude that the duty order is not longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 29, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–28425 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–508–806, C–201–816, C–307–810]

Initiation of Countervailing Duty Investigations: Phthalic Anhydride From Israel, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: The following officials of the Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, DC 20230, may be contacted for further information: Gary Bettger (202) 482–2239 for Israel; Stephanie Hager (202) 482–5055 for Mexico; and Elizabeth Graham (202) 482–4105 for Venezuela.

The Petition

On October 22, 1993, we received petitions in proper form filed by Aristech Chemical Corporation; BASF Corporation; Koppers Industries, Inc.; and Stepan Company on behalf of the

United States phthalic anhydride (PA) industry. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Israel, Mexico and Venezuela receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Israel and Mexico are each a "country under the Agreement" within the meaning of section 701(b) of the Act. Title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Israel and Mexico materially injure, or threaten material injury to, a U.S. industry.

On August 31, 1990, Venezuela became a contracting party to the General Agreements on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires a finding that the GATT does not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party and the merchandise within the scope of the petition which is imported under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2917.35.00, enters duty-free, the ITC is required to determine whether, pursuant to section 303(a)(2) of the Act, imports of this merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioners have stated that they are interested parties, as defined in section 771(9)(C) of the Act, and that they have filed the petitions on behalf of the U.S. industry producing the merchandise subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

For purposes of these investigations, PA is an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although sometimes it is produced from napthalene. PA is predominately used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. The subject PA is produced in two physical forms, molten and flaked.

The PA subject to these investigations is currently classified under subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Investigations

The Department has examined the petitions on PA from Israel, Mexico and Venezuela and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers or exporters of PA receive countervailable subsidies. The following programs are included in our investigations.

Israel

1. Encouragement of Capital Investments Law (ECIL) of 1959
   a. Income tax exemptions
   b. Capital grants
   c. Research and development grants
2. Exchange Rate Risk Insurance Scheme (EIS)

Mexico

1. Preferential pricing of orthoxylene feedstock
2. Short-term pre-export financing from Bancomex
3. Short-term import financing from Bancomex
4. PITEX ("Duty-Free Imports for Companies that Export")
5. Accelerated depreciation allowance

Venezuela

1. Preferential pricing of orthoxylene feedstock
2. Export subsidies
   a. FINEXPO preferential short-term export loans
   b. FINEXPO preferential long-term export loans
   c. Excessive tariff drawbacks
3. Preferential tax exemptions under the 1966 Income Tax Law

We are not including the following programs which are alleged to be benefitting producers of the subject merchandise in Venezuela. (For a more detailed discussion, see the Memorandum to Barbara R. Stafford from Team dated November 12, 1993, on file in the Central Records Units of the Main Commerce Building.)

1. Preferential Finance Company of Venezuela (FIVCA) Loans

Petitioners alleged that Venezuelan PA producers received preferential FIVCA export financing. However, the preferential FIVCA loan program was determined in previous cases to be a domestic, not an export, program and petitioners have provided no evidence to the contrary. See e.g. Final Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763 (June 30 1988). Furthermore, petitioners did not allege or provide any supporting information indicating that the program is specific or that the loans are provided on terms inconsistent with commercial considerations.

2. Provision of Preferential Pricing of Raw Materials for Exports

The program was found not to exist in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Circular Welded Non-Alloy Steel Pipe from Venezuela 57 FR 42964 (Sept. 17, 1992). Petitioners have provided no evidence to the contrary.

3. Export Incentives

Petitioners describe a program that appears to be the Export Bond Program. The Export Bond Program was designed to provide partial compensation for the requirement that exporters convert foreign currency export earnings to bolivars at an official rate significantly lower than the free market rate. This program was previously found to be amended to cover only agricultural products (see Final Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela; and

Countervailing Duty Order for Certain Ferrosilicon From Venezuela, 58 FR 27539 (May 10, 1993)). Petitioners have not provided any evidence to the contrary.

4. Government Grants to Oxidor

Petitioners allege that PEQUIVEN (a state-owned orthoxylene supplier) provided funding to Oxidor. Petitioners basis for this allegation is a June 2, 1992 General System of Preference (GSP) petition, in which Aristech, a petitioning company, noted that PEQUIVEN had "provided significant funding to at least one Venezuelan PA producer (Oxidor)." Petitioners have provided no information that this funding is provided pursuant to a specific government program. In addition, petitioners have made no arguments regarding the specificity of the funding.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determinations by the ITC

The ITC will determine by December 6, 1993, whether there is a reasonable indication that a United States industry is being materially injured, or threatened with material injury, by reason of PA imports from Israel, Mexico and Venezuela. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: November 12, 1993.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-28428 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-351-822, A-437-803, A-508-805, A-201-815 and A-307-809]

Initiation of Antidumping Duty Investigations: Phthalic Anhydride From Brazil, Hungary, Israel, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-6320, or 482-4929.

INITIATION OF INVESTIGATIONS:

The Petition

On October 22, 1993, we received a petition filed in proper form by Aristech Chemical Corporation, BASF Corporation, Koppers Industries, Inc., and Stepan Company (petitioners). In accordance with 19 CFR 353.12, the petitioners allege that imports of phthalic anhydride (PA) from Brazil, Hungary, Israel, Mexico and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Period of Investigation

The period of investigation is May 1, 1993, to October 31, 1993.

Scope of Investigations

For purposes of these investigations, phthalic anhydride (PA) is an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although it is sometimes produced from napthalene. PA is predominantly used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. The subject PA is produced in two physical forms, molten and flaked.

The PA subject to these investigations is currently classifiable under subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based United States Price (USP) on 1993 monthly U.S. Customs values of imported Brazilian PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based foreign market value (FMV) on both prices and constructed value (CV). Petitioners' prices are not actual price quotes, but rather are annualized dollar figures. Accordingly, we believe petitioners' calculation based on CV is the most appropriate methodology for purposes of initiation. In calculating CV, petitioners based the cost on the U.S. industry experience adjusted for known 1993 differences in Brazilian production expenses. Petitioners used the statutory minimum of 10 and eight percent for selling, general and administrative expenses (SG&A) and profit, respectively. We made no adjustments to petitioners' calculations.

The dumping margin for PA from Brazil based on a comparison of USP to FMV alleged by petitioners is 65 percent.

Hungary

Petitioners based USP on 1993 monthly U.S. Customs values of imported Hungarian PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners, alleging that Hungary is a non-market economy (NME) country, based FMV on CV using U.S. factors of production valued using costs from Brazil. Petitioners explained that they approached numerous sources to try to obtain Hungarian factors of production, but were unable to obtain this information. Consequently, petitioners used U.S. factors of production, an approach that they claimed is more conservative because the U.S. production facility used as a basis for comparison has greater capacity utilization and is more efficient than the Hungarian producer.

The range of dumping margins of PA from Hungary based on a comparison of

USP to FMV alleged by petitioners is 43–74 percent.

Israel

Petitioners based USP on 1993 monthly U.S. Customs values of imported Israeli PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based FMV on a home market price as well as on CV. For purposes of initiation, we have accepted petitioners' price analysis, which is based on an Israeli PA producer's ex-factory price, exclusive of taxes. By accepting petitioners' price calculations, we have not evaluated the CV.

The dumping margin of PA from Israel based on a comparison of USP to FMV alleged by petitioners is 22 percent.

Mexico

Petitioners based USP on 1993 monthly U.S. Customs values of imported Mexican PA. These customs values are exclusive of transportation, insurance, and import duties. No adjustments were made to USP.

Petitioners based FMV on home market prices as well as on CV. For purposes of initiation, we have accepted petitioners' price analysis based on average monthly, ex-factory, net tax prices charged to Mexican customers, as obtained from a confidential industry source. By accepting petitioners' price calculations, we have not evaluated the CV.

The range of dumping margins of PA from Mexico based on a comparison of USP to FMV alleged by petitioners is 30–40 percent.

Venezuela

Petitioners based USP on monthly U.S. Customs values of imported Venezuelan PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based FMV on CV because they were unable to obtain Venezuelan PA price information. Petitioners calculated CV based on U.S. industry experience, adjusted for known differences between the U.S. and Venezuelan manufacturing process. Petitioner used the statutory minimum of 10 and eight percent for SG&A, and profit, respectively. We made no adjustments to petitioners' calculations.

The range of dumping margins for PA from Venezuela based on a comparison of USP to FMV alleged by petitioners is 28–52 percent.

Initiation of Investigations

We have examined the petition on PA from Brazil, Hungary, Israel, Mexico, and Venezuela, and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PA from Brazil, Hungary, Israel, Mexico, and Venezuela are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by December 6, 1993, whether there is a reasonable indication that imports of PA from Brazil, Hungary, Israel, Mexico and Venezuela are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination on any one of these investigations will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28426 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–831–803, A–832–803, A–822–803, A–833–803, A–835–803, A–841–803, A–842–803, A–843–803, A–844–803, A–447–803, A–449–803, A–451–803]

Titanium Sponge From Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan; Intent To Revoke Antidumping Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping findings on titanium sponge from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 17, 1993.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Treasury Department published an antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138). On August 12, 1992, the finding was transferred to the individual states when the Department of Commerce transferred the antidumping finding on titanium sponge from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 36070). The Department of Commerce has not received a request to conduct an administrative review of these findings for more than four consecutive annual anniversary months (August 1993 was the fifth annual anniversary month).

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that a finding is no longer of interest to interested parties and will revoke the finding if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On August 3, 1993, the Department published an "Opportunity to Request Administrative Review" for the period August 1, 1992 through July 31, 1993 (58 FR 41239). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke these findings.

Opportunity To Object

No later than December 17, 1993, domestic interested parties, as defined in section 353.2(k)(3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping findings.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by August 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this

intent to revoke on or before December 17, 1993, we shall conclude that the findings are no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 29, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-28427 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 931061-3261]

Standard Reference Data Grants and Cooperative Agreements Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Standard Reference Data Program (SRD) of the National Institute of Standards and Technology (NIST) is continuing its program for grants and cooperative agreements to provide critically evaluated data to the scientific and engineering communities. For the next two years, the areas of priority are thermochemistry and molecular spectroscopy, although proposals in other areas will be considered. Typical data projects are supported on the order of $15,000 to $30,000 in annual funding. It is anticipated that in FY 1994 a total of $100,000 will be available and that four to six projects will be selected. Similar funds are expected for FY 1995.

DATES: Proposals must be received no later than the close of business December 20, 1993.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, revised Standard Form 424 (Rev. 4/88) to: Standard Reference Data Program, Attention: Mr. Malcolm W. Chase, National Institute of Standards and Technology, A323 Physics Building, Gaithersburg, MD 20899-0001.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm W. Chase—(301) 975-2200.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 290) and by the Standard Reference Data Act of 1968 (Public Law 90-396), the NIST Standard Reference Data (SRD) Program conducts directly and through grants and cooperative agreements a program to collect, evaluate, and disseminate scientific and technical data. The emphasis of the program is on data evaluation, that is, the assessment of the quality and reliability of data by examining their documentation, their adherence to known scientific and engineering laws and principles, and their comparison to related data. Academic institutions, non-Federal agencies, and independent and industrial laboratories are eligible to apply. The program is listed in the Catalog of Federal Domestic Assistance under the following name and number: National Standard Reference Data System; 11.603.

Because of the high cost of data programs, the Standard Reference Data Act attempts to maximize cooperation among all interested groups. Many SRD projects involve cooperative efforts to maximize the output from limited resources. Matching funds are not required for these awards.

Grants awarded under the SRD program will generally provide financial assistance to the recipient without substantial NIST involvement in the data project. Cooperative Agreements awarded for SRD data projects will generally involve a close working relationship between a group of NIST experts and the recipient and, in some cases, financial assistance. However, any financial assistance whether for Grants or for Cooperative Agreements, will be provided on a yearly basis.

The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The National Institute of Standards and Technology reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal Government purposes, copyrights developed or purchased by a recipient under an SRD grant.

Program Objectives

Standard Reference Data is responsible for program management and coordination of the National Standard Reference Data System (NSRDS). The major aim of the program is to provide critically evaluated numerical data to the scientific and technical community in a convenient and accessible form. Other outputs, such as annotated bibliographies, data collections, and procedures for computerized handling of data are also made available. A second aim is to provide feedback into experimental and theoretical programs to help raise the general standards of measurement and provide guidance as to the relative needs of various data. By communicating the experience gained in evaluating the world output of data in the physical sciences, NSRDS helps to advance the level of techniques applied to research and development and improve the reliability of physical measurements. A third aim is to contribute to the U.S. competitive edge through providing technical efforts with the most recent and reliable reference data on which to base design of processes and applications.

The technical scope of the program gives primary emphasis to well-defined physical and chemical properties of substances and systems which are well characterized. Also included are engineering materials (alloys, ceramics, etc.) whose composition may vary only within clearly stated ranges. While these definitions leave many borderline cases, the overall intent is to concentrate the effort on intrinsic properties that are clearly defined in terms of accepted physical theory and substances whose composition and history are so well known as to justify evaluation of the data. Biological properties and data relating to large natural systems (e.g., the atmosphere, the oceans) also fall outside the program.

For the upcoming 2-year period, SRD is interested in funding data evaluation projects. Although the major emphasis is in thermodynamics and spectroscopy, SRD will entertain other subject areas.

a. Thermodynamic Data: Evaluated thermochemistry and thermophysics data for inorganic and organic substances

b. Molecular Spectroscopy: Evaluated spectroscopic data for diatomic and polyatomic molecules, with emphasis on homonuclear molecules

Proposal Review Process

All proposals will be assigned to the appropriate SRD Program Manager for the above programs for review, including internal and external peer review, and recommendations on funding. The following items will be taken into consideration in the Program Manager's recommendation to the Program Chief:

1. The existence or planned existence of a NIST data activity in this area (see Program Objectives above).
2. Previous data experience of the applicant.
3. The importance to the U.S. industrial scientific and engineering community.
4. Technical merit of the proposal.

Applicants should allow up to 60 days' processing time. Proposals will be evaluated for technical merit by at least three professionals from NIST, the

Standard Reference Data Program, or technical experts from other government agencies or the community at large.

Evaluation Criteria

a. Need for data activity	0–20 points.
b. Complementary to existing or planned NIST data activity.	0–10 points.
c. Related to priority list for SRD FY 94 program.	0–40 points.
d. Experience of proposing group with respect to.	
i. previous data evaluation—general.	0–30 points.
ii. previous data evaluation in this area.	0–30 points.
iii. experience in computerized databases—general.	0–10 points.
iv. experience in computerized databases in this area.	0–20 points.
e. Feasibility of completing project in proposed time.	0–20 points.
f. Technical merit of the proposal.	0–25 points.
Total	0–205 points.

All proposals will be evaluated and given numeric ratings. Awards will be made based on the high score and availability of funds.

Paperwork Reduction Act

The SF–424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, and the following explanation is provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B;

Lower Tier Certifications

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Applicants are hereby notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are also notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DOC are made.

Awards under the Standard Reference Data Program shall be subject to all applicable Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Applicants are reminded of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: November 10, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–28429 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application to modify permit no. 810 (P524).

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, 96–043 Ala Ike, Pearl City, HI 96782, has requested a modification to Permit No. 810.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Sliver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS,

NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 810, issued on January 12, 1993 (58 FR 5360) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing and Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 810 authorizes the Permit Holder to: conduct scientific research on humpback whales (*Megaptera novaenangliae*) over a 5-year period. The Permit Holder requests that the Permit be modified to include Hawaiian monk seals (*Monachus schauinslandi*) and several odontocete species indigenous to Hawaii.

Dated: November 10, 1993.

William W. Fox, Jr.,

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

[FR Doc. 93-28409 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-22-M

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearings

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

ACTION: Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a public hearing on draft Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources for the Gulf of Mexico and South Atlantic. Amendment 7 proposes to: (1) Suballocate the Eastern zone commercial quota for Gulf group king mackerel equally between the east and west coasts of Florida (the North area and the South/West area are separated at the boundary between Florida's Dade and Monroe counties); and (2) further suballocate the South/West area quota between net and troll fishermen. The Council is also considering an endorsement to the king mackerel vessel permit for the Eastern zone, that would allow fishermen to fish in either the northern area or the southern area each season, but not in both.

DATES: Written comments on the proposed action must be received by January 3, 1994. The hearing is scheduled for Tuesday, November 30, 1993, from 7 p.m., to 10 p.m.

ADDRESSES: Comments should be addressed to Robert K. Mahood, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, South Carolina 29407-4699. The hearing will be held at the Fort Pierce Civic Center, room 101, 2300 Virginia Avenue, Fort Pierce, Florida (407-468-1415).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, (803-571-4366).

SUPPLEMENTARY INFORMATION: The hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Carrie Knight at the above Council address by November 22, 1993.

Dated: November 12, 1993.

David S. Crestin,

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

[FR Doc. 93-28359 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-22-M

National Weather Service, Modernization Transition Committee; Meeting

Time and date: December 8, 1993 from 8:30-11:30 a.m. and 1-4 p.m.; and December 9, 1993 from 9 a.m.-12 noon and 1-2 p.m.

Place: This meeting will take place at the Quality Hotel, 8727 Colesville Road, Silver Spring, Maryland 20910.

Status: The meeting will be open to the public. The last 30 minutes of the last day will be set aside for oral comments or questions from the public. Approximately 20 seats will be available on a first-come first-served basis for the public.

Matters to be considered: This meeting will be to familiarize Committee members with the National Weather Service and its modernization activities and to initiate consultation on the agenda items noted below. Action items will be addressed at the second meeting of the Committee tentatively scheduled in January 1994. The meeting will cover: (1) the National Weather Service roles and responsibilities; (2) Modernization and Associated Restructuring (MMAR); (3) the role of the Committee; (4) Public Law 102-567; (5) the modernization criteria required by section 704 of Public Law 102-567 (initiate consultation); and (6) the National Implementation Plan (initiate consultation). The Chairman of the National Research Council's (NRC) National Weather Service Modernization Committee will address the Modernization Transition Committee on the role of the NRC's Modernization Committee and their report on modernization criteria that was issued in July, 1993.

Contact person for more information: Mr. Senator Raygor, National Weather Service, Transition Program Office, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910 telephone: 301-713-0391.

Dated: November 12, 1993.

Elbert W. Friday,

Assistant Administrator for Weather Services.

[FR Doc. 93-28360 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-12-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed International Edible Oils Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in the international edible oils index futures contract. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K

Street NW., Washington, DC 20581. Reference should be made to the CBT international edible oils index futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Exchange in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 12, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93-28335 Filed 11-17-93; 8:45 am]

BILLING CODE 6351-01-M

Financial Products Advisory Committee

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee (FPAC) will conduct a public meeting in the Lower Level Hearing Room (B-1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on December 2, 1993, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

1. A briefing on the Commission's recently issued Study of Swaps and Off-Exchange Derivatives;
2. A panel discussion of regulators and industry representatives on issues relating to coordination of regulation of managed funds;
3. A briefing on the recent Treasury Department decision concerning the tax treatment of gains and losses from hedging;
4. Briefing by CFTC staff on current regulatory issues including recent litigation concerning application of the Treasury Amendment, recently promulgated rules on insider trading and update on development of risk assessment rules; and
5. Other items for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Acting Chairman Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC., on November 16, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-28517 Filed 11-17-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact—Construction and Operation of the Knolls Site Low Level Radioactive Material Processing Facility, Schenectady County, NY

AGENCY: Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors has prepared an Environmental Assessment of the proposed action to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

The Environmental Assessment discusses alternatives to the proposed action and concludes that there are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated. The Environmental Assessment summarizes and references the extensive body of existing published reports which discuss the environmental performance of the Knolls Site, including the releases of radioactivity from the Site and the absence of environmental impact from Site operations. The Environmental Assessment discusses the fact that the operations and amounts of radioactivity processed will remain unchanged.

Naval Reactors provided a draft of this Environmental Assessment to New York State for review and comment. New York State did not have any comments.

Based on the analysis in the Environmental Assessment, Naval Reactors considers that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental

Policy Act (NEPA) of 1969, (42 U.S.C. 4321 et seq.). Therefore, Naval Reactors proposes to issue a Finding of No Significant Impact. In accordance with the Council on Environmental Quality regulations which allow agencies to determine circumstances under which public review of proposed Findings are appropriate, Naval Reactors is making the proposed Finding and the Environmental Assessment available for public comment for a period of 30 days following the date of **Federal Register** publication of this notice. Comments postmarked within the 30 day public comment period will be considered by Naval Reactors prior to a final determination whether to issue the Finding of No Significant Impact or to prepare an Environmental Impact Statement for the proposed action.

DATES: Comments on the proposed Finding of No Significant Impact may be sent to Mr. Richard A. Guida, Associate Director for Regulatory Affairs, Office of Naval Reactors at the address indicated below. Comments must be postmarked by December 17, 1993 to ensure consideration.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information on the Finding of No Significant Impact for construction and operation of the Knolls Site Low Level Radioactive Material Processing Facility, the National Environmental Policy Act process associated with this proposed action, or wishing a copy of the Environmental Assessment should contact Ms. Lisa Megargle, U.S. Department of Energy, Office of Naval Reactors (NE–60), Washington, DC, 20585, (703) 603–6126.

SUPPLEMENTARY INFORMATION:

Background

The Naval Nuclear Propulsion Program is a joint Navy/DOE program established in Presidential Executive Order 12344 (permanently enacted by Public Law 98–525, 42 U.S.Code 7158). The Office of Naval Reactors is the Naval Nuclear Propulsion Program organization within the DOE. Under the law, Naval Reactors is responsible for all matters pertaining to Naval nuclear propulsion including "* * * research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition of naval nuclear propulsion plants * * *" and "* * * the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities * * *." Naval Reactors is responsible for the Knolls Atomic Power Laboratory, which conducts research and development work on improved nuclear propulsion plants for U.S. Navy warships.

Proposed Action

The proposed action is to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

Alternatives Considered

There are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated.

Environmental Considerations

An extensive body of existing environmental reports document the environmental performance of the Knolls Site, including current waste processing operations at the Site. Radiation exposure to any member of the public due to the Knolls Site is too small to be measurable. The total annual radiation exposure to the Site workforce is less than the amount allowed by Federal regulations for a single worker. Releases of airborne radionuclides result in off-site doses that are less than one percent of the U.S. Environmental Protection Agency standard. The General Accounting Office recently completed a thorough fourteen month review of environment, health, and safety matters (including reactor safety) at DOE sites under the cognizance of Naval Reactors, including the Knolls Site. The General Accounting Office reported to Congress that they found no significant deficiencies. Since operations to be conducted in the proposed facility are the same as those currently conducted in Building H2, the proposed action would result in no change from the current insignificant environmental impacts from the Knolls Site.

Proposed Determination

Based on the information and analysis in the Environmental Assessment, Naval Reactors considers the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Naval Reactors proposes to issue a Finding of No Significant Impact and will make a final determination following a 30 day public review period.

Issued at Arlington, Virginia this 4th day of November 1993.

B. DeMars

Deputy Assistant Secretary for Naval Reactors.

[FR Doc. 93–28407 Filed 11–17–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. JD94–00822T Texas–153]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 12, 1993.

Take notice that on November 1, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Bear Grass (Travis Peak), underlying certain portions of Freestone and Leon Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and consists of portions of the following surveys:

Isaac Connelly Survey, Abstract A–117
Isaac Connelly Survey, Abstract A–1152
Getrudis Diaz Survey, Abstract A–178

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28350 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-45-005]

ANR Pipeline Co.; Report of Refunds

November 12, 1993.

Take notice that on July 29, 1993, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of a $484,907.84 refund made to High Island Offshore Systems (HIOS) on July 9, 1993. ANR states that the refund is in compliance with section 1. of a July 28, 1992, Stipulation and Agreement approved by the Commission on October 26, 1992. The refund covers services ANR provided for HIOS under Contract X-64 at Grand Chenier from January 1, 1992 through December 31, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28356 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-39-003]

ANR Pipeline Co.; Notice of Report of Refunds

November 12, 1993.

Take notice that on October 28, 1993, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of a $173,966.36 refund made to High Island Offshore Systems (HIOS). ANR states that the refund is in full compliance with Section 1. of a March 3, 1993, Stipulation and Agreement approved by the Commission on May 4, 1993. The refund covers services ANR provided for HIOS under Contract X-64 at Grand Chenier from January 1, 1993 through August 31, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28357 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-35-001]

Colorado Interstate Gas Co.; Revised Tariff Filing

November 12, 1993.

Take notice that on November 5, 1993, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 14, to be effective November 10, 1993. CIG states that Sheet No. 14 reflects CIG's proposed Account 191 direct bill amounts, by customer, that were included on appendix A of CIG's initial filing in this proceeding on October 29, 1993.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28358 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-22-004]

Natural Gas Pipeline Co. of America; Filing of Report of Refund

November 12, 1993

Take notice that on September 8, 1993, Natural Gas Pipeline Company of America (Natural), tendered for filing its Report of Distribution of Refunds distributed to its jurisdictional customers.

Natural states that on September 8, 1993, it refunded $798,224.33 to its jurisdictional customers in accordance with the provisions of Section 34 of the General Terms and Conditions of Natural's FERC Gas Tariff, Fourth Revised Volume No. 1.

Natural states that a copy of this report has been mailed to each of Natural's jurisdictional customers, intervenors and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28355 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-67-070]

Texas Eastern Transmission Corp.; Proposed Changes to FERC Gas Tariff

November 12, 1993.

Take notice that on October 28, 1993, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on appendix A to the filing, with a proposed effective date of December 1, 1993.

Texas Eastern states that the tariff sheets submitted in this filing reflect the base tariff rates applicable for the period December 1, 1993 through November 30, 1994 (Year 4) pursuant to the terms of the Stipulation and Agreement (Settlement) in Texas Eastern Transmission Corporation, Docket Nos. RP88-67, et al. (Phase II/PCBs).

On December 17, 1991, Texas Eastern filed the Settlement regarding rate recovery of costs associated with environmental assessment and remediation costs related to polychlorinated biphenyl (PCB) contamination of its system and sites adjacent to its system. The Commission approved the Settlement, and it became final and non-appealable on April 17, 1992. Pursuant to the terms of the Settlement, in section 26 "Article VI Adjustment" of Texas Eastern's FERC Gas Tariff, Texas Eastern is required to submit on or before October 31, 1993, tariff sheets that set forth the Settlement rates for Year 4. Texas Eastern states that the proposed tariff sheets have been filed to comply with this requirement of the settlement.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers, interested state commissions, and all parties on the service list in Docket Nos. RP88-67, et al. (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 19, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28354 Filed 11-17-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4802-9]

Public Water Supervision Program: Program Revision for the State of Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Connecticut is revising its approved State Public Water Supervision Primacy Program. Connecticut has adopted drinking water regulations for total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by December 17, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 17, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 17, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Connecticut Department of Public Health and Addiction Services (formerly Connecticut Department of Health Services),Water Supplies Section, 21 Grand Street, Hartford, CT 06106.

and

U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, One Congress Street, 11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Mark Sceery, U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565-3604.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 27, 1993.

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 93-28391 Filed 11-17-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4802-8]

Notice of Public Water Supervision Program: Program Revision for the State of Rhode Island

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Rhode Island is revising its approved State Public Water Supervision Primacy Program. Rhode Island has adopted: (1) Drinking water regulations for total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544); and (2) filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primacy Drinking Water Regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated on June 29, 1989 (54 FR 27486). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by December 17, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 17, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 17, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Rhode Island Department of Health, Division of Water Quality,3 Capitol Hill, Providence, RI 01908.

and

U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, One Congress Street, 11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ellie Kwong, U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3620.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 19, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–28390 Filed 11–17–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 12, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0315.

Title: Section 76.221, Sponsorship identification; list retention; related requirements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 450 recordkeepers; 0.5 hours average burden per recordkeeper; 225 hours total annual burden.

Needs and Uses: A cable system operator is required to retain a list of the executive officers, or board of directors, or executive committee, etc. of the organization paying for such matter, when a cablecast is of a political or controversial nature pursuant to § 76.221(d). Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each advertiser (§ 76.221(f)). These lists shall be made available for public inspection. The data is used by the public so that they may know by whom they are being persuaded.

OMB Number: 3060–0393.

Title: Section 73.54, Antenna resistance and reactance measurements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 200 recordkeepers; 1 hour average burden per recordkeeper; 200 hours total annual burden.

Needs and Uses: Section 73.54(d) requires that AM licensees file notification with the FCC when determining power by the direct method pursuant to 47 CFR 73.51. This notification requirement is accomplished through a formal application process and has OMB approval under FCC Form 302 (OMB Control No. 3060–0029). In addition, § 73.54(d) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station. The background information is used by FCC staff in field investigations to ensure that measurements are taken properly and by station licensees to identify any problems that may occur.

OMB Number: 3060–0209.

Title: Section 73.1920, Personal attacks.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1,375 responses; 0.5 hours average burden per response; 688 hours total annual burden.

Needs and Uses: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 73.1920 requires that a licensee of a broadcast station must transmit to the person or group attacked a notification of the date, time and identification of the broadcast of a personal attack; a script or tape of the attack, and an offer of a reasonable opportunity to respond to the attack over the licensee's facilities. This data is used to notify a person or group that a personal attack has been made and to afford that person or group attacked an opportunity to respond to the attack over the licensee's facilities.

OMB Number: 3060–0175.

Title: Section 73.1250, Broadcasting emergency information.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 50 responses; 1 hour average burden per response; 50 hours total annual burden.

Needs and Uses: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to: Tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station. The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-28381 Filed 11-17-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Whitman T. Eastman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Whitman T. Eastman, and Margaret M. Eastman, Gunnison, Colorado; to acquire an additional 22.1 percent of the voting shares of First National Bankshares of Gunnison, Inc., Gunnison, Colorado, for a total of 36.4 percent, and thereby indirectly acquire First National Bank of Gunnison, Gunnison, Colorado.

2. James Miller, Walthill, Nebraska; to acquire an additional 10.6 percent of the voting shares of FNB Insurance Agency, Inc., Walthill, Nebraska, for a total of 31.8 percent, and thereby indirectly acquire First National Bank, Walthill, Nebraska.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28375 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

MegaBank Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1993.

A. MegaBank Financial Corporation, Englewood, Colorado; to engage *de novo* through its subsidiary, Colorado Partnership Corporation, Englewood, Colorado, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28376 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio, to acquire certain assets and assume certain liabilities of CTI Logistics, Inc., Rahway, New Jersey, and thereby engage in freight payments data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The data processing activities proposed to be conducted include pre-payment audit, rate analysis, electronic funds transfer, cost accounting functions, and the collection of economic and financial

data resulting from the provision of such freight payment services.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28377 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

Vermont Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Vermont Financial Services Corp., Brattleboro, Vermont; to acquire 100 percent of the voting shares of West Mass Bankshares, Inc., Greenfield, Massachusetts, and thereby indirectly acquire United Savings Bank, Conway, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Summerville/Trion Bancshares, Inc., Summerville, Georgia; to acquire up to 7 percent of the voting shares of Bank of Adairsville, Adairsville, Georgia, and Peoples Bank of Crawfordville, Crawfordville, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bancorp of New Glarus, Inc., New Glarus, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of New Glarus, New Glarus, Wisconsin.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. United Bankers' Bancorporation, Inc., Bloomington, Minnesota; to become a bank holding company by acquiring at least 85 percent of the voting shares of United Bankers' Bank, Bloomington, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Austin Bancshares, Inc., Kansas City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Waverly Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Bank of Waverly, Waverly, Missouri.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hill Bancshares Holdings, Inc., Weimar, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Hill Bank & Trust Co., Weimar, Texas.

2. Odem Bancshares, Inc., Odem, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Odem, Odem, Texas.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28378 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service Performance Review Board Membership; Addendum

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

These additional individuals will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Kenneth S. Apfel
Beverly Dennis, III
Anna L. Durand
Samuel C. Fish
Sharon Smith Holston
Robert A. Israel
Arthur C. Jackson
Joseph J. Jacobs, M.D.
Duane L. Jeanotte
Barry L. Johnson, Ph.D.
John H. Kelso
Eugene Kinlow
Darrell G. Kirch, M.D.
Irwin J. Kopin, Ph.D.
Edward D. Korn, Ph.D.
Carl Kupfer, M.D.
Risa J. Lavizzo-Mourey, M.D.
Richard A. Leman, Ph.D.
Claude J. Lenfant, M.D.
Joseph R. Leone
Arthur S. Levine, M.D.
Samuel Lin, M.D., Dr.P.H.
Donald A. B. Lindberg, M.D.
V. Markku Linnoila, M.D.
Lance Liotta, M.D., Ph.D.
David Lipman, M.D.
John D. Mahoney
Thomas Malone, Ph.D.
Audrey Manley, M.D.
John A. McLachlan, Ph.D.
Merle G. McPherson, M.D.
Richard A. Millstein
Jay Moskowitz, Ph.D.
Gary R. Noble, M.D., M.P.H.
Robert Nussenblatt, M.D.
Kenneth Olden, Ph.D.
Barbara Packard, M.D., Ph.D.
Claude F. Pickelsimer
Roy Pickens, Ph.D.
Alan S. Rabson, M.D.
David Rodbard, M.D.
Saul W. Rosen, M.D.
Marla E. Salmon, Sc.D.
Ruth Sanchez-Way, Ph.D.
Philip E. Schambra, Ph.D.
Carol Scheman
Paul M. Schwab
Lawrence E. Shulman, M.D.
James B. Snow, Jr., M.D.
Allen M. Spiegel, M.D.
Edwin M. Sullivan
Frank J. Sullivan, Ph.D.
Sandra Swain, M.D.
Michael Taylor
Judith L. Vaitukaitis, M.D.
Mary Jo Veverka
Josephine T. Waconda
Edwin L. Walker
James Walsh
Judith N. Wasserheit, M.D.
Jacquelyn Y. White
Richard Wyatt, Ph.D.

Dated: November 9, 1993.

Eugene Kinlow,

Acting Assistant Secretary for Personnel Administration.

[FR Doc. 93–28240 Filed 11–17–93; 8:45 am]

BILLING CODE 4551-04-M

Food and Drug Administration

[Docket No. 89D-0368]

Revocation of Action Levels for Residues of Toxaphene in Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the agency's action levels for residues of the cancelled pesticide, toxaphene, in human food and animal feed. The agency has taken this action because the results of FDA monitoring indicate that toxaphene residues are no longer occurring as unavoidable contaminants in the food and feed commodities subject to action levels.

DATES: The revocation of the action levels for unavoidable residues of toxaphene in food and feed is effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 109.4(c)(2) and 509.4(c)(2), FDA is announcing changes in action levels for an added poisonous or deleterious substance. The changes concern the revocation of all action levels for residues of the pesticide toxaphene in certain food and feed.

FDA is responsible under section 402(a)(2)(B) and (a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B) and (a)(2)(C)) for enforcing tolerances for pesticide residues that are established by the Environmental Protection Agency (EPA) pursuant to section 408 of the act (21 U.S.C. 346a) and EPA-established food additive regulations promulgated pursuant to section 409 of the act (21 U.S.C. 348). Under section 402(a)(2)(B) and (a)(2)(C) of the act, food or feed is adulterated if it contains a pesticide residue that is unsafe within the meaning of section 408 or 409 of the act. A pesticide residue is unsafe under the act if the residue exceeds an established EPA tolerance or food additive regulation or if it is one for which there is no established EPA tolerance or food additive regulation. Shipment of adulterated food or feed in interstate commerce is prohibited, (21 U.S.C. 301(a)), and food or feed so shipped is subject to FDA seizure and condemnation under 304 of the act (21 U.S.C. 334).

Tolerances and food additive regulations established by EPA generally apply to pesticide residues resulting from the registered (i.e., approved) use of the chemical in agriculture. In some circumstances, however, FDA encounters pesticide residues in food or feed for which there is no tolerance or food additive regulation, but where the residues present may be due to an unavoidable source of contamination. The pesticides most commonly associated with unavoidable contamination of food and feed are certain chlorinated hydrocarbon pesticides (e.g., DDT), which persist in the environment even after their uses have been discontinued. Generally, tolerances have not been established by EPA for unavoidable pesticide residues that may be present in food or feed.

The act provides that in the absence of a tolerance, any amount of a pesticide residue in a food or feed is unsafe, and therefore renders the food or feed adulterated under section 402(a)(2)(B) or (a)(2)(C) of the act. FDA, in consultation with EPA, has found, however, that the level of unavoidable pesticide residue is frequently so low that it is not of regulatory or public health significance. In cases where the agency has found such contamination levels, it has determined, again in consultation with EPA, that pursuing an enforcement action would provide no substantial benefit to the public. For these situations, FDA has established action levels, usually based on levels recommended by EPA, to define a level of unavoidable contamination at which food or feed may be regarded as adulterated under the act. FDA action levels are guidelines, and are not binding, as discussed in FDA's general policy statement published in the **Federal Register** of April 17, 1990 (55 FR 14359). The action levels currently in effect for unavoidable pesticide residues are contained in Attachment B of Compliance Policy Guide (CPG) 7141.01.

Toxaphene was one of the pesticides in this listing. Its action levels appeared as Attachment B.12 of CPG 7141.01. The action levels for unavoidable residues of this chemical were established for the following commodities: processed animal feed, artichokes, asparagus, cherries, figs, fish, melons, mustard greens, plums, pumpkins, certain root vegetables and small fruits, squash, and turnip greens.

The registered agricultural uses of toxaphene were cancelled by EPA in 1982. The EPA tolerances in 40 CFR 180.138 that were established for residues resulting from these registered uses, however, continued in effect until September 1, 1993. On that date, EPA published a final rule in the **Federal Register** (58 FR 46087) that revoked these tolerances for toxaphene residues.

Prior to EPA's revocation of the toxaphene tolerances, FDA reviewed its regulatory monitoring data for 1991 and 1992, which showed that of the approximately 40,000 samples of food examined by FDA, only two samples were found to contain measurable levels of toxaphene residues—one fish sample contained 0.2 parts per million (ppm) toxaphene and one animal feed (peanut byproduct) contained 0.2 ppm toxaphene. Based upon these limited findings of toxaphene residues, FDA has concluded that toxaphene is no longer persistent in the environment whereby it may be unavoidably contaminating food or feed at levels of regulatory or public health concern. For this reason, FDA has decided to revoke all action levels for unavoidable residues of toxaphene in food and feed, effective September 30, 1993. The agency has advised its district officers to remove the toxaphene action level listing in Attachment B. 12 of CPG 7141.01.

Dated: November 9, 1993.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 93-28372 Filed 11-17-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93F-0385]

Compagnia Italiana di Ricerca e Sviluppo, SRL; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS), has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as an antiscaling agent applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications.

DATES: Written comments on petitioner's environmental assessment by December 17, 1993.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4380) has been filed by Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS), c/o AAC Consulting Group, 1730 Rhode Island Ave. NW., Washington, DC 20036. The petition proposes to amend the food additive regulations to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as an antiscaling agent applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 17, 1993, submit to the Dockets Management Branch written comments regarding the environmental assessment. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28373 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0357]

Science Applications International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Science Applications International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers which may contain food.

DATES: Written comments on the petitioner's environmental assessment by December 17, 1993.

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

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3M4399) has been filed by Science Applications International Corp., 2950 Patrick Henry Dr., Santa Clara, CA 95054. The petition proposes that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers which may contain food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 17, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28374 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Strategic Directions for Cooperative Agreements For Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program for Fiscal Year 1994

The Health Resources and Services Administration (HRSA), announces that during fiscal year (FY) 1994, applications will be accepted to continue the development of the AIDS Regional Education and Training Centers (AETCs) program for one year. This program is authorized under section 776(a), (previously section 788A), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on proposed strategic directions under development for this program.

Public Law 102–408 makes the following revisions to this program:

*Extends the eligibility for awards to include any "public and nonprofit private entity".

*Modifies the list of disciplines in which faculty training could be supported to delete "psychology" and substitutes "mental health practice"—defined elsewhere in the Act as meaning clinical psychology, clinical social work, and marriage and family therapy;

*Provides general authority for training of practitioners to provide for the health care needs of individuals with HIV disease; and

*Develops and disseminates curricula *and resource materials* relating to the care and treatment of individuals with HIV disease *and the prevention* of the disease among individuals at risk of contacting the disease.

Proposed Strategic Directions for AETC Program

The AIDS Education Training Centers program was initially designed to provide information on the prevalence of AIDS and identification of groups at increased risk of HIV infection. As the HIV/AIDS epidemic matured, it became apparent that the AETCs had to shift their priorities from HIV/AIDS information transfer to more intensive clinical training. This shift was necessitated by the introduction of new therapeutic interventions, such as antiretroviral therapies, which offered the promise of delaying the onset of opportunistic infections associated with AIDS. The mission of the AETCs is to address the ever increasing issues surfacing because of the changes in the HIV epidemic by constantly adding new priorities to address new issues. The Bureau of Health Professions and the Division of Medicine have developed new strategic directions which will have to be more fully incorporated into the priorities of the AETC program. These strategic directions include an emphasis on generalism, a continued emphasis on minorities and the underserved and an emphasis on interdisciplinary training. The AETC program review will look at: The structure of the AETC network; the current and projected status of the HIV epidemic, the appropriate role for the AETCs; the approximate proportion of resources that should be devoted to information dissemination, prevention, and treatment; which provider groups should be targeted for training; and emerging issues that AETCs need to devote more of their resources addressing such as HIV in correctional facilities and HIV in border areas.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of HIV infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238).

Interested persons are invited to comment on the proposed strategic directions for the AETC program. All comments received on or before December 17, 1993 will be considered before the strategic directions are finalized.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Land, Parklawn Building, room 4C–25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Approximately $16,106,839 will be available for this program in FY 1994. This amount would support approximately 17 continuation awards averaging $986,375. Only projects which previously received funds in FY 1993, are eligible to receive continuation awards in FY 1994. The AETCs will continue to provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal years 1992 and 1993, HRSA reviewed 17 continuation applications for Cooperative Agreements for AIDS Regional Education and Training Centers (AETCs). All of the continuation applications were funded.

Eligibility and Purpose

Awards are made to accredited public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

1. To train the faculty of schools and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, mental health practice (clinical psychology, clinical social work and marriage and family therapy), allied health, to teach health professions students to provide for the health care needs of individuals with HIV disease;

2. To train practitioners to provide for the health care needs of such individuals;

3. With respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

4. To develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease.

Definitions

"Accredited Health Professional Schools" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as define in section 799(l)(E) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act and a program for the training of physician assistants as defined in section 701(8)(A).

"Academic Health Science Center" means an organization within a post-secondary educational system, which brings together major divisions or programs of health professions instruction, research in the health sciences, and health services.

These definitions are consistent with the use of the terms within other title VII programs administered by HRSA.

Project Requirements

The following project requirements, which were published in the **Federal Register** FY 1989, after public comment dated September 8, 1989, 54 FR 37378, will be continued in FY 1994.

The project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus of FY 1994 will continue to focus on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the primary care providers (i.e., physicians, nurses, dentists, physician

assistants, nurse practitioners, and dental hygienists). In addition, at least fifty percent of project funds must be expended for training activities in high AIDS incidence MSAs identified prior to the competitive award or high AIDS incidence MSAs identified for funding through the "Ryan White" CARE ACT program.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists;
- Training of other health professionals such as mental health care providers and case managers;
- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary care linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkages to "Ryan White" CARE ACT, titles I, II, III, and IV funded health services programs and the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs;
- Linkage to PHS funded migrant (Sec. 329(a)(1) and community health (Sec. 330(a) centers, health care for the homeless programs (Sec. 340) State and local health agencies and health care facilities involved in providing care for HIV infected individuals;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

Collaboration

The AETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, "Ryan White" CARE ACT funded health services programs, the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs, Health Care for the Homeless programs, community and migrant health centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

AETC projects also are encouraged to collaborate with the national network of AIDS Clinical Trial Units (ACTUs) and the Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the Robert Wood Johnson Foundation or the American Foundation for AIDS Research. It is also suggested that projects collaborate with the NIAID Pediatric Clinical Trials Centers.

Degree of Federal Involvement Agreement

Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key AETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

Review Criteria

The review criteria stated below, which were established in the **Federal Register** in FY 1989, dated September 8, 1989, 54 FR 37378, after public comment, will be continued in FY 1994.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;
2. The degree to which the project plan adequately provides for meeting the project requirements;
3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;
4. The soundness of the fiscal plan for assuring effective utilization of funds; and
5. The potential of the project to continue on a self-sustaining basis after the period of support.

Definitions

The following definitions apply to those training sites/facilities listed in the project requirements above.

Facilities

"Community Health Center" means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR 57.102(c).

"Health Care for the Homeless Program", as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population under section 340 of the PHS Act. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in **Federal Register**, (55 FR 31233) (August 1, 1990).

"Health Professional Shortage Area" means an area designated under section 332 of the PHS Act.

"Migrant Health Center" means an entity as defined in section 329(a)(1) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

Other Definitions

"Rural Area" means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget.

"Rural Regional Education and Training Center" is an AIDS ETC project which meets the essential characteristics of an ETC, is adapted to serve the health professions education needs of rural areas and rural primary care providers, and has components which may be replicated in other rural areas. The application deadline date is December 17, 1993.

Applications shall be considered as meeting the established deadline if they are either:

1. *Received on* or before the established deadline date; or
2. *Sent on or before* the established deadline and received in time for orderly processing. (Applicants should request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered

postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

Additional Information

Requests for technical or programmatic information should be directed to: Elaine Daniels, M.D., Ph.D, Chief, HPHIVE Branch, AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

Application Requests

Application materials and additional information regarding business, administrative and fiscal issues related to the awarding of funds under this notice may be requested from: Grants Management Branch (D35), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Branch at the above address.

This program is listed at 93.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: September 27, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–28327 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory Funding Preference for Allied Health Project Grants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Allied Health Project Grants under the authority of section 767, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference.

Approximately $3.4 million will be available in FY 1994 for this program. Total continuation support recommended is approximately $2 million. It is anticipated that approximately $1.4 million will be available to support 10 to 12 competing awards averaging approximately $106,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 83 applications for Allied Health Project Grants. Of those applications, 59 percent were approved and 41 percent were disapproved. Eight projects, or 10 percent of the applications received, were funded. In FY 1992, HRSA reviewed 113 applications for Allied Health Project Grants. Of those applications, 46 percent were approved and 54 percent were disapproved. Eleven projects, or 10 percent of the applications received, were funded.

Purposes

Section 767 authorizes the award of grants to assist in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include:

(1) Those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) Those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) Those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) Those that provide career advancement training for practicing allied health professionals;

(5) Those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) Those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) Those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) Those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) Those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) Who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) Who agree upon completion of the training program to practice in a medically underserved community;

That shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary.

To maximize program benefit, programs that provide financial assistance in the form of traineeships to students will not be considered for funding in FY 1994. The period of Federal support will not exceed 3 years.

Eligibility

Eligible entities for the purpose of this grant are:

(1) Schools, universities, or other educational entities which provide for allied health personnel education and training and which meet such standards as the Secretary may prescribe; or

(2) Other public or nonprofit private entities capable, as determined by the Secretary, of carrying out the purpose of the Allied Health Project Grants program; and

(3) Located in a State.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S.

Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review criteria, stated below, which were established in FY 1990 (55 FR 12424, dated 4/3/90) after public comment, will remain unchanged in FY 1994.

- The extent to which the proposed project meets the legislative purpose;
- The background and rationale for the proposed project;
- The extent to which the project contains clearly stated realistic and achievable objectives;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- The evaluation plans and procedures for program and trainees, if involved;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Funding Preference

The statutory preference identified in section 767(b)(2) and the statutory preference identified in section 791(a) of the PHS Act have been combined in the following preference which will be applied to Allied Health Project Grants for fiscal year 1994: Preference shall be given to qualified applicants that—

(A) Expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; OR

(B) Demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically underserved communities (high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities); OR

(C) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" is defined as a minimum of 20 percent of graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

Established Special Consideration

The following special consideration was established in FY 1991 after public comment (56 FR 14939, dated 4/12/91) and the Administration is extending it in FY 1994.

Special consideration will be given to applicants demonstrating affiliation agreements for interdisciplinary training experiences in one or more of the following: a nursing home; hospital or ambulatory care center providing substantial geriatric health care; Migrant Health Center (section 329 of the Act); Community Health Center (section 330 of the Act); Health Professional Shortage Area (section 332 of the Act); Area Health Education Center (section 746 of the Act); or a State or local public health or designated clinic or center serving an underserved population, or a rural health clinic or other facility with training opportunities in a rural area.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers;

Section 330 authorizes support for community health care services to medically underserved populations;

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas; and

Section 746 authorizes support for Area Health Education Centers to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Allied Health Project Grants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated 8/17/93, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training

Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference. The comment period is 30 days. All comments received on or before December 17, 1993 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference are established. Written comments should be addressed to: Neil Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Application forms will be sent to FY 1993 applicants and to those who request kits.

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Jacquelyn Whitaker (D37), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

Telephone: (301) 443–6857 FAX: (301) 443–6343. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6763.

The deadline date for receipt of applications is February 9, 1994. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The Catalog of Federal Domestic Assistance number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: October 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–28326 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on December 1, 1993, at the National Institutes of Health, Bethesda, Maryland 20892, from 8:30 a.m. to 4:30 p.m., the Building 31, Conference Room 10, C Wing. The meeting will be open to the public. Attendance by the public will be limited to space available.

The meeting will be devoted to discussion of (1) The NIH Intramural Research Program Review, and (2) Equal Employment Opportunity Activities.

The Executive Secretary, Sandy Cahmblee, J.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301 496–2122, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carol Chism on (301) 496–3154 in advance of the meeting.

Dated: November 10, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–28332 Filed 11–17–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on December 8–9, 1993, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on December 8, and from 9 a.m. to adjournment on December 9. This will be the second meeting in a total of three to determine the possibility of programs and activities of the National Library of Medicine, of individuals, of professional associations, and of other institutions that might be undertaken over the next 10 years to assure that our society benefits from the skills of medical librarians. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Susan Buyer.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: November 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28333 Filed 11–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3361; FR-3193-N-06]

Announcement of Funding Awards for HOPE for Homeownership of Multifamily Units Program (HOPE 2)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this is an announcement notifying the public of the funding decision made by the Department in a second selection from the competition for funding under a Notice of Funding Availability for HOPE for Homeownership of Multifamily Units Program (HOPE 2), published on January 14, 1992 (57 FR 1585). The first selection was published on October 15, 1992 at 57 FR 47343. This announcement contains the names and addresses of the award winners and the amount of the awards in a second round of selections.

DATES: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Director, Office of Resident Initiatives, Office of Housing, room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-4542. The TDD number for the hearing impaired is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to make available funding for grants under the HOPE for Homeownership of Multifamily Units Programs (HOPE 2). (HOPE is an acronym for Homeownership Opportunity for People Everywhere.) The HOPE 2 program, which was authorized by the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990), provides planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out approved homeownership programs for eligible families.

These HOPE 2 grants, totaling $24 million, will enable 16 resident and housing-related organizations to begin the process of purchasing over 1,800 housing units in multifamily properties financed, owned, or with mortgages insured by the government. HOPE 2 awards were made in 12 states and the Virgin Islands in both planning and implementations categories. Recipients in both the first and second funding rounds were chosen in a national competition under selection criteria announced in the January 14, 1992 NOFA and described more fully in program guidelines published with the NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the names, addresses, and amount of the awards are attached to this Notice.

Dated: November 12, 1993.

Nicolas R. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

FISCAL YEAR 1992 HOPE 2 AWARDS

[2nd Round Selections]

Region	Grantee	Property	Number of units	Amount of award
01	H2-92-MA-010-I-R, CHRLSBK Apts Tenants Assoc., 650 Huntington Avenue, Apt 3L, Boston, MA 02115, Contact: Kerstin Hildebrant, Phone: (617) 232-5713.	Charlesbank Apartments, 650 Huntington Avenue, Apt. #3L, Boston, MA 02115.	276	$8,799,834.00 Implementation Grant.
02	H2-92-NJ-004-F-N, New Community Corporation, 322 West Market Street, Newark, NJ 07103, Contact: Larry Goldston, Phone: (201) 623-2800.	Englewood I & II, 80 Jay 68-82 William Streets, Englewood, NJ 07631.	40	$181,370.00 Planning Grant.
02	H2-92-NY-301-F-N, Domestic Violence Services, 480 Broadway—Suite LL-20, Saratoga Springs, NY 12866, Contact: Colleen McGrath, Phone: (315) 583-0280.	Hotel Honig Rehabilitation, 116 Caroline Street, Saratoga Springs, NY 12866.	6	$96,717.00 Planning Grant.
02	H2-92-NY-004-I-M, Mutual HSG Group Inc, 20 South Broadway, Room 912, Yonkers, NY 10701, Contact: Duane Nealson, Phone (914) 964-6554.	31 Ravine Avenue, Yonkers, NY 10701.	21	$435,500.00 Implementation Grant.
04	H2-92-GA-005-I-M, Atlanta Mutual HSG. Assoc., 44 Broad St., N.W.—Suite 607, Atlanta, GA 30303, Contact: David W. Landis, Phone (404) 331-7428.	Defoors Ferry Manor Apts, 2788 Defoors Road, N.W., Atlanta, GA 30318.	286	$3,468,868.00 Implementation Grant.
4	H2-92-VQ-003-F-P, Govt. of the U.S. Virgin Islands, LBJ Gardens Office Complex, Christian sted, St. Croix, Virgin Islands 00820, Contact: James M. McNamara, Phone: (809) 773-0160.	Estate Annas Hope Housing Apts, Christianstead, St. Croix, U.S. Virgin Islands, VI.	16	$151,000.00 Planning Grant.
05	H2-92-IL-004-I-N, The Neighborhood Institute, 1750 East 71st Street, Chicago, IL 60649, Contact; Tayani Suma, Phone: (312) 684-4610.	Parkside-Lotus Cooperative, 5449 West Congress Avenue, Chicago, IL 60649.	70	$2,902,593.00 Implementation Grant.
05	H2-92-MI-008-F-N, CSA Enterprises, Inc, 555 Tower (P.O. Box 915), Ypsilanti, MI 48197, Contact: Stephen B. Terry, Phone: (313) 484-6610.	Forest Knoll Apartments, 693 Arbor Drive, Ypsilanti, MI 48197.	231	$200,000.00 Planning Grant.
05	H2-92-MI-007-F-N, CSA Enterprises, Inc, 555 Tower (P.O. Box 915), Ypsilanti, MI 48197, Contact: Stephen B. Terry, Phone: (313) 484-6610.	Arbor Manor Apartments, 1334 Monroe, Ypsilanti, MI 48197.	80	$95,000.00 Planning Grant.
05	H2-92-OH-005-I-N, Capital City C.U.R.C, 787 S. State Street, Westerville, OH 43081, Contact: Charles L. Adrian, Phone: (614) 882-1447.	Hickory Ridge, 2890 Bridgewalk Street, Columbus, OH 43224.	96	$3,852,000.00 Implementation Grant.

FISCAL YEAR 1992 HOPE 2 AWARDS—Continued

[2nd Round Selections]

Region	Grantee	Property	Number of units	Amount of award
06	H2-92-OK-003-I-N, Most Worshipful Prince Hall Grand Lodge, P.O. Box 1588, Muskogee, OK 74402-1588, Contact: Deary Vaughn, Phone: (918) 683-3123.	Summit Point Apartments, 1801 South 132nd East Avenue, Tulsa, OK.	172	$1,451,900.00 Implementation Grant.
06	H2-92-OK-002-F-R, Meadows Tenant Assoc., 2820 South 116th East Avenue, Tulsa, OK 74129, Contact: Tereasa Patterson, Phone: (918) 622-7376.	The Meadows Apartments, 2820 South 116th East Avenue, Tulsa, OK 74129.	176	$200,000.00 Planning Grant.
06	H2-92-TX-313-F-N, Land Services Associates, 2323 Allen Parkway, Houston, TX 77019, Contact: Charles Rushing, Phone: (713) 461-3604.	Eastwood Terrace Apartments, Nacogdoches, TX.	100	$199,180.00 Planning Grant.
07	H2-92-MO-301-F-N, West End Community Conference, 724 Union Blvd., St. Louis, MO 63108, Contact: Marie W. Flower, Phone: (314) 367-7049.	Dead Building Awakening, 5838 Enright, St. Louis, MO.	12	$135,000.00 Planning Grant.
07	H2-92-NE-002-F-N, New Comm. Dev. Corp., 2001 No. 35th Street, Omaha, NE 68111, Contact: Michael Maroney, Phone: (402) 451-2228.	Tommie Rose Garden, 34th & Lake, Omaha, NE.	100	$200,000.00 Planning Grant.
08	H2-92-CO-006-I-M, Greater Denver Mutual HSG., 1776 S. Jackson, Suite 810, Denver, CO 80210, Contact: Steven W. Barbier, Phone: (303) 762-7274.	Mountain Terrace Apartments, 3650 West 84th Avenue, Westminister, CO 80030.	148	$2,256,221.00 Implementation Grant.
			1,830	$24,625,183.00

[FR Doc. 93-28384 Filed 11-17-93; 8:45 am]

BILLING CODE 4210-27-M

Office of the Secretary

[Docket Nos. N-93-3630; FR-3523-C-02 and N-93-3631; FR-3524-C-02]

Federal Home Loan Mortgage Corporation; Interim Housing Goals; Correction, and Federal National Mortgage Association; Interim Housing Goals; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Notices of interim housing goals; Corrections.

SUMMARY: On October 13, 1993 (58 FR 53048 and 53072), the Department published in the **Federal Register**, Notices of Interim Housing Goals for the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), respectively. The purpose of this document is to make editorial and typographical corrections to those two notices.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708-1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708-3137; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708-0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the following corrections are made to FR Doc. 93-25181 and FR Doc. 93-25182, Notices of Interim Housing Goals for Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, published in the **Federal Register** on October 13, 1993 at 58 FR 53048 and 53072, respectively, to read as follows:

1. On page 53064, in the third column, correct the table heading in column one to read "Household income as a percent of area median income", and correct the table heading in column two to read "Percent of mortgage applications approved".

2. On page 53070, in the first column, correct the table to read as follows:

Type of property	Efficiency	Number of bedrooms		
		1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	65	70	96	122

3. On page 53089, in the first column, correct the table heading in column one to read "Household income as a percent of area median income", and correct the table heading in column two to read "Percent of mortgage applications approved".

4. On page 53091, in column two, correct the footnote following the table in item C.1.b. by removing "85 percent" and inserting in its place "8 percent".

Dated: November 12, 1993.

Sally Warner Watts,

Acting Assistant General Counsel for Regulations.

[FR Doc. 93-28383 Filed 11-17-93; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-950-4830-02]

Documentation of Current Administrative Boundaries for Bureau of Land Management Offices; Montana, South Dakota, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The management boundaries between districts and resource areas are delineated below. This description is provided to identify the current administrative boundaries to facilitate users, the general public, or other entities desiring office and geographical areas of management responsibility.

FOR FURTHER INFORMATION CONTACT: Janet Singer, BLM Montana State Office, P.O. Box 36800, Billings, MT 59107-6800, 406-255-2742.

SUPPLEMENTARY INFORMATION: The boundaries between districts and resource areas, where applicable, are described as follows:

Dickinson District

The State of North Dakota.

Butte District

Beginning at a point on the Canadian border and the county line between Flathead and Glacier Counties; thence southeasterly along the county line; thence southeasterly along the Flathead-Pondera County line; thence southeasterly along the Flathead-Teton County line; thence southerly along the Flathead-Lewis and Clark County line; thence southerly along the Powell-Lewis and Clark County line to a point at the southwest corner of Township 15 North, Range 9 West; thence easterly along the township line to the Cascade County line; thence south and east along the Lewis and Clark-Cascade County line; thence southeast along the Lewis and Clark-Meagher County line; thence southeast along the Broadwater-Meagher County line; thence easterly along the southern line of Meagher County; thence south and east along the Park-Sweetgrass County line; thence east along the Park-Stillwater County line; thence south along the Park-Carbon County line to the Wyoming state line; thence west and south along the Wyoming state line to the Idaho state line; thence westerly and northerly along the Idaho state line to the Canadian border; thence east to the point of beginning.

Garnet Resource Area

The northwest portion of the area described as Butte District and delineated on the east and south as follows: Beginning at the southwest corner of Township 15 North, Range 9 West; thence southeasterly along the Powell-Lewis and Clark County line to the Jefferson County line; thence southwesterly along the Powell-Jefferson County line; thence along the southerly lines of Powell, Granite, and Ravalli Counties to the Idaho state line.

Dillon Resource Area

The southwest portion of the area described as Butte District and bounded on the north and east as follows: Beginning at the Idaho state line on the Ravalli-Beaverhead County line; thence northeasterly along the Ravalli-Beaverhead County line; thence southeasterly along the Beaverhead-Deer Lodge County line to its intersection with the section line between Sec. 12, T. 1 S., R. 15 W., PMM and Sec. 7, T. 1 S., R. 14 W., PPM; thence south between Secs. 12 and 7 and Secs. 13 and 18 to the Corner of Secs. 13, 18, 19, and 24; thence east between Secs. 18 and 19 and 17 and 20 to the section corner of Secs. 16, 17, 20, and 21 which is on the boundary of Beaverhead National Forest; thence north, east, and southeast along the Forest boundary to the corner of Secs. 13 and 24, T. 1 S., R. 10 W. and Secs. 18 and 19, T. 1 S., R. 9 W., PMM; thence north along the range line to the Big Hole River which is the Beaverhead/Silver Bow County line; thence southeast along the county line to its intersection with the Madison County line; thence easterly and southerly along the Madison County line to the Idaho state line.

Headwaters Resource Area

That portion of central and eastern Butte District including Deer Lodge County, Silver Bow County, Jefferson County, the southern portion of Lewis and Clark County, Broadwater County, Gallatin County, Park County, and that portion of Beaverhead County south of the Big Hole River and north of the Beaverhead National Forest which is described above and not included in the Dillon Resource Area.

Lewistown District

The northcentral portion of Montana from the Canadian border and along the east boundary of Butte District to the southeast corner of Meagher County; thence north along the east line of Meagher County; thence east along the south line of Judith Basin County; thence east along the south line of Fergus County; thence east along the south line of Petroleum County; thence north along the east line of Petroleum County; thence northeast along the south line of Phillips County; thence northeast along the south line of Valley County to the boundary of the Fort Peck Indian Reservation; thence in a northerly direction along the west boundary of the Fort Peck Indian Reservation; thence east along the north boundary of the Fort Peck Indian Reservation; thence north along the east line of Valley County to the Canadian border thence west along the border to the northwest corner of Glacier County.

Great Falls Resource Area

The western portion of the Lewistown District including all of Glacier County, Toole County, Liberty County, Pondera County, Teton County, Cascade County, Meagher County, and the northern part of Lewis and Clark County which lies within the Lewistown District boundaries.

Havre Resource Area

The northern portion of Lewistown District including all of Hill and Blaine County and the northern portion of Choteau County which lies north of the Missouri River.

Phillips Resource Area

The northern portion of Lewistown District which includes all of Phillips County.

Valley Resource Area

The most northeasterly portion of Lewistown District which includes all of Valley County except for the portion lying within the Fort Peck Indian Reservation.

Judith Resource Area

The southcentral portion of Lewistown District which includes all of Petroleum, Fergus, and Judith Basin Counties and the portion of Choteau County which lies south of the Missouri River.

Miles City District

The southeast and eastern portions of Montana bounded on the west by Butte and Lewistown Districts and includes the State of South Dakota.

Billings Resource Area

The southwest portion of Miles City District which includes all of Wheatland, Golden Valley, Musselshell, Yellowstone, Stillwater, Sweetgrass, and Carbon Counties and all of Big Horn County, except for the easterly portion which lies outside of the Crow Indian Reservation. From the north county line in Township 1 North, Range 38 East follow the section line between sections 4 and 5 South to the boundary of the Crow Indian Reservation. Continue south and along the boundary between the Crow and Northern Cheyenne Indian Reservations, thence follow the boundary of the Crow Indian Reservation to the Wyoming state line.

Big Dry Resource Area

The northern portion of the Miles City District which includes the portion of Valley County included in the Fort Peck Indian Reservation; Rosebud County north of the Yellowstone River; Custer County north of the Yellowstone River and the northeasterly portion of Custer County which is described as beginning on the county line between Custer and Prairie Counties at the southwest corner of T. 10 N., R. 51 E., Section 33; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 4; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 3; then south one mile to the

southwest section corner of T. 9 N., R. 51 E., Section 10; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 11; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 14; then west 5 miles to the northwest section corner of T. 9 N., R. 50 E., Section 24; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 24; then west 2 miles to the northwest section corner of T. 9 N., R. 50 E., Section 27; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 27; then east 3 miles to the southwest section corner of T. 9 N., R. 51 E., Section 30; then south 2 miles to the southwest section corner of T. 8 N., R. 51 E., Section 4; then east approximately 2½ miles to the Powder River in T. 8 N., R. 51 E., Section 2; then southerly along the Powder River approximately 6 miles to the southern boundary of T. 8 N., R. 51 E., Section 26; then east approximately 1¼ miles to the southwest section corner of T. 8 N., R. 52 E., Section 30; then south one mile to the southwest section corner of T. 8 N., R. 52 E., Section 31; then east one mile to the southwest section corner of T. 8 N., R. 52 E., Section 32; then south 2 miles to the southwest section corner of T. 7 N., R. 52 E., Section 8; then west approximately 3¼ miles to the Powder River in T. 7 N., R. 51 E., Section 15; then southerly along the Powder River approximately 35 miles to the eastern boundary of T. 4 N., R. 53 E., Section 25; then north approximately one mile to the southwest section corner of T. 4 N., R. 54 E., Section 19; then east 2 miles to the southwest section corner of T. 4 N., R. 54 E., Section 21; then north approximately 2¼ miles to the 1/16 corner of T. 4 N., R. 54 E., Sections 8 and 9; then due east approximately 1¼ miles across T. 4 N., R. 54 E., Sections 9 and 10; then due north ¼ mile; east ¼ mile; south ¼ mile; and east ¼ mile to the eastern boundary of T. 4 N., R. 54 E., Section 10; then southeast along the allotment boundary across T. 4 N., R. 54 E., sections 11, 14, and 24 to the eastern boundary of T. 4 N., R. 54 E., section 24 and the intersection of the line between Custer and Carter Counties.

Also included in Big Dry Resource Area is the northwest corner of Carter County which includes Sections 5, 6, 7, 8, 9, 16, 17, 18, 19, 29, and 30 in Township 4 North, Range 55 East; and all of Daniels; Dawson; Fallon; Garfield; McCone; Prairie; Richland; Roosevelt; Sheridan and Wibaux Counties.

Powder River Resource Area

The southeastern portion of Miles City District which includes the easterly portion of Bighorn County which lies outside of the Crow Indian Reservation (as excluded from the Billings Resource Area), the portion of Rosebud County which lies south of the Yellowstone River, the portions of Custer and Carter Counties not listed above in the Big Dry Resource Area, and all of Treasure and Powder River Counties.

South Dakota Resource Area

The State of South Dakota.

Dated: November 12, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93-28414 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW102537]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: November 12, 1993.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW102537 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW102537 effective December 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93-28415 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-7122-08-1016; CACA 28548]

Notice of Issuance of Land Exchange Conveyance Document; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands to consolidate public landownership and achieve the multi-agency objectives of the Western Mojave Land Tenure Adjustment Project. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: The values of the public lands and non-Federal lands in the exchange were appraised at $1,568,500 and $1,600,000, respectively. The equalization payment required of the United States in the amount of $31,500 was waived by the proponent.

1. On September 15, 1993, the United States issued an exchange conveyance document to the Bank of A. Levy as Trustee in Trust for P&V Enterprises, Inc., Final Beneficiary under the Antelope Park Trust (Subdivision Trust Agreement No. 80307), pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands, more particularly described in the exchange conveyance document:

San Bernardino Meridian, California

T. 9 N., R. 2 W.,
Sec. 10;
T. 7 N., R. 4 W.,
Secs. 30, 31, and 32;
T. 6 N., R., 5 W.,
Sec. 2;

Comprising 857.72 acres of public land in San Bernardino County. A complete description of the lands is available in the California State Office at the address shown above.

2. In exchange for these lands, the United States acquired the following described lands from the Bank of A. Levy as Trustee in Trust for P&V Enterprises, Inc., Final Beneficiary under the Antelope Park Trust (Subdivision Trust Agreement No. 80307):

Mount Diablo Meridian, California

T. 31 S., R. 41 E.,
Secs. 23, 25, 27, and 35;

Comprising 2,560 acres of non-Federal lands in San Bernardino County.

Dated: November 8, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93-28416 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-40-M

[CO-010-04-4210-05; COC-54601]

Realty Action: Sale of Public Land in Grand County, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Grand County, Colorado have been examined and found suitable for direct sale under section 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 & 1719), at not less than the appraised fair market value. The mineral interest will be included in the sale.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 4 N., R. 76 W.,
Sec. 24, lot 13.

The lands described above contain 1.73 acres, more or less.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this sale is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459, (303) 724-3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws, for a period of 270 days from the date of publication of this notice. The land will be segregated as specified above unless the sale is canceled or completed prior to that date

The following reservations will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

Dated: November 10, 1993.

William J. Pulford,

District Manager.

[FR Doc. 93-28418 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-84-M

[CO-050-4210-05, COC-55107]

Realty Action; Sale or Exchange of Public Lands, Clear Creek County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale or exchange of public lands in Clear Creek County, Colorado. COC-55107.

SUMMARY: The following described land has been examined and found suitable for disposal by sale under section 203, or by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale or exchange until at least 60 days after the date of this notice.

Sixth Principal Meridian, Colorado

T. 3 S., R. 74 W.,
Sec. 28: Lots 15, 47
Containing 9.31 acres

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or exchanged, or for two years following publication of this notice, whichever occurs first.

This parcel will be offered by direct sale or by exchange to Michael Dugan. The patent, when issued, will reserve ditches and canals and mineral interests to the Untied States, and will be subject to existing rights-of-way for a power transmission line and for a municipal water pipeline. Detailed information concerning these reservations as well as specific conditions of the sale will be available on request.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

DATES: Interested parties may submit comments to the District Manager at the above address until December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell at (719) 275-0631.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Dated: November 8, 1993.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93-28417 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-JB-M

[MT-070-04-4210-04; M82176]

Realty Action: Exchange of Public and Private Lands, Broadwater County, MT

AGENCY: Butte District, Bureau of Land Management, DOI.

ACTION: Designation of public lands in Broadwater County for transfer out of Federal ownership in exchange for private lands in Broadwater and Gallatin Counties, Montana.

SUMMARY: The Bureau of Land Management (BLM) proposes to exchange public land to acquire the private land at the junction of Sixteenmile Creek and the Missouri River to provide important public access and recreational opportunities.

The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 3 N., R. 2 E.,
Sec. 12, lots 6, 7, SW¼NW¼.
T. 4 N., R. 2 E.,
Sec. 12, lot 6;
Sec. 26, W½;
Sec. 34, E½.

The lands described above comprise 750.27 acres in Broadwater County. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Final determination of disposal will await completion of an Environmental Assessment. Upon completion of the Environmental Assessment, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: On or before January 3, 1994, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702.

Dated: November 5, 1993.

James R. Owings,

District Manager.

[FR Doc. 93-28323 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-DN-M

[OR-942-00-4730-02: G4-025]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 12 S., R. 1 E., accepted October 14, 1993
T. 15 S., R. 6 W., accepted September 16, 1993
T. 27 S., R. 7 W., accepted October 27, 1993

Washington

T. 10 N., R. 18 E., accepted September 15, 1993
T. 16 N., R. 19 E., accepted September 30, 1993
T. 36 N., R. 19 E., accepted October 27, 1993
T. 16 N., R. 20 E., accepted September 30, 1993
T. 17 N., R. 20 E., accepted September 30, 1993
T. 16 N., R. 22 E., accepted September 30, 1993
T. 15 N., R. 23 E., accepted September 30, 1993
T. 16 N., R. 23 E., accepted September 30, 1993

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 8, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-28419 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-33-M

[AZ-930-4210-06; A-903, AR-05059, AR-05172, AR-07159]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comments, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Public Land Orders (PLO) 1176 (AR-05059), PLO 1390 (AR-05172), PLO 3263 (AR-07159), and PLO 4373 (A-903), which withdrew National Forest System lands in the Apache-Sitgreaves National Forests for use by the Forest Service as campgrounds, forest camps and picnic grounds. All sites have improvements located thereon and the Forest Service intends to continue to utilize the sites for the purposes withdrawn. It does not anticipate any significant change in land use in the surrounding areas in the near future. All the withdrawn lands were closed to appropriation under the mining laws but not to the mineral leasing laws. In addition, PLO 1176 and PLO 1390, closed the lands to operations under the Public Land Laws. The proposed action is to continue closure to the mining laws, to establish a 20-year time limit for the specific withdrawal, and to open lands covered by PLO 1176 and PLO 1390, to use authorizations applicable to National Forest System lands. The withdrawn areas presently are, or soon will be, the smallest unit possible necessary to meet existing needs.

DATES: Comments on the proposed action should be received on or before February 16, 1994.

ADDRESSES: Comments should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona, 85014, or P.O. Box 16563, Phoenix, Arizona, 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602-650-0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 1176, 1390, 3263 and 4373, withdrawing lands for uses such as campgrounds, forest camps and picnic grounds, be modified and generally continued for 20 years. Some of the same orders have been utilized to withdraw other sites for a variety of uses. These will be the subject of other notices and withdrawal review reports. All sites, or portions thereof, remaining withdrawn will continue to be closed to operations under the mining laws only, unless otherwise specified. The land will continue to be open to mineral leasing and to other types of uses applicable to National Forest System lands. Continuation of the withdrawals as proposed in this notice are in conformance with existing forest plans. All sites listed below are located within the boundaries of the Apache-Sitgreaves National Forests in Coconino, Apache, Navajo and Greenlee Counties. The specific sites are identified and described as follows:

Gila and Salt River Meridian

Lakeside Forest Camp Recreation Area (AR-05059)

T. 9 N., R. 22 E.,
Sec. 23, N½SW¼SE¼.
The area described totals 20.00 acres.

Granville Campground and Recreation Area (AR-05172)

T. 3 S., R. 29 E.,
Sec. 8, W½NW¼NE¼, S½SW¼NE¼, W½NW¼SE¼, E½SE¼NW¼.
The area described totals 80.00 acres.

Alpine Divide Forest Camp (AR-07159)

T. 6 N., R. 30 E.,
Sec. 23, SW¼.
The area described totals 160.00 acres.

Blue Crossing Forest Camp (AR-07159)

T. 3 N., R. 31 E.,
Sec. 1, SW¼SW¼.
The area described totals 40.00 acres.

Buffalo Administrative Camp Site (AR-07159)

T. 4 N., R. 28 E.,
Sec. 1, E½NE¼SW¼.
The area described totals 20.00 acres.

Hannagan Forest Camp (AR-07159)

T. 3 N., R. 29 E., (Unsurveyed)
Sec. 3, NE¼SE¼.
The area described totals 40.00 acres.

KP Cienega Forest Camp (AR-07159)

T. 3 N., R. 29 E., (Unsurveyed)
Sec. 28, S½NW¼, N½SW¼.
The area described totals 160.00 acres.

Middle Blue Forest Camp (AR-07159)

T. 3 N., R. 31 E.,
Sec. 22, NE¼NW¼.
The area described totals 40.00 acres.

West Fork Black River Forest Camps (AR-07159)

T. 5 N., R. 28 E.,
Sec. 29, S½SW½;
Sec. 30, E½SE¼;

Sec. 32, W½NE¼, NE¼NW¼, N½SE¼, lots 3 and 4.

The areas described aggregate 434.79 acres.

East Fork Black River Forest Camp (AR-07159)

T. 4 N., R. 28 E.,
Sec. 1, Lots 1 and 2;
Sec. 12, NW¼.
T. 5 N., R. 28 E.,
Sec. 25, SW¼, W½SE¼, lots 3 and 4;
Sec. 35, NE¼, N½SE¼, lots 8 and 9;
Sec. 36, NW¼, NW¼SE¼, N½SW¼, lots 1, 4 and 5.
T. 5 N., R. 29 E.,
Sec. 19, S½SE¼;
Sec. 20, E½NE¼, SW¼NE¼, NW¼SE¼, SW¼;
Sec. 21, NW¼NW¼;
Sec. 30, NE¼, E½NW¼, NE¼SW¼, lots 2 and 3.

The areas described aggregate 2,074.43 acres.

South Fork Campground Recreation Area (AR-07159)

T. 8 N., R. 28 E.,
Sec. 20, W½NE¼, NE¼NW¼.

The areas described total 120.00 acres.

Upper Blue Forest Camp (AR-07159)

T. 4 N., R. 32 E.,
Sec. 18, SW¼NE¼, SE¼NW¼, S½NE¼NW¼.

The areas described total 120.00 acres.

Canyon Point Campground and Recreation Area (A-903)

T. 11 N., R. 14 E.,
Sec. 22, SE¼NE¼, E½SE¼;
Sec. 23, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 26, SW¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼ (that portion within the Sitgreaves National Forest);
Sec. 35, N½NE¼, SE¼NE¼, NE¼NW¼ (those portions within the Sitgreaves National Forest).

The areas described aggregate 780.00 acres.

The total acreage of the areas described in this publication is 4,089.22 acres. The purpose of the withdrawals was and continues to be to protect Forest Service campgrounds, forest camps and picnic grounds from possible location, entry and disturbances that may be caused by mining activity.

For a period of 90 days from the date of publication of this notice, all persons wishing to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the BLM will undertake such investigations as may be necessary to determine the proper existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register** in the form of a PLO. The existing withdrawals will continue in force pending the final determination on each action.

Phillip Moreland,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93-28420 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-4210-06; CACA 32220]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 45 acres of National Forest System lands for protection of a seismographic station of the University of California, Berkeley. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before February 16, 1994.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E-2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

SUPPLEMENTARY INFORMATION: On June 10, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Klamath National Forest
T. 45 N., R. 8 W.,
Sec. 24, NE¼SE¼ and N½NW¼SE¼SE¼.

The area described contains 45 acres in Siskiyou County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

Dated: November 10, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93-28421 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202-395-7340.

Title: Minerals Yearbook Volume III Customers Survey.

OMB approval number: None.

Abstract: Information is needed to evaluate customer response to recent publication format changes as well as quality and timeliness issues. The results will provide guidance to the Bureau on future content direction and

distribution policies for this publication.

Bureau form number: None.

Frequency: One time survey.

Description of respondents: Academia, private companies, Government institutions and international consultants.

Annual responses: 9,000.

Annual burden hours: 1,500.

Bureau clearance officer: Alice J. Wissman 202–501–9569.

Dated: October 25, 1993.

Hermann Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 93–28305 Filed 11–17–93; 8:45 am]

BILLING CODE 4310-59-M

Fish and Wildlife Service

Possible New Listing Criteria for Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which trade in specimens is controlled are listed in Appendices I, II, and III to the Convention.

A draft resolution with possible new criteria for listing species in CITES Appendices I and II has been circulated by the CITES Standing Committee. The U.S. Fish and Wildlife Service (Service) announces the availability (upon request) of the draft resolution, and solicits comments on the draft criteria, and on their potential application.

DATES: The Service will consider all comments received by December 13, 1993, in developing a response on the draft resolution, for transmittal to the CITES Secretariat by December 31, 1993. Further, the Service will consider all comments received by February 11, 1994, in determining the U.S. negotiating positions on any revision of the draft resolution for the U.S. representatives to the March 1994 meeting of the CITES Standing Committee. Any resulting final draft resolution would be submitted to the Parties for their consideration at the ninth meeting of the Conference of the Parties to CITES (COP9), to be held in Ft. Lauderdale, Florida, during November 7–18, 1994.

ADDRESSES: Comments, information, and questions should be sent to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, room 725; Arlington, Virginia 22203; fax number 703–358–2276. Express and messenger deliveries should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia. Comments and materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m. Monday through Friday near Washington, DC at the above address in Arlington, Virginia (room 750).

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, concerning the biological criteria and the assessment thereof (telephone 703–358–1708) or Mr. Marshall P. Jones, Chief, Office of Management Authority, concerning policy and administrative matters (telephone 703–358–2093).

SUPPLEMENTARY INFORMATION:

Background

The Convention (TIAS 8249) regulates import, export, re-export, and introduction from the sea of certain animal and plant specimens. Those species for which such trade is controlled are included in three appendices. Appendix I lists species threatened with extinction that are or may be affected by the trade. Under the provisions of CITES Article II, paragraph 2(a), Appendix II lists species that although not necessarily now threatened with extinction may become so, unless the trade in them is strictly controlled. Under the provisions of Article II.2(b), Appendix II also lists other species that must be subject to regulation, in order that the trade in those currently and potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of those currently or potentially threatened species among the specimens of other species). (Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of the other Parties in controlling trade.)

Any country that is a Party to this treaty may propose amendments to Appendix I or II, for consideration usually at a meeting of the Conference of the Parties. Criteria on (1) addition or uplisting of species and other taxa for Appendix I or II, and on (2) deletion or downlisting of species and other taxa for Appendix I or II, were established in Resolutions Conf. 1.1 and Conf. 1.2 respectively, in 1976 at the first meeting of the Conference of the Parties to CITES (COP1). These criteria have been supplemented with criteria for particular situations in several other resolutions adopted at subsequent COPs. The format for the proposed amendments was established in Resolution Conf. 2.17, adopted in 1979 at COP2.

In 1992 at COP8, the Parties adopted Resolution Conf. 8.20, which directed the CITES Standing Committee (SC) to undertake, with the assistance of the CITES Secretariat, a revision of the criteria for amending the appendices. This resolution directed a joint meeting of the CITES Animals Committee (AC) and CITES Plants Committee (CPC) to prepare a draft resolution on such criteria. Later in 1992 the SC provided further direction to the process: (1) Designating the World Conservation Union (IUCN) along with individuals selected by the SC to provide recommendations on new criteria and a report for the March 1993 SC meeting; and (2) determining that the joint meeting would consist of the Regional and as well the alternate representatives of the AC and CPC, and also the members of the SC, which is comprised of six Regional representatives, the depository government (Switzerland), the country that hosted the last COP (Japan), and the country hosting the next COP.

The CITES Parties are organized within six Regions: Africa, Europe, Asia, Oceania, North America, and South America, Central America and the Caribbean. Canada is the North American Regional representative on the Standing Committee, and has the alternate member on the Animals Committee. Mexico has the Regional representative on the Animals Committee, and the alternate member on the Plants Committee. The United States is a member of the Standing Committee as the next host country (for COP9 in 1994), and has the Regional representative on the Plants Committee.

Joint Meeting on Possible New Criteria

IUCN submitted their report with recommendations on possible new listing criteria to the SC meeting in March 1993, where concerns with the IUCN draft were discussed. The draft was revised by the IUCN, and the revision was circulated to the Parties by the SC Chairman in April 1993 for review and comment. The Service made that revised report available for commentary, in preparing for the joint meeting (see the June 15, 1993, Federal Register; 58 FR 33103). IUCN

meanwhile sought to "validate" the draft criteria based on information available on a selected number of species, by the IUCN Species Survival Commission Specialist Groups trying the criteria to determine how particular species would be classified. Information from this undertaking was available for the joint meeting.

The joint SC/AC/CPC meeting was held in Brussels, Belgium from August 30 through September 3, 1993. The resulting draft resolution contains new or revised: (1) Biological criteria for Appendix I species; (2) criteria for Appendix II species under CITES Article II.2(a); (3) criteria for special cases, *i.e.*, for (a) Appendix II species under Article II.2(b), (b) split-listings, and (c) higher taxa listings; (4) precautionary measures; (5) definitions and notes; and (6) a format, subsequently annotated, for the proposals on taxa (the submission of amendments to the appendices).

Information Sought

This draft resolution resulting from the joint meeting has been received by the Service, and is available upon request to the Office of Scientific Authority (see the ADDRESSES section). It has not been adopted by the SC, which did endorse the continuation of this evaluation process at its September 6–8, 1993, meeting in Brussels, Belgium.

The Service is interested in receiving any comments on the scientific and technical adequacy of the draft resolution, as well as the following points singled out by the joint meeting:

(1) Any considerations that should have been included but were not.

(2) Comments on the usage and the definitions of "decline", "continuing decline" and "marked decline".

(3) Particularly, views on the text in the draft resolution's Annex 2, which provides the criteria for Appendix II species under CITES Article II.2(a).

(4) Whether a periodic review of the efficacy of including species in the appendices should be confined to Appendix I species or also should extend to those in Appendix II.

The Service would be interested in receiving any other comments on the interpretation and the application of the draft criteria. If efforts also are made to assess the criteria in terms of whether a certain species would be classified in Appendix I, or II, or neither, the Service would be interested in receiving all the information used in making that assessment. If the biological or trade information is inferred to be inadequate to determine in which appendix the species should be placed, the Service would be interested in discussion of what was perceived to be insufficient and what information would be needed to apply these criteria.

The Service also is interested in any input from scientific or other experts on alternative listing criteria or other alternatives, considering the Standing Committee's prospect next March of recommending a draft resolution to the Parties.

Future Actions

In his October 15, 1993, letter to the CITES Parties, the SC Chairman stated that the SC is keen to receive the views of the Parties on all aspects of the draft resolution. He asked that their comments be provided in the form of proposed amendments to the draft resolution, for the SC to consider. The commentary is scheduled to be analyzed in January 1994, with possible preparation of a revised draft resolution for consideration by the SC, which intends to hold its next meeting on March 21–25, 1994, in Geneva, Switzerland.

Any important issue should be identified and submitted to the CITES Secretariat by December 31, 1993, and so the Service is requesting that any comments on the important issues be submitted to the Service by December 13, 1993. In addition, the Service is requesting that all comments on this draft resolution or its application be submitted by February 11, 1994. Prior to participation in the next SC meeting in March 1994, the United States will also consult with Canada and Mexico (the other members of the North American Region).

This notice was prepared by Dr. Bruce MacBryde, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: November 3, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–28329 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–782954

Applicant: Dr. Ennis Berker, Portage, MI.

The applicant requests a permit to purchase in interstate commerce up to 6 captive-born Indian monitors (*Varanus bengalensis*) from Danny Gorman, Levittown, New York, to enhance the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 12, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–28363 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment for an Amendment to the Incidental Take Permit (PRT–739678) and Short-term Habitat Conservation Plan for the Endangered Stephens' Kangaroo Rat in Western Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Riverside County Habitat Conservation Agency (RCHCA) seeks the approval of the U.S. Fish and Wildlife Service (Service) for an amendment to extend the duration of incidental take permit PRT–739678 (permit) from December 31, 1993, until September 30, 1994. The proposed amendment would extend the expiration date of the permit 9 months to facilitate the establishment of permanent Stephens' kangaroo rat (SKR) reserves, and to allow for the completion of the long-term SKR Habitat Conservation Plan (HCP) currently being prepared by the RCHCA. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (Act) and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the proposed amendment or the Environmental Assessment (EA) should be received on or before December 17, 1993.

ADDRESSES: Comments regarding the adequacy of the EA should be addressed to Dr. Peter Stine, Acting Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Please refer to permit number PRT-739678 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. John Bradley, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (619-431-9440). Individuals wishing copies of the EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act, "taking" of the SKR, an endangered species, is prohibited. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are in 50 CFR 17.22. In July 1990, the Service issued the 2-year permit for the incidental take of SKR to the local governments who are members of the RCHCA. The authorization granted by the permit is conditioned on implementation of the HCP submitted by the RCHCA members and on compliance with the implementation agreement signed by the participating jurisdictions. In general, the HCP and implementation agreement established a program during which permanent SKR reserves would be established and a limited amount of incidental take would be allowed under certain conditions. Since 1990, the permit has been amended four times.

The EA considers the environmental consequences of the alternatives, including the proposed action and the no action alternatives. The proposed action would allow the amendment of the permit to extend the expiration date 9 months, until September 30, 1994. The proposed action would not alter the restrictions on take imposed by the permit, or change the level of incidental take of the SKR specified in the current biological opinion. The proposed action would facilitate establishment of SKR reserves by maintaining land use controls in reserve study areas and continue the collection of mitigation fees during the additional months required to complete the long-term SKR HCP. Under the no action alternative, the existing terms and conditions of the permit would remain in effect and the permit would expire on December 31, 1993. Under the no action alternative there would be a gap in the collection of mitigation fees required for SKR habitat mitigation, and some land use and management restrictions imposed on lands within SKR reserve study areas would be lifted. An alternative considered, but eliminated from further consideration was incorporation of the amendment into an application for a new incidental take permit. It was eliminated from further consideration because the proposed amendment would not alter the existing permit in a way that would necessitate submittal of a new permit application. Moreover, the proposed amendment is intended to allow for the completion of the long-term plan and not to initiate its implementation.

Dated: November 10, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93-28365 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: December 15, 1993 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 E. Church Street, room P-205, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P-208, Bethlehem, PA 18018, (215) 861-9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, room P-208, Bethlehem, PA 18018, Attention: Millie Alvarez. Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Charles P. Clapper, Jr.,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 93-28370 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-70-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Government of Tunisia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Tunisia. At this time, the Government of Tunisia has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $8.0 Million U.S. Dollars (U.S. $8,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Tunisia

Project: 664-HG-004D—$8,000,000.

Housing Guaranty Loan No: 664-HG-009 A01.

1. Attention: Mr. Mongi Grine, Directeur, Direction des Paiements Exterieur, Banque Centrale de Tunisie, Tunis, Tunisia. Telex No.: BANCENT 15375, 13311. Telefax No.: 216-1-340-615 (preferred communication). Telephone No.: 216-1-340-588, 254-000.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, November 30, 1993, 12:00 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Lane Smith or Ms. Monia Ben Khalifa, Rhudo/Nena—USAID/Tunisia, c/o American Embassy, Tunis, Tunisia, (Street address: 28 Rue Suffex, Notre Dame, Tunis, Tunisia), Telex No.: 14182 USAID TN, Telefax No.: 216-1-783-350 (preferred communication), Telephone No.: 216-1-784-300.

Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, Office of Housing and Urban Programs, PRE/H, Room 401, SA-2, Washington, DC 20523-0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663-2552 (preferred communication), Telephone No.: 202/663-2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $8.0 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rates, and variable rates with interest "caps", are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6¼% U.S. Treasury Bond due August 15, 2023. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(c) *Variable Interest Rate with "Caps":* Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six-month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premium, if any.

(b) Federal statutes governing the activities of A.I.D. require that the proceeds of A.I.D.-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523-0214, Telephone: 202/663-2530.

Dated: November 10, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93-28475 Filed 11-17-93, 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-359]

Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on October 4, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Space Systems/Loral, Inc., 3825 Fabian Way, Palo Alto, California 94303-4697. A letter supplementing the complaint was filed on October 29, 1993. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dielectric miniature microwave filters and multiplexers containing same by reason of alleged infringement of claims 1, 3, 7-11, and 14 of U.S. Letters Patent 4,489,293, and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and a temporary cease and desist order prohibiting the importation into and the sale within the United States after importation of infringing dielectric miniature microwave filters and multiplexers during the course of the Commission's investigation.

ADDRESSES: The complaint and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12. The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e).

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on November 8, 1993, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain dielectric miniature microwave filters and multiplexers containing same by reason of alleged infringement of claims 1, 3, 7, 8, 9, 10, 11, or 14 of U.S. Letters Patent 4,489,293, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e)(8), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Space Systems/Loral, Inc., 3825 Fabian Way, Palo Alto, California 94303–4697.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint and motion for temporary relief are to be served: Com Dev Ltd., 155 Sheldon Drive, Cambridge, Ontario, Canada N1R 7H6.

(c) Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–I, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondent in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21 and 210.24. Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules, 19 CFR 201.16(d), 210.21(a), and 210.24(e)(9), such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: November 9, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28290 Filed 11–17–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31024]

The Durango & Silverton Narrow Gauge Railroad Co.—Petition for Declaratory Order or Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 The Durango & Silverton Narrow Gauge Railroad Company's (D&SNG) discontinuance of interstate freight operations over D&SNG's entire 45-mile line between Durango and Silverton, CO, subject to the standard labor protective conditions.

DATES: Unless a formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on December 18, 1993. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by November 29, 1993, petitions to stay must be filed by December 3, 1993, and petitions for reopening must be filed by December 13, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 31024 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's representative: Edward T. Lyons, Jr., 1625 Broadway, suite 1600, Denver, CO 80202.

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 purchase 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. (Assistance for the hearing impaired is available through TDD Services (202) 927–5721).

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28404 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1130X)]

Consolidated Rail Corp.—Abandonment Exemption—in Grant County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 1.14 miles of railroad between milepost 162.0±, near Marion and milepost 163.14±, in Sweetser, in Grant County, IN.

Conrail 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

[1] See Exemp. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

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 reports), 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 governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely 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 22, 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 requests under 49 CFR 1152.29[3] must be filed by December 2, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 13, 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: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101-1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 26, 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 is 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 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28405 Filed 11-17-93; 8:45 am]

BILLING CODE 7035-01-P

[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 the 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. 32380]

Golden Triangle Railroad—Trackage Rights Exemption—SouthRail Corp.

SouthRail Corporation has agreed to grant trackage rights to Golden Triangle Railroad over approximately 4.5 miles of rail line between milepost 9.5 at or near Columbus, MS, and milepost 5.0 at or near Bentoak, MS. The trackage rights were to become effective on November 9, 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: Jay M. Nadlman, SouthRail Corporation, 114 West Eleventh St., Kansas City, MO 64105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under 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 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28401 Filed 11-17-93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32345 (Sub-No. 1)]

North Carolina Ports Railway Commission—Purchase and Operation Exemption—CSX Transportation, Inc., Line in North Carolina; Wilmington Terminal Railroad, L.P.—Lease and Operation Exemption—North Carolina Ports Railway Commission

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 11343, *et seq.*, (1) in Finance Docket No. 32345, the purchase and operation by North Carolina Ports Railway Commission (NCPR) of CSX Transportation, Inc., lines in Wilmington, NC, known as the New River Spur and the Front Street Spur, with a combined length of about 4.2 miles, subject to standard labor protective conditions, and (2) in Finance Docket No. 32345 (Sub-No. 1), the lease and operation by Wilmington Terminal Railroad, L.P., of the above-described lines to be purchased by NCPR in Finance Docket No. 32345, subject to standard labor protective conditions.

DATES: This exemption is effective on November 23, 1993. Petitions to reopen must be filed by December 8, 1993.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 32345 and 32345 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Patricia E. Dietrich, 1224 17th Street NW., Washington, DC 20036.

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 purchase 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. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Decided: November 5, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28402 Filed 11-17-93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32386]

Soo Line Railroad Co.—Trackage Rights Exemption—Indiana Southern Railroad Co.

Indiana Southern Railroad Company has agreed to grant trackage rights to Soo Line Railroad Company over approximately 19.6 miles of rail line between milepost 94.20 at Elnora, IN, and milepost 113.80 at Maysville, IN. The trackage rights were to become effective on November 10, 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: Larry D. Starns, Soo Line Railroad Company, 1000 Soo Line Building, 105 South Fifth St., Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under 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 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28400 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Consent Judgment Pursuant to the Resource Conservation and Recovery Act; United States v. Hanlin Group, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Hanlin Group, Inc.*, (D. Me.), Civil Action No. 91–0188–B, was lodged with the United States District Court for the District of Maine on October 27, 1993. The proposed Consent Decree requires the Defendant to perform a facility investigation, corrective measures study, and any necessary stabilization measures at its Orrington, Maine facility. Also, the Decree provides that the Defendant will pay a civil penalty of $1,152,000 for its violations of the Resource Conservation and Recovery Act, 42 U.S.C. 67901 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be address 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. *Hanlin Group, Inc.*, D.O.J. Ref. No. 90–7–1–593.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 100 Middle Street Plaza, East Tower, 6th Floor, Portland, Maine 04101 (c/o Michael Dubose); at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203 (c/o Amelia Welt Katzen); and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the 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 enclose a check in the amount of $38.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28315 Filed 11–17–93; 8:45 am]

BILLING CODE 4410–01–M

Settlement Agreement in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Settlement Agreement in *United States* v. *Washington Department of Transportation, et al.*, Civil Action No. C92–1351R, was lodged with the United States District Court for the Western District of Washington on September 29, 1992. As to one defendant, the State of Washington Department of Transportation, this Settlement Agreement resolves claims filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, and section 309(b) of the Clean Water Act, 33 U.S.C. 1319(b).

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against defendants Washington Department of Transportation, McDonald's Corporation and James M. Pirie Construction Co., Inc., for alleged violations of the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") promulgated thereunder, and the Clean Water Act during the 1987 renovation and demolition of the old Crabpot restaurant on the Colman Dock, Pier 52, in downtown Seattle, Washington. The United States previously entered into settlements with McDonald's and Pirie Construction which included civil penalty payments of $150,000 and $50,000, respectively. In this final settlement in this case, the State of Washington Department of Transportation agrees to pay the United States a civil penalty of $40,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Washington Department of Transportation, et al.*, DOJ number 90–5–2–1–1686.

Copies of the proposed Settlement Agreement may be examined at the Office of the United States Attorney, Western District of Washington, 800 Fifth Avenue Plaza, Seattle, Washington 98104, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Settlement Agreement may also be obtained from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Settlement Agreement, please enclose a check in the amount of $3.75 (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. 93–28309 Filed 11–17–93; 8:45 am]

BILLING CODE 4410–05–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on September 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell

Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Accuwave, Inc. ("Accuwave") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Accuwave, Santa Monica, CA. Bellcore and Accuwave entered into an agreement effective as of September 4, 1993, to engage in cooperative research on the topic of wavelength-division multiplexed optical communications systems to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28316 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corp.

Notice is hereby given that, on October 14, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Z&S Consultants Ltd., London, United Kingdom; Geomatic A.S., Oslo, Norway; United States Government, Department of the Interior, Bureau of Land Management, Washington, DC.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on July 15, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 1993, 58 FR 43655.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28319 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on October 5, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cadence Chemical Resources, Inc. has resigned its associate membership effective August 31, 1993.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PAC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PAC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on August 30, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 6, 1993, 58 FR 52120.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28317 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Software Productivity Consortium

Notice is hereby given that, on September 23, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Software Productivity Consortium ("SPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become small business members of SPC: Space Applications, Inc., Santa Ana, CA; and Systems Engineering and Management Associates, Inc., Alexandria, VA. BTG, Inc., Vienna, VA has been admitted as a basic member; and Aerojet Electronic Systems Division of Gencorp Inc., Asusa, CA has been admitted as an affiliate member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SPC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on March 26, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 1991 (56 FR 36848).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28318 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Phase I Media Arts Section) to the National Council on the Arts will be held on December 2, 1993 from 9:30 a.m. to 4:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for introductions and a brief Advancement Overview.

The remaining portion of this meeting from 10 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion,

evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28346 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Construction/Renovation Challenge Review Section) to the National Council on the Arts will be held on December 10, 1993 from 9:30 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC, 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10:30 a.m. for introductions and a Challenge Process Overview.

The remaining portion of this meeting from 10:30 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c), (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC, 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28347 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Section) to the National Council on the Arts will be held on November 30 to December 3, 1993 from 9 a.m. to 6 p.m. on November 30, 1993 to December 2, 1993 and from 9 a.m. to 4:30 p.m. on December 3, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 4:30 p.m. on December 3, 1993 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 3 p.m. on December 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1993, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28342 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (Folk Art Projects Section) to the National Council on the Arts will be held on December 7-10, 1993 from 9 a.m. to 6:30 p.m. on December 7 and 9, 1993; from 9 a.m. to 10:30 p.m. on December 8, 1993; and from 9 a.m. to 4:30 p.m. on December 10, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 10:30 a.m. to 12:30 p.m. on December 9, 1993 for a policy review.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on December 7, 1993; from 9 a.m. to 10:30 p.m. on December 8, 1993; from 9 a.m. to 10:30 a.m. and 12:30 p.m. to 6:30 p.m. on December 9, 1993; and 9 a.m. to 4:30 p.m. on December 10, 1993 are for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28345 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 30, 1993 to December 3, 1993 from 9 a.m. to 5:30 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 5 p.m. on December 3, 1993. This meeting will be held in room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 5 p.m. on December 3, 1993 for a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 3 p.m. on December 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28343 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Local Arts Agency Advisory Panel (Local Incentive and Rural Development Sections) to the National Council on the Arts will be held on November 30 to December 3, 1993 from 1 p.m. to 5 p.m. on November 30, 1993; from 9 a.m. to 7 p.m. on December 1-2, 1993; and from 9 a.m. to 3 p.m. on December 3, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. A policy discussion will be held in addition to application review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28344 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on December 6-11, 1993 from 9 a.m. to 6 p.m. on December 6, 1993; from 9 a.m. to 7 p.m. on December 7-9, 1993; and from 9 a.m. to 5 p.m. on December 10-11, 1993. This meeting will be held in room M-14, on December 6-10, 1993 and room 714 on December 11, 1993, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on December 10, 1993 and from 4 p.m. to 5 p.m. on December 11, 1993 for a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on December 6, 1993; from 9 a.m. to 7 p.m. on December 7-9, 1993; from 9 a.m. to 3:30 p.m. on December 10, 1993; and from 9 a.m. to 4 p.m. on December 11, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28341 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that meeting of the Opera-Musical Theater Advisory Panel (New American Works Section B) to the National Council on the Arts will be held on December 7-10, 1993 from 9 a.m. to 10 p.m. on December 7-9, 1993, and from 9 a.m. to 5 p.m. on December 10, 1993. This meeting will be held in room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on December 7, 1993 for Introductions and Orientation, and from 11:15 a.m. to 12:15 p.m. on December 10, 1993 for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 10 p.m. on December 7, 1993; from 9 a.m. to 10 p.m. on December 8-9, 1993; from 9 a.m. to 11:15 a.m. and 12:15 p.m. to 5 p.m. on December 10, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28348 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Section A) to the National Council on the Arts will be held on November 30-December 3, 1993 from 9 a.m. to 10 p.m. on November 30-December 2, 1993, and from 9 a.m. to 5 p.m. on December 3, 1993. This meeting will be held in room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on November 30, 1993 for introductions and orientation, and from 11:15 a.m. to 12:15 p.m. on December 3, 1993 for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 10 p.m. November 30, 1993; from 9 a.m. to 10 p.m. on December 1-2, 1993; from 9 a.m. to 11:15 a.m. and 12:15 p.m. to 5 p.m on December 3, 1993 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-28349 Filed 11-17-93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. DPR-54, issued to the Sacramento Municipal District (SMUD or the licensee), for the Rancho Seco Nuclear Generating Station located at the licensee site in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and exemption from participation in the industry

retrospective rating plan (secondary level financial protection) for the Rancho Seco Nuclear Generating Station. The licensee requested the exemption in a letter dated November 14, 1990, and supplemented by letter dated October 15, 1992.

The Need for the Proposed Action

The Rancho Seco Nuclear Generating Station (Rancho Seco) was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. The NRC in license Amendment No. 117, dated March 17, 1992, modified Facility Operating License DPR-54 to a Possession Only License (POL). The license is conditioned so that SMUD is not authorized to operate or place fuel in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations. The plant has not operated for approximately four years and three months and radioactive decay has significantly reduced the radioactive nuclide inventory and decay heat of the spent fuel. Since a sufficient spent fuel cooling period of three years has elapsed, the potential for causing significant offsite consequences no longer exists at Rancho Seco. Therefore, the requested exemption addresses two areas for relief in financial protection requirements: (1) A reduction in the primary financial protection coverage requirements from $200,000,000 to $100,000,000 and (2) withdrawal from participation in the industry retrospective rating plan. Since Rancho Seco no longer contributes as great a risk to the industry retrospective rating plan participants as an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the Commission in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety, no changes would be made in the types or quantities of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Rancho Seco Nuclear Generating Station dated March 1973.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of California regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated November 14, 1990, and supplemented by letter dated October 15, 1992, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Rancho Seco Nuclear Generating Station at the Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93-28393 Filed 11-17-93; 8:45 am]

BILLING CODE 7590-01-M

In the Matter of: All Boiling Water Reactors (BWRS) Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, on August 12, 1993, September 13, 1993, and September 17, 1993, Mr. Paul M. Blanch submitted petitions on his own behalf to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 regarding BWR reactor pressure vessel level instrumentation condensate pots, as discussed in NRC Generic Letter 92-04, "Resolution of the Issues Related to Reactor Vessel Water Level Instrumentation in BWRs Pursuant to 10 CFR 50.54(f)," dated August 19, 1992, and NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993. The Petitions have been referred to the Office of Nuclear Reactor Regulation for preparation of a response.

Petitioner requested in his August 12, 1993, letter that each operating BWR either conclusively demonstrate the operability of the condensate pots and associated level instruments, interlocks, and ECCS functions or be provided a plant specific license exemption with the plant specific safety analysis. Petitioner further stated that if operability cannot be demonstrated and/or the NRC fails to grant plant specific relief from the regulations, each BWR must comply with the Action Statements of the Technical Specifications for inoperable level instruments.

Petitioner requested in his September 13, 1993, letter that an enforcement conference, to be conducted between the NRC staff and Northeast Utilities to discuss a potential failure to perform a timely analysis of a known operability concern on the Feedwater Coolant Injection System at Millstone Unit 1, be opened to the general public and that Petitioner be allowed to participate. While Petitioner requested this action under the provisions of 10 CFR 2.206, the NRC staff has determined that this request does not fall within the Scope of 10 CFR 2.206. Petitioner was

informed in the NRC acknowledgement of the petitions of the Commission policy on public attendance at enforcement conferences. Petitioner further requested a response to two questions related to a discussion on the NRC's regulations that occurred at a workshop on § 2.206 petitions held in July 1993 by the NRC staff with the public. These questions again did not fall within the scope of 10 CFR 2.206, and Petitioner was informed that the NRC staff would address his questions by separate correspondence.

Petitioner requested in his September 17, 1993, letter that the NRC staff, under the provisions of 10 CFR 2.206, provide responses to six specific questions. The NRC staff has determined that this request does not fall within the scope of 10 CFR 2.206, and so informed Petitioner in the NRC acknowledgement of the petitions. Petitioner was further informed that the NRC staff would address the questions by separate correspondence.

By letter dated November 9, 1993, the Petitioner was informed of the referral of these petitions to the Director, Office of Nuclear Reactor Regulation, and was further informed of the determinations regarding what aspects of the Petitions fell within 10 CFR 2.206, as discussed in the preceding paragraphs. As provided by § 2.206, appropriate action with regard to the specific requests made in Petitions that are within the scope of § 2.206 will be taken within a reasonable time.

A copy of the Petitions are available for inspection at the Commission Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of November, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-28396 Filed 11-17-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219; License No. DPR-16; EA 93-136]

GPU Nuclear Corp., Oyster Creek Nuclear Generating Station, Forked River, New Jersey; Order Imposing a Civil Monetary Penalty

I

GPU Nuclear Corporation (Licensee) is the holder of Operating License No. DPR-16 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission). The License authorizes the Licensee to operate the Oyster Creek Nuclear Generating Station, in accordance with the conditions specified therein.

II

An inspection of licensed activities was conducted on May 17 and 18, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 17, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice on September 20, 1993. In its response, the Licensee admitted the violations, and paid $50,000 of the $75,000 proposed. However, the licensee requested withdrawal of the remaining portion of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated, and that the portion of the civil penalty not paid by the licensee should be imposed for the violations designated in the Notice.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $25,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 9th day of November, 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On August 17, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $75,000 was issued to the licensee for five violations identified during an NRC inspection. GPU Nuclear Corporation (Licensee) responded to the Notice on September 20, 1993. The Licensee admitted the violations, paid $50,000 of the civil penalty, but requested withdrawal of the remaining $25,000 of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violations

A. Plant Technical Specification (TS) 6.11 requires, in part, that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR part 20 and shall be approved, maintained and adhered to for all operations involving personnel radiation exposure.

Licensee radiation safety procedure 9300-ADM-4110.04, Rev. 8, "Radiation Work Permit (RWP)," paragraph 7.2.3, Block 3, Work Description, written to comply with TS 6.11 and 10 CFR Part 20, requires that sufficient detail be provided in the RWPs for Radiological Controls personnel to understand the scope of the task.

Contrary to the above, RWP 930254, prepared for decontamination work scheduled for May 7, 1993, in the New Radwaste Building fill aisle, did not provide sufficient detail for Radiological Controls personnel to understand the scope of the task. Specifically, the RWP did not indicate that personnel would enter into the batch tank pit on the 23' elevation of the New Radwaste Building. Consequently, on May 7, 1993, workers entered the batch tank pit, while neither the Radiation Controls Technician providing job coverage to the workers, nor the Radiological Engineering Department, which establishes as low as reasonably achievable (ALARA) controls and support, knew that this entry was to be made under this RWP.

B. 10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary to comply with the requirements of part 20 and which (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions. 10 CFR 19.12 requires, in part, that all individuals working in any portion of a restricted area be kept informed of radiation in such portions of the restricted area, and be instructed in the precautions and procedures to minimize exposure to radiation. The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

Contrary to the above, prior to the May 7, 1993, entry by personnel into the batch tank pit on the 23' elevation of the New Radwaste Building, a portion of the licensee's restricted area that was posted as a locked high radiation area and which required respirator usage, the licensee did not (1) survey the batch pit to assure compliance with that portion of 10 CFR 20.101 that limits total occupational dose and (2) inform individuals working in the area of radiation levels in the area and had not instructed those individuals in the precautions and procedures to minimize exposure to radiation. The floor of the batch pit had been covered with spilled powder resin from the batch tank and had contact dose rates of about 10 R/hr.

C. 10 CFR 20.103(c)(2) requires, in part, that the licensee maintain and implement a respiratory protection program that includes, as a minimum, air sampling sufficient to identify the hazard and permit proper equipment selection.

Licensee radiation safety procedure 9300-4020.03, Revision 8, "Use of Respiratory Protection Equipment," paragraph 7.9.2 requires that the protection factor (PF) for respiratory protection equipment selected be greater than the multiple by which the peak concentration of airborne radioactive materials is expected to exceed the values of Appendix B, Table 1, Column I of 10 CFR Part 20 as determined by the sampling of the airborne contamination.

Contrary to the above, on May 11, 1993, the licensee did not maintain and implement a respiratory protection program in that (1) radiation workers were permitted entry into the batch tank pit on the 23' elevation of the New Radwaste Building to remove debris, without prior air sampling being conducted in the pit to identify the hazard and (2) the respiratory protection equipment (negative pressure full face respirators) worn by the workers provided a PF of 50, which was less than the required PF indicated by the air sampling conducted during the pit entry.

D. 10 CFR 20.103(a)(3), requires, in part, that for purposes of determining compliance with the requirements of 10 CFR 20.103, the licensee shall use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity in restricted areas.

Contrary to the above, on May 11, 1993, two radiation workers entered the batch tank pit on the 23' elevation of the New Radwaste Building, a posted restricted area requiring respiratory protection equipment for entry, and the licensee did not use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity. Specifically, only one person had been issued a breathing zone analyzer (BZA), despite the fact that only one person could enter the batch tank pit at a time. This resulted in a situation where the worker without the BZA could be working in higher concentrations of airborne radioactivity.

E. Plant Technical Specification 6.11 requires that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR part 20 and shall be approved, maintained, and adhered to for all operators involving personnel radiation exposure.

Licensee radiation safety procedure 9300-ADM-4010.02, Revision 5, "ALARA Review Procedure," Section 7.3, "ALARA Review Criteria", in part, implements the requirements of 10 CFR part 20 by specifying the circumstances in which an ALARA review must be done.

Contrary to the above, as of May 18, 1993, procedure 9300-ADM-4010.02 did not adequately specify criteria for performing an ALARA review for highly contaminated systems and components in that such reviews were left to the discretion of Radiological Engineering without guidelines for exercising that discretion. As a consequence, Radiological Engineering waived the performance of an ALARA review for a planned decontamination task involving highly contaminated material in a locked high radiation exclusion area—a situation for which an ALARA review would normally have been warranted by sound radiological protection principles.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement IV).

Civil Penalty—$75,000.

2. Summary of Licensee Request for Mitigation

The license, in its response, admitted the violations, and paid $50,000 of the proposed civil penalty. However, the licensee, requested withdrawal of the $25,000 escalation of the civil penalty. (The NRC had escalated the base civil penalty of $50,000 by 25% based on the long term corrective actions not being adequate or timely, and another 25% based on the licensee's prior performance). As a basis for its request, the licensee stated that prior to the enforcement conference, the Vice President/Director of the Station directed that future decontamination activities, similar to the May 7 and 11 tasks, be performed under the licensee's work management planning process. The licensee also indicated that Radiological Controls management had issued directives to define the expected interpretations of the As-Low-As Reasonably-Achievable (ALARA) review criteria. These directives were included in the procedures shortly after the enforcement conference. Therefore, the licensee requests that the 25% escalation based on the corrective action factor be withdrawn.

With respect to the licensee's prior performance, the licensee contends that the May 1993 event and the April 1991 event, the latter being the subject of a past escalated enforcement action [Reference: EA No. 91-056], do not have similar root causes. Therefore, the licensee maintains that the two events are not indicative of the same failure, and corrective actions for the April 1991 event cannot be expected to have prevented the May 7th event. On this basis the licensee contends that the 25% escalation of the base civil penalty on prior performance is inappropriate.

3. NRC Evaluation of Licensee Response

The NRC has evaluated the licensee response and has determined that the licensee has not provided an adequate basis for withdrawal of the $25,000 portion of the civil penalty attributed to the 50% escalation of the base amount.

With respect to the 25% escalation of the penalty based on corrective actions, the licensee's presentation at the June 24, 1993 enforcement conference, more than six weeks after the event, indicated that the licensee had not completed its determination on a need for clarifying the ALARA review procedure or on the need for instituting long-term corrective actions that focused on ALARA review and job planning. Weaknesses in the ALARA procedure were a major contributing factor in the root cause of the violations, because had the procedure specified clear criteria for performing an ALARA review in this case, such a review would have provided the necessary elements of radiological planning to prevent the violations from occurring.

The NRC recognizes that the licensee's May 24, 1993, "ALARA Reviews and RWP Requirements" memorandum instructed the licensee's staff to perform reviews for a broad category of work. However, at the enforcement conference, the licensee indicated that they had not determined if these changes would be made permanent by incorporating them in the ALARA procedure. While the licensee's May 24, 1993 memorandum constituted an adequate interim corrective action, it needed to be incorporated into the radiation protection procedures to qualify as a long-term corrective action, because Technical Specification 6.11 requires that all operations involving personnel radiation exposure shall be conducted following personnel radiation protection procedures. In this case the necessary procedure changes, including the temporary change to the ALARA review procedure, were not made until the NRC emphasized the need for permanent procedural guidance at the enforcement conference. Therefore, the NRC maintains that the licensee's long-term corrective actions were not adequate or timely and the 25% civil penalty escalation based on corrective actions was appropriate.

With respect to the 25% escalation of the penalty based on past performance, the NRC maintains that the 1991 and May 1993 events were similar in that they both indicated weaknesses in job planning and communication, and failure of personnel to ensure that radiological requirements

regarding appropriate survey, instructions and monitoring were followed. For example, in 1991, one operator entered a locked high radiation area of unknown radiation intensity without appropriate survey, monitoring equipment, and instructions in precautions and procedures to minimize exposure to radiation, as required by the plant technical specifications and the regulations. In May 1993, workers entered a highly contaminated locked high radiation area of unknown radiation hazard without appropriate survey and instructions, and on one occasion, one worker entered the same area without suitable monitoring equipment for airborne radioactivity, as required by the regulations.

In addition, the 1991 event indicated a need for the licensee to enhance its procedure regarding personnel monitoring during group entry, in particular, the practice of allocating certain monitors to only one person when more than the one person was entering the area. During the May 11, 1993 event, the same "group entry" criterion was applied and resulted in not having suitable measurements of radioactive dose for one of the two workers, since they were separately entering the highly contaminated area.

When considering whether to escalate the penalty based on the licensee performance factor, a number of criteria are considered, as stated in Section VI.B.2 of the Enforcement Policy. In addition to the effectiveness of previous corrective actions for similar problems, those criteria consist of Systematic Assessment of Licensee Performance (SALP) evaluations, prior enforcement history overall as well as in the area of concern. The base civil penalty may also be escalated by as much as 100% if the current violation reflects the licensee's poor prior performance. Even if the NRC were to accept the licensee's argument that the events were not similar, a basis for partial escalation based on past performance still exists, given the licensee's prior enforcement history in the area of radiological controls, since it included the escalated enforcement action in 1991 along with several cited and non-cited violations since then. In light of the prior events, the NRC could have considered an even higher escalation, rather than the 25% applied, but chose not to because of the licensee's improving SALP rating in this area. Therefore, based on the above, the NRC maintains that 25% escalation on the factor is appropriate.

4. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigating the escalation of the civil penalty based on the corrective action and prior performance adjustment factors. Accordingly, the NRC has determined that a monetary civil penalty in the amount of $25,000 should be imposed.

[FR Doc. 93-28395 Filed 11-17-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 69 to Facility Operating License No. NPF-42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), which revised the License and Technical Specifications for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment revises the License and the Technical Specifications to allow an increase in the maximum reactor core power level (rated thermal power) from the present value of 3411 megawatts thermal (MWt) to a revised limit of 3565 MWt. The increase in allowed core power combined with the energy added by the reactor coolant pumps would result in the proposed changes allowing Wolf Creek to operate at a nuclear steam supply system power of 3579 MWt. In addition to the increased core power level, changes were made in the allowable operating temperatures of the reactor coolant system. The reductions in reactor coolant hot-leg temperatures were made in order to reduce the potential for stress corrosion cracking of steam generator tubes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 9, 1993 (58 FR 32392). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment. The environmental assessment and finding of no significant impact was published in the **Federal Register** on October 25, 1993 (58 FR 55086).

For further details with respect to the action see (1) the application for amendment dated January 5, 1993, as supplemented by letter dated October 1, 1993, (2) Amendment No. 69 to License No. NPF-42, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are 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 Rooms, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects, III/IV/V.

Dated at Rockville, Maryland, this 10th day of November 1993.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-28394 Filed 11-17-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office: 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

Municipal Securities
Interviews
File No. 270-384.

Notice if 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 informal interviews of up to 100 persons or entities concerning issues related to disclosure practices in the municipal securities markets. These interviews are necessary to gain a greater understanding and appreciation of matters significant to regulation of disclosure provided by issuers and market participants to the primary and

the secondary markets for municipal securities. Each interview is estimated to require three burden hours. Persons and entities interviewed also may be asked to provide the staff, on a voluntary basis, with any available data concerning current disclosure practices, such as existing studies and reports by industry participants.

The estimated average burden hours are 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 hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours 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.

Dated: November 8, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28340 Filed 11-17-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33172; International Series Release No. 610, File No. SR-AMEX-93-29]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants on the Amex Hong Kong 30 Index

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Amex proposes to clarify the manner in which it calculates the Amex Hong Kong 30 Index ("Index") and determines the settlement value of warrants based on the Index. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On October 8, 1993, the Exchange received Commission approval to list and trade warrants on the Index.[1] The Exchange is now proposing, prior to the actual listing or trading of any warrants on the Index, to clarify the manner in which it calculates the Index and determines the settlement value of warrants based on the Index. The Index value and the settlement value will be based upon the most recent official closing prices of each of the component securities as reported by the Stock Exchange of Hong Kong ("HKSE"). The Index is then calculated by multiplying the HKSE closing price of each security by the number of shares outstanding. The Index value for purposes of settling warrants on the Index upon exercise or at the warrant expiration will be calculated based on the most recent official closing prices for each of the Index's component securities as reported by the HKSE.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[1] See Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-93-29 and should be submitted by December 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[2] 17 CFR 200.30-3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-28338 Filed 11-17-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33173; File No. SR-CBOE-93-49]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Gaming Index.

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to list and trade options on the CBOE Gaming Index ("Gaming Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Gaming Index.

The CBOE states that the Gaming Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the gaming industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed gaming industry funds, as well as a means of hedging the risks of investing in the gaming industry.

1. Index Design, Maintenance, and Calculation

The Gaming Index is based on fifteen gaming industry stocks. Eight of those stocks currently trade on the New York Stock Exchange ("NYSE"), and seven currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[1] The Index is priceweighted and will be calculated on a real-time basis using last-sale prices. The Index is comprised of stocks that range in capitalization from $137.1 million to $5.1 billion, as of October 20, 1993. As of that time, the total capitalization of the Index was $19.6 billion, the median capitalization of the stocks in the Index was $447.6 million, the largest stock in the Index accounted for 16.19% of the total capitalization of the Index, and the smallest stock in the Index accounted for 1.57% of the total capitalization of the Index. All fifteen Index component stocks presently have options listed upon them.

The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock in not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to other industry indices that previously have been approved for trading on the Exchange, the Gaming Index is priceweighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by summing the prices of the component stocks and then dividing by a divisor that yielded an Index value of 100.00 as of January 2, 1992. As of October 20, 1993, the Index value was 258.79.

The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index is reviewed on approximately a monthly basis by the CBOE staff. The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the gaming industry. If a company in the Index is no longer representative of the gaming industry, the stock will be removed from the Index. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the gaming industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock.

The CBOE will not make any change in the composition of the Index if such change would result in less than ninety percent of the Index, by weight, consisting of stocks that are eligible for individual equity options as provided in CBOE Rule 5.3. The CBOE will most likely maintain fifteen stocks in the Index at all times. Absent prior approval by the Commission, the CBOE will not increase to more than twenty or decrease to fewer than ten the number of stocks in the Index.

2. Index Option Trading

The Exchange proposes to base trading in options on the Gaming Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS for which the underlying value will be computed at one-tenth of the Gaming Index. The current and closing index value of any such reduced-value LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. The Exchange submitted to the Commission, as an exhibit to the present rule filing, proposed contract specifications for the Gaming Index options.

3. Exercise and Settlement

Gaming Index options will have European-style exercise[2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to Gaming

[1] All seven NASDAQ component stocks are currently qualified for and traded on the NASDAQ National Market.

[2] A European-style option can only be exercised during a specified period before the option expires.

Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

4. Exchange Rules Applicable to Industry Index Options

An industry index contract such as the Gaming Index option will be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. Ten reduced-value options will equal one full-value contract for such purposes.

The CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of Gaming Index options.

5. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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.

[3] Under CBOE Rule 24.9, A.M.—settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–49 and should be submitted by December 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28339 Filed 11–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33185; File No. SR–NASD–93–13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Filing Requirements of the Corporate Financing Rule

November 10, 1993.

On May 4, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The proposal clarifies the exemption from the filing requirements of the NASD's Corporate Financing Rule[4] for securities registered on Form S–3[5] or Form F–3[6] and offered pursuant to Rule 415[7] under the Securities Act of 1933 ("Securities Act"). The proposal also clarifies the exemption from the filing requirements of the NASD's Corporate Financing Rule for Canadian securities registered on Form F–10 under the Securities Act.[8]

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on May 21, 1993.[9] The Commission received one letter commenting on the proposal. This order approves the rule change.

NASD rules provide an exemption from the filing requirements of the Corporate Financing Rule for offerings filed on Form S–3 or Form F–3 and offered pursuant to Rule 415, and Canadian offerings filed on Form F–10 and offered pursuant to the home jurisdiction's shelf prospectus offering procedures. On October 21, 1992, the Commission approved amendments expanding the classes of issuers eligible to file on Form S–3 pursuant to Rule 415.[10] In light of these amendments, issuers newly eligible to file on Form S–3 are also exempt from the NASD's Corporate Financing Rule filing requirements.

The NASD has reviewed its exemption from the Corporate Financing Rule filing requirements, and has concluded that it does not have sufficient information with respect to these newly eligible issuers and transactions to determine whether the market forces related to such offerings result in the presence of fair and reasonable underwriting terms and arrangements.[11] Accordingly, the NASD is amending the Corporate Financing Rule to limit the exemption to offerings[12] that meet Form S–3's eligibility criteria as set forth in that

[4] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD initially filed the proposed rule change with the Commission on March 10, 1993. On May 4, 1993, the NASD filed Amendment No. 1, which clarified the language of, and statutory basis for, the rule change.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

[4] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 44(b)(7)(C) (CCH) ¶ 2200D.

[5] 17 CFR 239.13.

[6] 17 CFR 239.33.

[7] 17 CFR 230.415.

[8] 17 CFR 239.40.

[9] Securities Exchange Act Release No. 32316 (May 17, 1993), 58 FR 29672.

[10] Securities Act Release No. 6964 (October 22, 1992), 57 FR 48970 (October 29, 1992).

[11] In this connection, the NASD's Corporate Financing Department conducted a preliminary review of filings of issuers that would meet the new Form S–3 standards, and identified compensation or regulatory issues in a number of the filings.

[12] The NASD determined that investment grade non-convertible debt and investment grade non-convertible securities registered on amended Form S–3 should continue to be exempt from the Corporate Financing Rule Filing Requirements, regardless of the registration form relied on, under a separate exemption set forth in Section (b)(7)(B) of the Corporate Financing Rule.

Form prior to October 21, 1992—i.e., the date of the Commission's approval of the amendments to Form S–3.[13] The NASD will undertake a review of offerings filed with the NASD on Form S–3 that are offered pursuant to Rule 415 by companies that would not meet the prior criteria for Form S–3 to determine whether the market forces related to such offerings result in the presence of fair and reasonable underwriting terms and arrangements.[14]

The NASD is also amending the exemption from the filing requirements of the Corporate Financing Rule for offerings of foreign private issuers filed on Form F–3 and Canadian offerings filed on Form F–10. At the time it amended Form S–3, the Commission had not proposed amendments expanding the class of issuers eligible to file on Form F–3 or Form F–10. Since that time, the Commission has adopted amendments to Form F–10 expanding the class of issuers eligible to file on that Form,[15] and has proposed amendments to Form F–3 expanding the class of issuers eligible to file on that Form.[16] The NASD believes it should clarify its Form F–3 and Form F–10 exemption in light of the Commission's amendments to Form F–10, and in the event the Commission adopts amendments to Form F–3 in the future. Therefore, the NASD is amending the Corporate Financing Rule to reflect that the Form F–3 and Form F–10 filing exemption is limited to offerings that meet the eligibility criteria as set forth in those Forms prior to October 21, 1992.[17]

The NASD recognizes its responsibility to ensure that application of the Rule does not impose a substantial burden on issuers. In this regard, the NASD's Corporate Financing Department maintains procedures to expedite its review of shelf offerings.[18] The NASD will clarify these procedures in its Notice to Members announcing approval of the rule change.

The Commission received one comment letter opposing the proposal, from the firm of Sullivan & Cromwell.[19] The NASD responded to issues raised by the commenter in letters dated July 20[20] and September 17, 1993.[21] Sullivan & Cromwell argues that the NASD's rationale for the rule change is inconsistent with the Commission's determination to expand the availability of Form S–3 to a larger class of issuers. Sullivan & Cromwell notes that NASD filing requirements impose significant costs in terms of filing fees and legal expenses, and can delay the offering. Sullivan & Cromwell believes that the additional expense and delay is inconsistent with the Commission's intent to eliminate unnecessary regulatory obstacles and increasing the flexibility and efficiency of the shelf registration process.

Sullivan & Cromwell also argues that issuers newly eligible to file on Form S–3 are financially sophisticated and capable of protecting their interests in negotiating underwriting arrangements. Sullivan & Cromwell points out that the amendments to Form S–3 did not reduce the amount of information these issuers must disclose to the investing public, and that these issuers are closely followed by market professionals. Accordingly, Sullivan & Cromwell believes that market forces are sufficient to ensure fair and reasonable underwriting terms and arrangements.

In response, the NASD argues that the Commission's concerns in amending Form S–3 focused on market following and public float, whereas the NASD is concerned principally with the fairness of the underwriter compensation arrangements. The NASD believes that while a one-year reporting history is sufficient to justify the incorporation-by-reference form of disclosure in connection with a secondary offering, a one-year reporting history does not necessarily ensure fair underwriting terms and arrangements. The NASD notes that in its study of offerings by these newly eligible issuers, a significant number of proposed underwriting arrangements did not comply with the Corporate Financing Rule. In addition, the NASD argues that the benefits of the proposed rule change in terms of ensuring fair and reasonable underwriting arrangements outweigh the costs attributable to increased fees, legal expenses, and delay.

Sullivan & Cromwell also objects to footnote 5 of the NASD's filing,[22] which clarifies the NASD's position that the Form S–3, Form F–3, and Form F–10 exemptions from the Corporate Financing Rule filing requirements cannot be used for offerings when the Rule 415 box is checked on the cover page of the registration statement but the securities are distributed in a single traditional underwriting arrangement shortly after effectiveness. Sullivan & Cromwell argues that to the extent financial sophistication and market interest can be presumed from Form S–3 eligibility, Form S–3 issuers should be able to protect their own interests in

[13] The NASD indicated that it will publish the prior version of Form S–3 in a Notice to Members, and will include a reference to that Notice to Members, following Subsection (b)(7)(C) of the Corporate Financing Rule in the NASD Manual, specifying that the Notice of Members includes a copy of Form S–3 as in effect prior to October 21, 1992. NASD staff will provide determinations to members and their counsel as to whether an offering would meet the objective criteria of Form S–3 as in effect prior to October 21, 1992. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Division of Market Regulation, SEC (April 14, 1993). The NASD will follow the same approach for Forms F–3 and F–10, as discussed below.

[14] The NASD anticipates that its review will cover the period of one year following the effective date of the proposed rule change. The NASD has agreed to provide the Commission with a report of its findings within 18 months following the effective date of the rule change. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (September 3, 1993).

[15] See Securities Act Release No. 7025 (November 3, 1993) (eliminating the market capitalization threshold, establishing a public float threshold of U.S. $75 million, and reducing the reporting history requirements to 12 months).

[16] See Securities Act Release No. 7029 (November 3, 1993) (reducing the public float threshold to U.S. $75 million and the reporting history requirement to 12 months).

[17] See Securities Act Release No. 6902 (June 21, 1991), 56 FR 30036 (July 1, 1991).

[18] The procedures previously approved by the NASD's Corporate Financing Committee are as follows:

1. Where the participating NASD member(s) have not been determined, the issuer may file the offering with the NASD on behalf of potential NASD member participants.

2. All necessary documents should be filed as set forth in Section (b)(5) of the Corporate Financing Rule.

3. The cover letter to the filing should include all information listed under "Information Required to Be Filed" in subsection (b)(6) of the Corporate Financing Rule requiring, inter alia, estimates of the maximum underwriting compensation, maximum price per share, and maximum amounts of any other underwriting compensation, as well as a statement of any affiliations between the issuer, any NASD member, and any purchases of securities of the issuer made by any NASD member in the prior twelve months.

4. The Corporate Financing Department staff will render an opinion of no objections to the underwriting terms and arrangements if undertakings are received with respect to the compensation and disclosure of the compensation in the offering document and to the effect that the Corporate Financing Department would be notified of any changes of issuer-member affiliation or purchases of the issuer's securities by a member.

5. In recognition of the market timing issues associated with shelf offerings, the staff of the Corporate Financing Department are authorized to grant priority to the review of shelf offerings. In order to determine the timetable for a proposed shelf offering, NASD staff routinely contact counsel on the date the offering is filed. NASD staff believe that in every case where the SEC staff grants "no review" status to an offering, NASD review is completed within the underwriter's time constraints. The average length of time for review of all offerings on a Form S–3 is currently 4.7 days.

Release No. 34–32316.

[19] See letter from Sullivan & Cromwell to Jonathan G. Katz, Secretary, SEC (June 9, 1993).

[20] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC ("NASD July letter").

[21] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC ("NASD September 17 letter").

[22] Release No. 34–32316, 58 FR at 29673, n.5.

negotiating underwriting arrangements. Thus, there is no reason to limit the exemption from the Corporate Financing Rule to offerings pursuant to Rule 415, in which the securities are distributed in a series of delayed transactions as opposed to a single transaction.

The NASD responds that the interpretation referred to in footnote 5 merely reflects the NASD's original intent to limit the Corporate Financing Rule filing exemption to "delayed basis" shelf offerings.[23] Furthermore, the NASD believes that it is inappropriate for a member to rely on an exemption from the filing requirements of the Corporate Financing Rule if, at any time between filing and the effective date, the member does not reasonably believe that the offering qualifies for the exemption.[24] For example, a Rule 415 election on the cover page of Form S–3 may relate to the future issuance of common stock underlying warrants or common stock registered on behalf of selling shareholders, and not to securities offered on the same registration statement that are to be sold in a conventional underwriting shortly after effectiveness. Thus, the fact that an issuer filing on Form S–3 is relying on Rule 415 should not automatically qualify the offering for an exemption under the Corporate Financing Rule. Similarly, when a registrant files with the Commission on Form S–3 and relies on Rules 415 and 430A,[25] the possibility arises that the securities may be sold in a traditional underwriting arrangement shortly after effectiveness. The NASD believes that an offering in which the registrant is relying on both Rule 415 and Rule 430A should not be eligible for the Corporate Financing Rule exemption because the member cannot reasonably believe that the offering qualifies for the exemption.

The Commission has considered the above comments and has determined to approve the NASD's proposed rule change. The Commission recognizes the NASD's obligation to ensure the fairness of underwriting terms and arrangements as a self-regulatory organization registered under section 15A of the Act. The Commission believes that in light of the NASD's findings regarding newly eligible issuers, continued review of these issuers' underwriting compensation arrangements may benefit investors by ensuring that a greater share of the offering proceeds accrue to the issuer.

At the same time, the Commission believes that the rule change appropriately balances the need to ensure investor protection with the interests of issuers in reduced regulatory burdens and increased efficiency for offerings off the shelf. In this regard, the Commission recognizes that the NASD has established special procedures for expediting its review of shelf offerings, and that the NASD states that it consistently completes its review of these offerings within the underwriter's time constraints. The Commission, therefore, does not believe that the rule change imposes significant regulatory inefficiencies on issuers filing on Form S–3, Form F–3, or Form F–10.[26]

In addition, the Commission has reviewed the NASD's interpretation, referred to in footnote 5 of the rule filing, that the Form S–3 and Form F–3 exemption from the Corporate Financing Rule filing requirements cannot be used for offerings when the Rule 415 box is checked on the cover page of the registration statement but the securities are distributed in a single traditional underwriting arrangement shortly after effectiveness. The Commission believes that it is reasonable for the NASD to limit its exemption from the Corporate Financing Rule filing requirements to offerings that qualify—both at the time of filing and up to the effective date—for the NASD's exemption as a delayed basis shelf offering filed on Form S–3 under Rule 415.[27]

For these reasons, and for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[28] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, 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. The Commission believes that the proposed rule change will promote just and equitable principles of trade and in general protect investors and the public interest by ensuring compliance with the NASD's Corporate Financing Rule in terms of fair and reasonable underwriting terms and arrangements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–93–13 be, and hereby is approved, effective February 1, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28337 Filed 11–17–93; 8:45 am]

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[23] See NASD July letter at 2.

[24] See NASD September 17 letter at 4–5.

[25] Under Rule 430A, certain pricing and underwriting compensation information need not appear in the registration statement at the time it becomes effective, provided the information is included in a final prospectus filed with the SEC within five days following the effective date of the offering. 17 CFR 230.430A. A registrant that is eligible to engage in a delayed offering pursuant to Rule 415 but is uncertain at the time of filing whether or not the securities will be offered promptly after effectiveness or on a delayed basis may retain the option to proceed under either Rule 415 or Rule 430A. Securities Act Release No. 6714 (May 27, 1987), 52 FR 21252 (June 5, 1987).

[26] Nevertheless, the Commission is concerned that the rule as drafted may make it inconvenient to locate the eligibility requirements for the Form S–3, Form F–3, and Form F–10 filing exemptions from the Corporate Financing Rule. These requirements will appear only in the NASD Notice to Members announcing approval of the rule change. The Commission believes that after gaining experience in administering and interpreting the rule, the NASD should consider making the relevant eligibility requirements more accessible to members and their counsel.

[27] In its release adopting the amendments to Form S–3, the Commission reminded potential registrants that "disclosure in the registration statement at the time of effectiveness should accurately reflect the registrant's current plans and arrangements with respect to the distribution of its securities." Securities Act Release No. 6964 (October 22, 1992), 57 FR 48970 (October 29, 1992).

[28] 15 U.S.C. 78o–3(b)(6).

[29] 17 CFR 200.30–3(a)(12).

[Release No. 34–33171; File No. SR–PSE–92–20]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Stock Exchange Inc., Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988

November 9, 1993.

I. Introduction

On December 14, 1992, the Pacific Stock Exchange Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, non-

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

public information. On October 25, 1993, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

Notice of the proposal appeared in the **Federal Register** on April 27, 1993.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter, and prosecute insider trading.[5] ITSFEA created a new section 15(f) of the Act[6] to require broker-dealers to maintain procedures designed to prevent the misuse of material, non-public information by such broker-dealers or any person associated with such broker-dealers. ITSFEA also grants the Commission broad rule-making authority concerning so-called "Chinese Wall" procedures developed by broker-dealers to deter and prevent insider trading.[7] Pursuant to this grant of rule-making authority, the Division undertook a comprehensive review of broker-dealer policies and procedures and, in March of 1990, issued a report of its findings, conclusions and recommendations.[8] In the Report, the Division stated that, among other things, it was concerned about the need for firms to "maintain documentation sufficient to recreate actions taken pursuant to Chinese Wall procedures."[9] Accordingly, the Division urged the self-regulatory organizations ("SROs") to develop standards of documentation for their member firms as well as effective examination programs.

B. The Proposal

The proposed rule change would establish a new Exchange Rule 2.6(e), which is designed to supplement section 15(f) of the Act. Proposed Rule 2.6(e) would require every member of the Exchange to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member and any person associated with the member. In addition, Rule 2.6(e) would mandate that all members that are required to file SEC Form X-17A-5 ("FOCUS Reports") with the Exchange on an annual basis must submit with their FOCUS Reports an attestation signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained. Finally, the proposed Rule would establish minimum standards for compliance with the recordkeeping requirements of the Rule and the Act, and require any members and associated persons who become aware of any possible misuse of material, non-public information to notify promptly the Exchange's Equities or Options Surveillance Department.

The proposal contains four Commentaries to Rule 2.6(e). Commentary .01 describes conduct that would constitute the misuse of material, non-public information. Specifically, such conduct would include, but would not be limited to: (1) Trading in any securities, or in any related securities, options or other derivative securities issued by a corporation while in possession of material, non-public information concerning the corporation; (2) trading in a security or related options or other derivative securities while in possession of material, non-public information concerning imminent transactions in the security or related securities; and (3) disclosing to another person or entity any material non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuses of such material, non-public information.

The Exchange states that the scope of the aforementioned definition is intended to be consistent with the goal of section 15(f) of the Act and ITSFEA: To prevent the misuse of material, non-public information. The Exchange believes that this definition should be broad enough to encompass frontrunning, trading on the basis of material corporate inside information, tipping and misappropriating material corporate inside information.

Commentary .02 would define the terms "associated person" and "person associated with a member" as any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of a member. The Exchange states that the purpose of this Commentary is to provide a definition that is consistent with the definition of "associated person" in section 3(a)(21) of the Act.[10]

Commentary .03 would require that, at a minimum, each member establish, maintain and enforce certain policies and procedures pursuant to Rule 2.6(e). Specifically, members would be required to: (1) Advise all associated persons in writing of the prohibition against the misuse of material, non-public information; (2) maintain for at least three years, the first two years in an easily accessible place, signed attestations from each member organization, and all associated persons of that member organization, affirming their awareness of, and agreement to abide by, the above-mentioned prohibitions; (3) maintain for at least three years, the first two years in an easily accessible place, copies of trade confirmation and monthly account statements for each account in which an associated person either has a direct or indirect interest or makes investment decisions. The member organization would be required to review all such account statements and trade confirmations at least quarterly for the purpose of detecting the possible misuse of material non-public information; and (4) all associated persons would be required to disclose to the member organization whether they, or any persons in whose account they have a direct or indirect financial interest or make investment decisions, is an officer, director, or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company must be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

The Exchange states that the standards in this Commentary are intended to be minimum standards for compliance with the record-keeping requirement of the Act and the Rule. According to the Exchange, adherence to these standards will not, in all cases, necessarily constitute compliance with the Act and the Rule for all members. The adequacy of any one member's policies and procedures will depend on the nature of that member's business.

Commentary .04 and the Bulletin (Exhibit B to the proposed rule change) describes a set of forms, denominated as the "Sample ITSFEA Compliance

[3] See letter from Deena G. Doherty, Senior Attorney, Options Compliance, PSE, to Diana Luka, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated October 25, 1993. Amendment No. 1 made non-substantive, clarifying changes to the proposal.

[4] See Securities Exchange Act Release No. 32178 (April 21, 1993), 58 FR 25685 (April 27, 1993).

[5] 4 Pub. L. No. 100-704.

[6] 15 U.S.C. 78o(f) (1988).

[7] "Chinese Walls" are broker-dealer policies and procedures designed to segment the flow and prevent the misuse of material, non-public information.

[8] See Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Non-public Information ("Report"), Division of Market Regulation, Commission, March 1990.

[9] *Id.* at 26.

[10] 15 U.S.C. 78c(a)(21) (1988).

Procedures" (Exhibit C to the proposed rule change), which may be used by certain "eligible members" to facilitate their compliance with the record-keeping and filing requirements of Rule 2.6(e). "Eligible members" are member organizations and sole PSE members that do not carry or introduce customer accounts and for whom the Exchange is the Designated Examining Authority ("DEA"). The Exchange states that the sample ITSFEA forms are intended to constitute the minimum policies and procedures required by the Act and the Rule. Their use, however, would not ensure compliance with the record-keeping and filing requirements.

The Sample ITSFEA Compliance Procedures require: (1) All associated persons to disclose each securities account in which they have a direct or indirect financial interest, or make investment decisions; (2) all associated persons to disclose whether they are an officer, director or 10% shareholder in a company whose shares are publicly traded or if any persons in whose account they have a direct or indirect financial interest or over whose account they may make investment decisions is an officer, director, or 10% shareholder in a company whose shares are publicly traded; (3) a written affirmation by all associated persons that they understand and will abide by the prohibition against the misuse of material, non-public information; and (4) the designation of a Senior Reporting Member to be responsible for implementing all necessary policies and procedures on behalf of the member organization. The Senior Reporting Member must submit a written affirmation that he or she ensures that all of the ITSFEA compliance procedures are being followed, including the regular review of all accounts and trading activities of associated persons.

III. Discussion and Conclusion

The Commission believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) of the Act, in particular,[11] in that it is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. The proposal will accomplish this by setting standards and bringing consistency to member practices to prevent the misuse of material, non-public information.

Broker-dealer Chinese Walls predate section 15(f) of the Act and have evolved to include policies and physical apparatus designed to prevent the improper or unintended dissemination of market sensitive information from one division of a multi-service firm to another. The Chinese Wall procedures also have developed trading reviews designed to prevent and detect illegal trading. Prior to the existence of section 15(f), however, the policies and procedures varied from one broker-dealer to the next, ranging from very tight, centralized control of information and review to little or no review or follow-up. The Division, in its Report, stated that broker-dealer oversight with regard to section 15(f) is an important issue and is best effectuated by SRO examinations and regulation subject to Commission oversight.[12] The Commission believes that the PSE's proposal adequately addresses the concerns raised in the Division's Report and that it should help to prevent the misuse of material non-public information by brokers and dealers.

Specifically, the Commission believes that the policies and procedures set forth in Rule 2.6(e) and the corresponding Commentaries will serve to ensure that PSE members establish, maintain and enforce policies to prevent the misuse of material, non-public information, thereby helping to assure that PSE members are in compliance with section 15(f) of the Act. First, the requirement that all associated persons be advised in writing of the prohibition against the misuse of material, non-public information as defined in the Rule, and the requirement that member organizations and persons associated with them sign attestations affirming their awareness of, and agreement to abide by, the aforementioned prohibitions will serve to heighten awareness of associated persons of this prohibition. Second, the requirement that member organizations maintain copies of trade confirmations and monthly account statements for each account in which an associated person has a direct or indirect financial interest or makes investment decision will assist Exchange and Commission review of those records and make any fraudulent acts easier to deter and detect. Third, the requirement that all associated persons disclose to the member organization whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions is an officer, director or 10% shareholder in a company whose shares are publicly traded, and the requirement that transactions in the stock (or option thereon) of such company be reviewed to determine whether the transaction may have involved a misuse of material non-public information will assist the Exchange and the Commission in the detection and deterrence of the misuse of material, non-public information.

The Commission believes that it is consistent with the Act for PSE Rule 2.6(e) to require that only members who file their FOCUS reports annually with the Exchange submit, along with their FOCUS Reports, an attestation of their compliance with Rule 2.6(e). In this regard, the Commission notes that members that file FOCUS Reports on a more frequent basis are subject to more frequent periodic audits by the Exchange. During these audits, the Exchange will review the procedures maintained by such members pursuant to Rule 2.6(e). Members who file FOCUS Reports on an annual basis, however, are subject to audits on a more infrequent basis. Accordingly, the Commission believes that the requirement that these members file an annual attestation that they are in compliance with Rule 2.6(e) will serve as a continuing reminder of the obligations of this rule. This should result in more internal compliance checks by members and, therefore, assist the Exchange in the administration of Rule 2.6(e) without compromising the effectiveness of the rule or adherence to section 15(f) of the Act.

Finally, the Commission believes that Rule 2.6(e), Commentary .02, which defines "associated person" or "person associated with a member" is consistent with the Act. Currently, the Exchange, in enforcing its rules, applies the definition of "person associated with a member" or "associated person of a member" contained in the Act. The proposal adopts this definition into the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PSE–92–20) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28336 Filed 11–17–93; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78f(b)(5) 1988).

[12] See Report, supra note 8 at 23.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

Portland District Advisory Council; Public Meeting

The U.S. Small Business Administration Portland District

Advisory Council will hold a public meeting at 8 a.m. on Wednesday, December 1, 1993, at The Beard Library, located at 6639 SW. Macadam (SW. Macadam and Vermont), Portland, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 222 SW. Columbia, suite 500, Portland, Oregon 97201, (503) 326-5221.

Dated: November 8, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-28380 Filed 11-17-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1899]

Telecommunications Regulation Training, Inviting Applications for Award

Purpose of Program: The purpose of this program is to create the foundation for a self-sustaining graduate-level training program in the emerging democracies of Central and Eastern Europe without long-term U.S. government financial support which will meet the requirements for government telecommunications and broadcast regulators and for telecommunications operators and managers who will be working in an increasingly commercialized and competitive communications sector. Additionally, the purpose is to assist the Hungarian, Czech, and Polish governments in the development, administration, and execution of clear telecommunications regulations that create an open, non-discriminatory process and an effective, level playing field for U.S. investors in the telecommunications sector.

Eligible Applicants: Profit and nonprofit, public and private, agencies, organizations, and institutions are eligible to apply for a grant or cooperative agreement.

Applications Available: On or about November 17, 1993.

For Further Information Contact: Carrie Davison, U.S. Department of State, Office of Acquisitions, P.O. Box 9115, Arlington, VA 22219. Telephone: (703) 875-6011.

Dated: November 8, 1993.

Warren Clark, Jr.,

Special Advisor, Communications and Information Policy.

[FR Doc. 93-28320 Filed 11-17-93; 8:45 am]

BILLING CODE 4710-45-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Region 3 Advisory Board; Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Change of Meeting Time.

SUMMARY: This is to announce a time change for the Region 3 Advisory Board meeting scheduled for December 2 as published in the **Federal Register**, October 19, 1993, page 53985. The new meeting time is 8 a.m. to 11:30 a.m.

DATES: December 2, 8 a.m. to 11:30 p.m.

ADDRESSES: Seattle Hilton, Sixth and University Streets, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

Dated: November 15, 1993.

Jill Nevius,

Committee Management Officer.

[FR Doc. 93-28406 Filed 11-17-93; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed multi-modal project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302, Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve modal interfaces in the vicinity of the Miami International Airport in Dade County, Florida. Improvements to the modal interfaces are considered necessary to provide for the existing and projected traffic demand.

The Intermodal Center facility is envisioned as providing modal interfaces between the Metro-Dade Metro-rail and Metrobus Systems, Tri-rail, Amtrak, potentially a High Speed Rail, and light rail connection to the Port of Miami. Alternative travel modes linking the center to the Miami International Airport Passenger Terminal being considered range from shuttle buses to an automated ground transport (AGT) system. The center will provide general public parking and may also contain car rental and tour bus facilities.

Alternatives under consideration include (1) taking no action; and (2) three (3) alternative sites near the Miami International Airport.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Dade County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned within the project vicinity during December, 1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 8, 1993.

R.V. Robertson,

District Engineer, Tallahassee, Florida.

[FR Doc. 93-28307 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS)

will be prepared for a proposed multimodal project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302. Telephone: (904) 681-7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve the SR 836 corridor in Dade County, Florida. The proposed project would include highway and transit improvements to the SR 836 corridor from the Florida Turnpike at Florida International University (FIU) to Miami International Airport, through downtown Miami to the Miami Beach Convention Center, which is a distance of approximately 13.5 miles. Improvements to the corridor are considered necessary to provide for the existing and projected travel demand and to address safety and operational issues.

Alternatives under consideration include:

(1) No-Build Alternative;

(2) Transportation Systems Management (TSM) Alternative;

(3) Expressway Widening Alternative, consisting of widening SR 836 from the Florida Turnpike to NW 17th Avenue;

(4) Elevated Express Lanes Alternative, which consists of an elevated structure over SR 836 carrying express lanes;

(5) Metrorail Alternative, consisting of roadway operational improvements to SR 836 and a Metrorail line along SR 836 from FIU through the Miami Intermodal Center at the Airport, to the Stage I Metrorail line at Earlington Heights, with a second line departing the Stage I Metrorail line at Overtown Station and branching to the Port of Miami and across the MacArthur Causeway to the Miami Beach Convention Center;

(6) SR 836 Alternative, consisting of roadway operational improvements to SR 836 and a Metrorail or "hybrid" line with an Airport branch, which would extend from FIU following SR 836 through downtown Miami to the Port of Miami, and across the MacArthur Causeway to the Miami Beach Convention Center;

(7) Flagler Street Alternative, consisting of roadway operational improvements to SR 836 and an LRT alignment with an Airport branch beginning at FIU and extending along SW 8th Street, Flagler Street, through downtown Miami, to the Port of Miami, and across the MacArthur Causeway to the Miami Beach Convention Center.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings are currently being held in Dade County. In addition, a public hearing will be held. Public notice will be given of the time and place of the public hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned within the project vicinity during December 1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

R.V. Robertson,

District Engineer, Tallahassee, Florida.

[FR Doc. 93-28308 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-22-M

Federal Transit Administration

Environmental Impact Statement on the Griffin Line Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), the Greater Hartford Transit District (GHTD) and the Capitol Region Council of Governments (CRCOG) intend to undertake a corridor study, which will become the core of an Environmental Impact Statement (EIS) in accordance with the Intermodal Surface Transportation Act (ISTEA) and the National Environmental Policy Act (NEPA). The local joint lead agencies will ensure that the EIS also satisfies the requirements of the Connecticut Environmental Policy Act (CEPA). While the corridor study focuses on the initial 9.2 mile segment from Union Station in Hartford to Griffin Center Office Park in Bloomfield, federal environmental policy (NEPA) and FTA policy (ISTEA) direct the scope to address the impacts of the "reasonably foreseeable actions" of the proposed alternative. As a result, the corridor study will also assess impacts of the potential longer term transit improvements to the Airport. In addition to a proposed transitway, which will consider both busway and light rail transit alternatives from Union Station to Griffin Office Park, the corridor study will evaluate the No-Action and the Transportation System Management (TSM) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the Greater Hartford Transit District by December 17, 1993.

Scoping Meeting: The public scoping meeting will be held on Thursday, December 9, 1993 from 4 p.m. to 8 p.m. at the Union Station Great Hall. See **ADDRESSES** Below.

ADDRESSES: *Written comments* on project scope should be sent to Mr. David Vozzolo, Director of Planning, Greater Hartford Transit District, One Union Place, Hartford, Connecticut 06103. The *Scoping meeting* will be held at the following location:

Thursday, December 9, 1993—4 p.m.
Union Station Great Hall
One Union Place
Hartford, Connecticut 06103.

FOR FURTHER INFORMATION CONTACT: Mr. Max Vigil, Director of Program Development, Federal Transit Administration, Region I, (617) 494-2484.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the local joint lead agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the corridor study which will become the core of the Environmental Impact Statement (EIS) and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the

scoping materials by contacting Ms. Anna Maruca at the Greater Hartford Transit District at the address above or by calling her at (203) 247-5329. Scoping comments may be made verbally at the public scoping meeting or in writing. See the DATES and ADDRESSES sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the EIS is completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Anna Maruca at the Greater Hartford Transit District as previously described.

II. Description of Study Area and Project Need

While the Greater Hartford Transit District is proposing initial implementation from Union Station in Hartford to Griffin Center Office Park in Bloomfield, due to federal environmental policy (NEPA) and FTA policy (ISTEA) the corridor study will assess the impacts within the full corridor of approximately 20 miles from the Hartford Enterprise Zone to Union Station to Griffin Center in Bloomfield to Bradley International Airport in Windsor Locks. The proposed transitway is intended to improve transit service in the Griffin Line corridor, improve the mobility of the corridor's transit dependent population, provide additional transportation capacity in the Hartford CBD and Asylum Hill areas and the Griffin Corridor and become a focal point for economic development and redevelopment in the corridor. The project would support the Region's attainment and maintenance of its air quality goals by providing a competitive alternative to the automobile.

III. Alternatives

The alternatives proposed for evaluation include: No-Action which involves no change to transportation services or facilities in the corridor beyond already committed projects; the TSM alternative which consists of low-to-medium cost improvements to the facilities and operations of Connecticut Transit, including expansion of peak and off-peak express bus services in the corridor; the minimum segment light rail transit alternative which consists of providing light rail service at eight stations along the 9.2 mile right of way, with possible extension to the Hartford Enterprise Zone and to Bradley International Airport; and the minimum segment busway alternative which consists of local and express bus service on the dedicated right of way, with possible extension to the Hartford Enterprise Zone and to Bradley International Airport. Eight stations are proposed for both the light rail transit minimum segment and busway minimum segment alternatives: Union Station, Garden Street, Woodland Street, Albany Avenue with a corridor park and ride facility, University Park/Blue Hills, COPACO/Cottage Grove Road with a corridor park and ride facility, Bloomfield Town Center and Griffin Office Park, which would be a terminal station of the minimum segment alternatives with a corridor park and ride facility. Feeder buses would serve the station areas at Griffin Office Park, Bloomfield Town Center, COPACO/Cottage Grove Road, University Park/Blue Hills, Woodland Street, Garden Street and Union Station.

IV. Probable Effects

FTA and the local joint lead agencies plan to evaluate in the corridor study, which will become the core of the EIS, all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the potential for increased economic development, the support of the region's air quality standards, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, health and safety impacts, impacts on wetland areas, and noise and vibration impacts. Impacts on natural areas, rare and endangered species and air and water quality, will also be covered. The cumulative environmental impacts of possible fixed guideway extensions in the corridor will also be analyzed. The impacts will be evaluated both for the construction period and for the long term period of operations. Measures to mitigate significant adverse impacts will be explored.

V. FTA Procedures

In accordance with the Intermodal Surface Transportation Efficiency Act (ISTEA) and FTA policy, environmental analyses prepared as part of this corridor study will become the core of the Final Environmental Impact Statement (FEIS) which will be prepared in conjunction with Preliminary Engineering. Upon completion of the Corridor Study, the Capitol Region Council of Governments, as the designated MPO, in cooperation with the corridor municipalities, will select a locally preferred alternative and the GHTD, as lead agency, will seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on November 15, 1993.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 93-28431 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

[Docket No. 93-49; Notice 2]

Determination That Nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) Multi-Purpose Passenger Vehicles are Eligible for Importation

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

ACTION: Notice of determination by NHTSA that conforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The determination is effective on November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused

admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R-91-002) petitioned NHTSA to determine whether 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States. NHTSA published notice of the petition on July 6, 1993 (58 FR 36246) to afford an opportunity for public comment. As described in that notice, the petitioner claimed that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence . . .* (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on inspection), 104 *Windshield Wiping and Washing Systems* (based on operation and certification of vehicle to European standard), 105 *Hydraulic Brake Systems* (based on documented testing and comparison of components to U.S.-model counterparts), 106 *Brake Hoses* (based on visual inspection of certification markings), 107 *Reflecting Surfaces* (based on visual inspection), 113 *Hood Latch Systems* (based on operation), 116 *Brake Fluids* (based on visual inspection of certification markings), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation and comparison with certified engine components), 201 *Occupant Protection in Interior Impact* (based on test film and conformance with similar performance requirements), 202 *Head Restraints* (based on test film and certification of vehicle to European standard), 203 *Impact Protection for the Driver from the Steering Control System* (based on certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film), 205 *Glazing Materials* (based on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on certification of vehicle to European standard), 207 *Seating Systems,* (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 219 *Windshield Zone Intrusion* (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 *Flammability of Interior Materials* (based on composition of upholstery).

The petitioner also contended that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV is capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors. The petitioner asserted that testing performed on the taillamp revealed that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror with a flat surfaced mirror, or inscription of the required warning statement on the mirror's convex surface.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of the VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims of Vehicles other than Passenger Cars:* Installation of a tire information placard. The petitioner asserted that the tire rims are certified by their manufacturer as complying with the standard, even though they lack a DOT certification marking.

Standard No. 208 *Occupant Crash Protection:* Installation of a driver's side air bag and a seat belt warning buzzer. The petitioner asserted that the vehicle conforms to the standard's injury criteria at the front passenger position based on a test report from the vehicle's manufacturer. The petitioner also submitted data indicating that the vehicle satisfies the applicable injury criteria at the driver position based on tests performed on a 1980 model Gelaendewagon equipped with a driver's side air bag. There is no difference between the ladder-style frame structure of the 1980 and the 1993 Gelaendewagon, aside from cross members behind the crumple zone, which were modified solely to accommodate a new exhaust system.

Standard No. 210 *Seat Belt Assembly Anchorages:* Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle.

Standard No. 212 *Windshield Retention:* Application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 *Fuel System Integrity.* The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle. Based on its analysis of information provided by the petitioner, as well as its engineering judgment, the agency is satisfied that the vehicle will comply with the side impact requirements of Standard No. 301.

One comment was received in response to the notice of the petition, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of the original manufacturer, Daimler-Benz A.G. Although this comment was received after the closing date for comments on the petition, it nevertheless was considered by NHTSA in preparing this determination. In its comment, MBNA contended that the petition must be denied because the petitioner did not submit destructive test data or similar evidence to demonstrate that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV complies with Federal motor vehicle safety standards. MBNA stated that the petition's "primary deficiency" is its failure to demonstrate through destructive test data or other means that the vehicle complies with Standard No. 208 *Occupant Crash Protection*. As discussed above, the petitioner did perform Standard No. 208 tests on an earlier model Gelaendewagon equipped with a driver's side airbag. Given the structural similarity between the tested vehicle and the 1993 Gelaendewagon, NHTSA has accepted the data submitted by the petitioner on these tests as being sufficient to demonstrate that the 1993 Gelaendewagon satisfies the standard's injury criteria.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP #3 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 12, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-28328 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Notice No. 93-22]

Safety Advisory: Service Life of Composite Cylinders Used in a Self-Contained Breathing Apparatus (SCBA) or in Other Services

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify persons using composite cylinders manufactured and authorized under DOT exemptions that those cylinders have a 15-year service life limit. The service life limitation applies to cylinders based on RSPA's fiber-reinforced-plastic (FRP) cylinder standards for metal-lined fiber-reinforced-composite cylinders which form part of an SCBA or are used in other services. The cylinders typically have service pressures of between 2,000 and 4,500 psig. Composite cylinders marked with a DOT exemption number that are older than 15 years should be removed from service. Such cylinders may have reduced strength without any visual indication of damage.

FOR FURTHER INFORMATION CONTACT: James K. O'Steen or Charles H. Hochman, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: RSPA has recently received numerous letters concerning the service life of certain cylinders used in Self-Contained Breathing Apparatuses (SCBAs). The letters express the concerns of fire departments and others with the 15-year service life limitation on FRP composite cylinders which form part of an SCBA. Commenters are particularly concerned with the cost of replacing the cylinders after 15 years. These cylinders are manufactured and authorized for transportation under DOT exemptions.

An FRP composite cylinder is composed of an inner metallic liner over-wrapped with fiber filaments, most commonly fiberglass or kevlar, bonded together with a plastic resin. The large forces produced by the high pressure inside such a cylinder are restrained by the inner liner and the thousands of fiber filaments windings around the inner vessel. In a composite cylinder used for an SCBA, a large portion of the strength of the cylinder is provided by the fiber filaments.

Because fiber filaments provide much of the strength of an FRP cylinder, the useful life of an SCBA cylinder is greatly dependent on the properties of fiber filaments. Two of these properties are susceptibility to brittle fracture and stress rupture.

Brittle fracture. Fiber filaments are very strong but brittle. Once a crack starts in a filament, the crack continues to grow until the filament breaks. Unfortunately, filaments cannot be manufactured without some microscopic cracks. Cracks are also caused by in-service damage and pressure cycling. As cracks in a filament grow and a filament breaks, the filament's load is transferred to adjacent filaments. With increasing load, cracks in other filaments grow faster, additional filaments break, and load transfer increases. As the process accelerates with time, the bursting strength of the cylinder may be reduced and the cylinder could rupture in service.

Stress rupture is an actual reduction of fiber strength that occurs with time when the fiber is under load. Stress rupture varies greatly with material type; fiberglass is more susceptible to stress rupture than carbon fiber. In structures made of a material subject to stress rupture, such as fiberglass, the load level on filaments eventually exceeds their strength and the cylinder may rupture at the marked service pressure with potentially lethal consequences.

Because brittle fracture damage and stress rupture may occur without any visual indication of damage, cannot be found by available non-destructive tests, and produce a general reduction in a cylinder's strength over time, a maximum life was established to prevent cylinder rupture in service. The 15-year restriction was based on technical data presented by the cylinder manufacturers in support of their exemption requests, and is consistent with the service life limitation found in a position paper, "Basic Considerations for Composite Cylinders," developed and published by the Compressed Gas Association.

Only one manufacturer of SCBA has requested that DOT amend its exemption to extend the cylinder service life from 15 years to 18 years. RSPA technical staff performed an extensive technical review of the manufacturer's information that resulted in a denial of the request. RSPA concluded that the test data presented in support of an increased service life indicated a trend toward accelerated loss in cylinder burst strength and an increasing probability of cylinder

failure, and did not support a service life extension.

RSPA is aware of, and concerned about, the financial burden associated with limiting the service life of composite cylinders, but RSPA must weigh this burden against the safety risk of a cylinder failure to firefighters and other users. For example, a Corem, New York firefighter was killed earlier this year by the rupture of a composite cylinder which was more than 15 years old. While the cause of that rupture was neither brittle fracture nor stress rupture, it is an example of the severe consequences of a composite cylinder failure.

Based on the above information, RSPA has retained the 15-year service life limitation on composite cylinders. At a minimum, persons finding composite cylinders that are older than 15 years should remove those cylinders from service. Composite cylinders are authorized for SCBA and other services under the following exemptions:

DOT-E 7218	DOT-E 8391	DOT-E 10019
DOT-E 7235	DOT-E 8487	DOT-E 10147
DOT-E 7277	DOT-E 8718	DOT-E 10256
DOT-E 7769	DOT-E 8725	DOT-E 10345
DOT-E 8023	DOT-E 8814	DOT-E 10637
DOT-E 8059	DOT-E 8965	DOT-E 10905
DOT-E 8115	DOT-E 9634	
DOT-E 8162	DOT-E 9659	

Issued in Washington, DC on November 12, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-28432 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-60-P

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on November 18, 1993, in the first floor banquet room for the Airport Marriott located at 1201 NW. LeJeune Road, Miami, Florida. Below is the intended agenda.

Thursday, November 18, 1993

Agenda

Part One—Closed to the Public

12:30 p.m.

1. Technical Matters
2. Budget Matters: Radio and TV Martí

Part Two—Open to Public

2:00 p.m.

1. Approval of Minutes
2. Update on Radio Martí
3. Update on TV Martí
4. OCB Office of Program Evaluation/Focus Group Results
5. Public Testimony

Items one and two which will be discussed from 12:30 p.m. to 2 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Liz Fernández, from the directorate of the Office of Cuba Broadcasting. Ms. Fernández can be reached at (202) 401-7013.

Dated: November 10, 1993.

Joseph Duffey,

Director.

[FR Doc. 93-28361 Filed 11-17-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 221
Thursday, November 18, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 18, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: November 12, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–28545 Filed 11–16–93; 2:16 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice to be published in the **Federal Register** on November 16, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, November 22, 1993.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: International banking matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28468 Filed 11–16–93; 10:54 am]

BILLING CODE 6210–01–P

federal register

Thursday
November 18, 1993

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2090 and 2200

Exchanges—General Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2200

[AA-260-4212-02 24 1A; Circular No. 2653]

RIN 1004-AB28

Exchanges—General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements primarily the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of August 20, 1988. Also, the rule implements other authorities and procedural requirements that are applicable to Federal Land Policy and Management Act land exchanges. The principal provisions in the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

EFFECTIVE DATE: December 17, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Don Simpson or Dave Cavanaugh, (202) 653-9215.

SUPPLEMENTARY INFORMATION: The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (Pub.L. 100-409)(hereafter referred to as the Act), is to facilitate and expedite certain land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate land ownership for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

On October 2, 1991, the Bureau of Land Management (BLM) and the Forest Service published separate proposed rules in the **Federal Register** (56 FR 49948-49977), with 60-day comment periods. The proposed rules were intended to implement the amendments made by the Act to section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716)(FLPMA), and to incorporate other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

The BLM and Forest Service received comments from 58 sources, including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the BLM and Forest Service. The analysis of comments pertaining to the BLM rule, and the corresponding responses and changes, are discussed as follows. Editorial and grammatical corrections also have been made as necessary.

General Comments

Two commenters stated that the time frames in the rule are too lengthy, particularly those related to the initiation and review process. The time periods specified in various sections of the rule were either imposed by the Act or administratively required to comply with BLM's public participation and environmental analysis procedures. Additionally, the BLM and the Forest Service have made further adjustments in their scheduling requirements to develop more uniform regulations and reduce the time periods wherever possible.

A respondent felt that streamlining the process to expedite the processing of exchanges may promote rapid disposal of Federal holdings in urbanized areas and forgo revenue-making opportunities on those properties. It was further suggested that a process for mid-course review at the highest departmental levels be built into the regulations. Land management agencies generally do not administer lands for intense development in urban areas. However, each exchange opportunity must be analyzed on an individual basis. Certain high-value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay.

A commenter expressed concern that the appraisal provisions did not lend themselves to land exchanges involving mineral interests, particularly those exchanges in Alaska. It was suggested that there be sufficient discretion in the rules to permit land exchanges where there has been insufficient exploration data to permit valuation by standard appraisal methods. The standard appraisal process is less reliable when there is very little exploration data or market information available to estimate market value reliably. Consequently, § 2201.3-2(b) of the proposed and final rule gives the authorized officer discretion to use other methods when this is the case.

It was pointed out by one commenter that there is no provision in the rule for conducting public hearings. In conjunction with the written notification requirements in §§ 2201.2 and 2201.7-1 of the rule, the BLM authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings, meetings, etc. is unnecessary.

One commenter suggested the preparation of an "environmental values document" to compare relative ecological values to be exchanged. All resource values associated with the lands involved in an exchange are examined through an environmental analysis pursuant to Council on Environmental Quality regulations and Departmental and BLM directives. Therefore a separate "environmental values" document is not required.

Specific Comments

Part 2090 Special Laws and Rules

Section 2091.2-2 Opening

One respondent felt the section will restrict management of minerals by eliminating the "ability to lease minerals." The same respondent felt the value of the Federal parcel offered in the exchange would be less because of this "restriction." It does remove leasing as a management option, but only until rules are promulgated. The value of the lands is based on the highest and best use, and where mineral development is the highest and best use, the values of the mineral(s) will be reflected in the appraised value. No change was made

in the final rule in response to these comments.

Section 2091.3–1 Segregation

Two respondents suggested correcting the reference to lands administered by the Forest Service by inserting the word "Forest" between the words "National" and "System." One further suggested adding a citation of the pertinent BLM and Forest Service regulations at the end of the section. Both of these suggestions have been adopted in the final rule.

Section 2091.3–2 Opening

One commenter suggested using consistent wording regarding the segregation of reserved minerals from the mining laws in this section and § 2201.1–2. Section 2201.1–2 of the final rule has been revised to make these two sections consistent.

One comment recommended "deleting (c) of this section because the segregation and opening is by operation of law as discussed in § 2091.3–1 supra." This paragraph is deleted as suggested in the final rule.

Section 2200.0–5 Definitions

One commenter expressed concern with the use of the term "eminent domain" in the definition of "acquisition" because of the negative implications associated with condemnation and the erosion of private property rights. The definition of acquisition has been deleted from the rule.

One commenter recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. No revision to the definition was considered necessary because § 2201.1(a) and (b) of the rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the Small Tracts Act (43 U.S.C. 682a) regulation definition in 36 CFR 254.31 or that the Small Tracts Act definition be amended by these rules. The definition in the rule was revised to conform with the definition in the Small Tracts Act regulations.

One commenter recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted because § 2201.4(a)(1) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s). An appraisal will take into account all factors that might influence the value of the estate to be conveyed.

One commenter stated that the definition of "highest and best use" may be too broad and recommended that the phrase "and present use of surrounding and/or adjacent property" be added after the words "based on market evidence." Use of nearby property is always considered by the appraiser in determining the highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, no change was made to the definition in the final rule.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. Market value is an estimate of the price that lands or interests in lands would bring in a competitive market. Interests in lands, such as timber or cultural resources, are valued accordingly. Section 2201.3–2 of the final rule identifies the various interests that may be considered in estimating market value.

One commenter asked if the mineral leasing laws under the definition of "mineral laws" include the Act of March 4, 1917, involving mineral resources on Weeks Act (16 U.S.C. 480, 500 *et seq.*) lands. "Mineral laws," as used in this rule, are identified for the purposes of segregation under §§ 2201.1–2 and 2201.9(b). Since segregation applies only to those lands reserved from the public domain for National Forest purposes, mineral prospecting and leasing on acquired lands with Weeks Act status are not included in the definition of "mineral laws."

It was recommended that the definition of "party" be amended to recognize States as full parties to an exchange. The definition in the proposed rule clearly recognized States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One commenter recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws. The commenter suggested adding the phrase "or by operation of law" after the word Secretary, presumably to reflect the automatic segregation of lands acquired through exchange provided by the Act. The purpose of segregation is to avoid the appropriation or long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from appropriation under both the public land laws and the mineral laws. The term "by operation of law" was not added to the final rule because the authority for segregation, and the authority to exchange for non-Federal lands that would automatically be segregated under the Act, lies with the Secretary.

A commenter indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The regulations only require the qualified appraiser to determine if the value of Federal lands exceeds $150,000; they do not require a formal appraisal report. It is expected, however, that the appraiser's analysis will meet the minimum standards contained in the USPAP.

One commenter suggested language and recommended that the definitions of "resource values" and "management objectives" be added to clarify the determination of public interest under § 2200.0–6 (b)(1) and (b)(2) of the rule. A definition of resource values has been included in the final rule; however, the term "management objectives" was not added because it is used consistent with the common definition of the two words.

It was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the exchange process. Section 2200.0–6 of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 2201.1–3 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 2200.0–6(h) of the rule requires that an environmental analysis be prepared. This analysis will ensure that environmental values such as cultural resources are not overlooked in the determination of public interest. No changes were made in the final rule in response to this comment.

Section 2200.0–6 Policy

(a) *Discretionary nature of exchanges.* One commenter recommended that this paragraph be amended to clarify that the decision of the Secretary when

determining public and State interest is subject to review. This section of the rule requires consideration of the needs of State and local residents. Section 2201.7–1(c)(1) of this rule sets forth the requirements for public notice of decisions and subsequent review. No changes were made in response to this comment.

(b) *Determination of public interest.* One commenter suggested that protection of watersheds be listed as a criterion in the determination of public interest. This suggestion was adopted.

It was suggested that the term "best served" be used instead of "well served." The same commenter pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested a list of lands most desirable. The term "well served" is retained in the final rule because it is the term used in section 206(a) of FLPMA. It would be impracticable to list types of lands that should be acquired through exchange, due to the variety of resources on involved lands. Identification of types of lands to be acquired is more appropriate during the land use planning process.

One commenter stated that the phrase "accommodation of land use authorizations" was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. The suggestion was adopted by expanding the term "authorized uses" in § 2201.1(c)(4) of the rule to include grants, permits, easements or leases.

One commenter recommended that the management and development of private lands be emphasized in this section and suggested wording for inclusion into the final rule. Additionally, two commenters recommended that this section include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. This section of the final rule was revised to read "* * * to meet the needs of State and local residents and their economies * * *" to emphasize the importance of these public interest criteria. The "notice of exchange proposal" at § 2201.2 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns it may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal will be considered in the development of an environmental analysis. The environmental analysis and related studies will serve as the basis for the "notice of decision" at § 2201.7–1 of the rule. This decision and all supporting documents will be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality or other resources. No change was made in response to this suggestion since potential impacts must be considered in the environmental analysis pursuant to § 2200.0–6(h) of the rule and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government respondent stated that Regional Coal Teams should be provided the opportunity for full participation in reviewing any exchange proposal. When processing exchanges involving coal, the appropriate Regional Coal Team shall have a major role in reviewing the exchange. However, it is impracticable to list in the rule all of the entities that should be given review opportunities.

One respondent suggested that the provision that provides that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be removed or limited to those uses of conveyed Federal lands that conflict with management objectives of "adjoining" Indian Trust lands that were established formally prior to that exchange proposal. This suggestion has been partially adopted by inserting the words "significantly conflict with established" before "management objectives" in § 2200.0–6(b)(2).

A local government respondent suggested that as a condition of exchange the Federal lands that may be used for landfills that may affect air quality use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). Rather than prescribing specific technologies in this rule, appropriate methods of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods.

In order to meet the needs of State and local residents, wording was suggested that would require a determination regarding the consistency of the intended use of conveyed Federal lands with local government zoning and other land use plans for adjacent non-Federal lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in § 2200.0–6(i) of the rule. Therefore, no change has been made in response to this suggestion.

Five commenters felt that the requirement that the land exchanged into non-Federal ownership be used or managed to conform to or enhance adjacent Federal land uses was costly, inequitable, unfair or may otherwise limit exchange opportunities. It would not be in the public interest to convey lands out of Federal ownership if the intended use were to create substantial management conflicts with adjacent Federal lands; therefore, this provision is retained in the final rule. The language of § 2200.0–6(b)(2) of the rule does not imply control over future uses or place any requirement on the management of the Federal land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to § 2200.0–6(i) of the rule. This section simply requires the authorized officer to consider the intended use in making the public interest determination.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis not be placed on noncommodity resources. Section 2200.0–6(b) is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 2200.0–5 of the rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. Cultural resources is specified as a resource to consider in reaching a public interest determination. No change in the final rule is necessary.

Another suggested the words "promotion of" be changed to "continuation of." The language of the proposed rule has been retained because

section 2(a)(1) of the Act found that land exchanges are an important tool for "the promotion of multiple-use values."

Concern was expressed that the regulation "* * * guts the entire public interest test set forth in FLPMA," and a recommendation was made to delete the section. The Department disagrees. Section 206(a) of FLPMA provides a listing of considerations to be "included" in any public interest determination. That listing also includes "better Federal land management and the needs of State and local people." Section 2(a)(1) of the Federal Land Exchange Facilitation Act further states the findings and declaration of Congress, from which were drawn most of the public interest criteria of § 2200.0–6(b) of the rule.

(c) *Equal Value Exchanges.* One commenter recommended that this paragraph be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the ANILCA (Alaska National Interests Lands Conservation Act) (16 U.S.C. 3192)." This suggestion cannot be adopted. Section 206(b) of FLPMA requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

It was suggested that a cross reference to the provisions for approximately equal value exchanges in § 2201.5 be included in this section. This suggestion was adopted.

(d) *Same State Exchanges.* Four commenters recommended that this paragraph be amended to allow for interstate exchanges. This suggestion cannot be adopted because section 206(b) of FLPMA requires that the Federal and non-Federal lands involved in an exchange be located in the same state.

(e) *O & C Land Exchanges.* One commenter suggested an amendment to this paragraph to clarify that non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be located in "any one of the 18 counties" in which the original grants were made. This suggestion was adopted.

(f) *Congressional Designations.* One respondent felt it was unclear if these regulations considered those areas outside the California Desert Conservation Area that have been created by statute but are not National Conservation Areas or National Recreation Areas. No change has been made in response to this comment. The listing of systems and areas in this section was taken directly from the Act. Lands acquired within areas created by statute but not listed in the Act will not become part of the unit or area under this rule.

It was suggested that in line 2 the words "United States" be deleted and replaced with "authorized officer." Title is accepted by the authorized officer on behalf of and in the name of the United States. No change has been made in the final rule in response to this comment.

(g) *Land and Resource Management Planning.* Several commenters felt the rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. Agency plans can be amended to recognize new information or changes in conditions. The reference in the rule to land use plans includes plans that have been amended in response to new information or changes in conditions that may surface in conjunction with or following an exchange proposal.

Another respondent felt that the regulations should not require that land use plans specifically authorize an exchange of Federal land, stating that the land use plan could not foresee all exchange proposals. The rule does not require that a land use plan specifically authorize an exchange, but only that an exchange proposal be consistent with the goals and objectives of the plan. No change was made in the final rule.

Concern was expressed that there were no provisions for identifying non-Federal lands for exchange and initiating contact with the private landowner. This suggestion was not incorporated in the final rule because land use plans identify areas or specific tracts of non-Federal lands that the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to exchange lands. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

One commenter questioned whether BLM lands suitable for exchange to benefit the Forest Service are identified in BLM planning or in Forest Service planning and, if it is BLM's responsibility, how BLM proposes to determine public interest. It was suggested that it be identified in the BLM planning process. The Forest Plans do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiations between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using criteria specified in § 2200.0–6(b). No change was made in the final rule in response to this comment.

(h) *Environmental Analysis.* One respondent noted that this paragraph does not invite the public to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*)(NEPA) and BLM policy and procedures referenced in paragraph (h) already address public notice and comment on environmental documents; therefore, it is not necessary to restate the specific requirements in the final rule. In addition, § 2201.2 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments that shall be considered in the environmental analysis of the proposed exchange.

A concern was expressed that compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 469–470) is not mentioned under this section of the rule. Cultural resources is only one of the many significant resources that must be considered. This rule does not limit or exclude any resources from consideration.

(i) *Reservations or restrictions made in the public interest.* Several commenters questioned the need and authority for reservations or restrictions in the conveyance of Federal land. Two commenters suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another commenter suggested conveying partial interests to third parties in lieu of reservations or restrictions. Two commenters were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. Identification of the need for reservations or restrictions begins with the agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest and, if so, confirm what reservations or restrictions are needed. The rule allows alternative methods of protection such as third party participation. Although reservations or restrictions may place burdens on the Federal and non-Federal parties, the effect of reservations or restrictions will be considered by each party prior to a decision to proceed. Section 206 of FLPMA and other authorities provide for the use of reservations or restrictions.

A major utility expressed the thought that the United States could retain title to, or administration of, lands involved in the exchange that are subject to rights-of-way. This is correct; the authority to reserve and retain any rights and interest, including rights-of-way, easements, or grants, when it is in the public interest, is provided in § 2200.0–6(i) of the rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies, including the State Historic Preservation Office. Covenants and restrictions may be developed to protect any number of public interests, including cultural resources, and consultation with appropriate Federal and State agencies will occur as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

Three commenters suggested the United States retain an interest in the stream of mineral royalties when exchanging Federal lands. Reserving mineral interests is preferred to maintaining royalty interests for administrative reasons. Depending on the type of royalty interest reserved, the generation of revenues may be prevented or reduced as a result of mineral development decisions made by the owner of the mineral interests. By contrast, reserving the mineral estate would allow the United States to manage the development of the resources in a way that would protect Federal interests. In addition, there may be no statutory authority for reserving a royalty interest.

(j) *Hazardous substances.* The Community Environmental Response Facilitation Act (106 Stat. 2174)(CERFA) was signed into law on October 19, 1992, one year after the proposed land exchange rules were published in the **Federal Register**. No changes to the final rule have been made as a result of the new legislation. However, the procedural requirements of CERFA will be followed to the extent applicable, and consideration will be given to the need for rulemaking in connection with this new law.

One respondent suggested requiring "hold harmless" agreements when conveying Federal lands affected by hazardous substances to a "potentially responsible party." Hold harmless agreements generally are desirable; however, it is necessary to maintain flexibility in negotiating land exchanges.

One commenter identified a perceived inconsistency in the requirement of notification for private parties and the Federal government. The notice to the non-Federal party requires that "known" storage, release, or disposal of hazardous substances be identified, whereas the private party must notify the government of "known or suspected * * *." The respondent favored the broader application but suggested that in any case they should be consistent. Full disclosure of the potential existence of hazardous substances on the non-Federal lands is necessary to avoid sole future liability by the United States incurred as a result of dissolution, bankruptcy, etc., of the non-Federal party. The non-Federal party will have no such risk because the Federal government will be available for correction or mitigation should future hazardous substance issues arise.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but do not require him to do so on Federal lands, and recommended that the provisions be made consistent. Paragraph (j)(1) of the final rule has been revised to incorporate this suggestion.

Several commenters proposed that the private parties only be required to provide a broad hold harmless indemnification if the government will reciprocate. This suggestion cannot be adopted. The United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also must warrant in the conveyance document to other than a "potentially responsible party," that the United States will be responsible for any further cleanup necessary. Further, obligating Federal government expenditure via indemnification agreements made in advance of necessary appropriations would be a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)).

A respondent stated that the "hold harmless" requirement may not protect Federal interests from cleanup liability imposed by a third party. The comment is correct. However, the "hold harmless" agreement would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands or interests in lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would establish the United States as an "innocent purchaser" in every case. In many cases, it is recognized that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules Incorporated* v. *United States Environmental Protection Agency*, 938 F.2d 276, D.C. Cir. 1991) that the United States is responsible for providing notice of the storage, release or disposal of hazardous substances on Federal lands regardless of ownership at the time the substances came to be on the lands, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. The phrase has been deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of known storage, release, or disposal of hazardous substances. These regulations do not supplant the requirements of 42 U.S.C. 9620.

(k) *Legal description of properties.* One commenter said that property description by legal survey is sometimes difficult and suggested that the rule be amended to allow the use of a map as an alternative. This suggestion cannot be adopted. Department of Justice Standards and public land laws pertaining to the transfer of title to Federal lands do not permit the use of a map in lieu of legal description of lands. Maps alone generally would not provide an unambiguous description of lands being considered for exchange; however, maps may be used to supplement legal descriptions.

(l) *Unsurveyed school sections.* An agency respondent suggested that the word "mineral" be inserted between the words "all" and "rights." It is intended that States must waive all rights, including those related to minerals, to unsurveyed school sections used in an exchange. This suggestion was not adopted.

(m) *Coordination with State and local governments.* Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision requiring a consistency review by the State government. Section 2200.0–6(i) states that the Federal lands conveyed will be subject to local government laws, regulations and zoning, and § 2200.0–6(m) provides for notification 60 days before conveyance. These provisions afford State and local governments the opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on the proposed exchange. Therefore, no additional references to local plans and ordinances have been made in the final rule.

Section 2200.0–7 Scope

One respondent suggested that paragraph (b) of the rule be clarified as to whether certain existing regulations would be superseded or merely amended. Part 2200 of the existing regulation is being revised with portions amended or superseded as indicated.

Two parties commented on paragraph (c), regarding the lack of uniform applicability of the proposed rule in Alaska. One suggested separate regulations for such exchanges, similar to the Small Tracts Act regulations. The other felt the rule should allow the authorized officer to depart from this rule to a degree consistent with ANILCA. The rule provides the authorized officer the latitude allowed by law to pursue land exchanges. No changes have been made in response to this comment.

Three comments were received suggesting clarification of paragraph (d) of the proposed rule. This paragraph provided for the continuation of exchanges agreed to prior to issuance of this final rule under the laws and regulations in existence at the time the initial agreement to exchange was entered. Paragraph (d) of the proposed rule has been revised in the final rule to remove the confusion generated and to reflect the provisions of the Act more accurately.

It is the intent of the Department to follow the principles established in subsection (g) of section 206 of FLPMA, as amended. Under these principles, the Department intends that the following will apply: (1) Before this rule takes effect, pending exchanges may proceed in accordance with existing statutory law, including the applicable provisions of the Federal Land Exchange Facilitation Act (the Act) as well as the regulations that are being superseded by this rule; and nothing in the Act shall be construed so as to delay or otherwise hinder the processing or consummation of any such exchange; (2) The principles expressed above are subject to the following caveat—if the parties agreed to initiate the exchange before August 20, 1988, the date of enactment of the Act, subsections (d) through (i) of section 206 of FLPMA, as amended, shall not apply to a pending exchange, unless the parties agree otherwise; (3) After this rule takes effect, pending exchanges initiated on or after August 20, 1988, shall proceed in accordance with this rule except where, in the judgment of the authorized officer, it would be more expeditious to continue otherwise, and to do so would not be inconsistent with current statutory law, including the applicable provisions of the Act, or a binding agreement is in effect and completion of the exchange would not be inconsistent with current statutory law.

Section 2201.1 Agreement to Initiate an Exchange

A representative of an environmental group suggested a provision requiring full public input and also specifying that the NEPA process begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of section 2201.2 of the rule. These provisions require publication of a notice as soon as the agreement to initiate is entered into, but the NEPA process may be initiated before that event if the authorized officer believes it would be proper. The opportunity for public input will depend upon the level of NEPA analysis and documentation, which, in turn, depends upon the complexity of each exchange proposal.

Another respondent suggested that the agreement to initiate should detail who will be responsible for costs incurred in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with §§ 2200.0–6(a), 2201.1(f) and 2201.7–2(c) of the final rule, which provide that there are no obligations or reimbursement requirements in exchanges that are terminated short of a binding exchange agreement. The statutory authority for this rule does not provide for reimbursement of expenses outside of an exchange transaction. Compensation, or reimbursement of the non-Federal party for costs incurred, in the event an exchange is terminated would raise myriad procurement and contracting issues and, in some cases, may not be authorized. This limitation, however, is not intended to preclude payment to anyone with whom the Government has contracted directly for services that in fact have been received.

One respondent asked whether, if an exchange proponent were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of the BLM, the proponent would be required to indicate as a part of the proposal document that the offered land is covered by a Forest Service management plan showing the land is essential to the programs of the National Forest System. The proponent would not be required to show that the non-Federal land is essential to the National Forest System. In such an instance, the proposal would be submitted to the BLM authorized officer. In analyzing the proposal, the BLM would consult with the Forest Service to determine whether the public interest would be well served, to assess environmental effects, and to determine if the exchange would be consistent with agency plans.

Another respondent suggested adding language at the end of paragraph (a) of this section requiring the authorized officer and the non-Federal party to meet and discuss proposed exchanges prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe such a requirement is needed in the rule. Advance meetings and discussions are commonplace and are necessary to reach the point of entering an agreement to initiate.

A commenter suggested language requiring the prospective exchange parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to be used to evaluate the feasibility of an exchange proposal. The Department recognizes that preliminary estimates of value may be useful in evaluating exchange proposals but does not see a need to require the use of preliminary estimates in all cases.

A comment suggested that the preliminary estimate reflect the intended use of the lands, thus eliminating potential for substantial profits. In preparing any preliminary estimate, the appraiser takes into consideration all probable uses of the property, including the proposed or intended use. These uses must be legal, economically feasible, physically possible and result in the highest and best use, i.e., most profitable use, of the property. It would be improper to disregard an important element of information that may influence market value; that is, the intended use may not always be the highest and best use of the property.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. The general types of information to be included in agreements to initiate are listed in the rule. A form would be most appropriately located in a handbook, not in the regulations.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the list of lands may occur at any time during the process, identification of all lands that might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: (1) A citation of the exchange authority, (2) a statement regarding the need for segregation of the Federal lands once the exchange is started, and (3) identification of the status that the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate United States officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of an exchange upon which agreement must be reached. Therefore, these suggestions were not included in the final rule.

Two parties suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion was not adopted because such requirements would go far beyond the legal authority to identify the party with whom the agency is exchanging land, their citizenship, or corporate standing.

One industry representative suggested that all known uses be identified in the agreement to initiate, and that right-of-way grants be specifically identified as an authorized use. Section 2201.1(c)(4) of the rule was amended to adopt this recommendation. Identification of uses known to the Federal and non-Federal parties will ensure proper consideration of these uses in the analysis of the exchange proposal.

Another industry respondent pointed out that paragraph (c)(7) requires documentation of any agreed upon compensation of assumed costs normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 2201.1–3 of the rule gives a partial listing of costs for which compensation may be made, but the assignment of these costs is best made by the authorized officer in accordance with accepted real estate practices in the vicinity of the lands to be exchanged. No changes were made to paragraph (c)(7) in the final rule in response to this comment, but reference to compensating for costs ordinarily borne by the other party under local custom or practice was added to § 2201.1–3.

Another respondent suggested that the requirement of paragraph (c)(11), regarding relocation of tenants on the non-Federal lands, apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4626) only applies to qualified displaced parties on acquired non-Federal land. Section 2201.8(c)(2) of the rule specifies the measures required to protect authorized occupants of the Federal lands.

Two parties asked that paragraph (d) also be used to establish the sequence and time lines for other required reports and/or clearances. The requirement that the agreement provide a time line is already specified in paragraph (c)(5) and is retained in the final rule. The sequence of preparing or approving required reports is subject to negotiation and agency administrative procedure.

Another respondent recommended deleting the entire second sentence of paragraph (d) relating to estimating value in the absence of current market information. By way of explanation, the respondent said that it is "inconsistent with" and would "eviscerate" the section on appraisals (2201.3 through 2201.3–3). To the contrary, the provisions of this paragraph are consistent with the provision of § 2201.3–2(b). No change in the final rule is needed.

Several comments on paragraph (g) questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal. One of the parties recommended deleting this paragraph. Another felt there should be no appeal opportunity if the non-Federal party withdraws. Only decisions of the authorized officer are appealable through the Interior Board of Land Appeals; the Department has no jurisdiction over decisions of non-Federal parties. In the case of land exchanges, the decision is made and documented through the final Notice of Decision. Section 2201.7–1 of the final rule establishes the provisions for appeal of this decision.

Section 2201.1–1 Assembled Land Exchanges

Most comments on this section centered on the appraisal methods to be employed when processing assembled land exchanges. Several commenters suggested relaxing the safeguards for dealing with certain assembled land exchanges. A detailed explanation of assembled land exchanges is provided below to assist in responding to these comments and in interpreting the rule.

Assembled land exchanges provide the opportunity to package multiple parcels of Federal and/or non-Federal land. There are two types of assembled exchanges provided for in the rule: (1) Single transaction exchanges, and (2) multiple transaction exchanges using a running ledger account to track value differentials for each of the transactions. Single transaction assembled exchanges result in one closing for a collection of parcels. Multiple transaction exchanges involve two or more closings and are intended to facilitate processing of large acreages. Assembled land exchanges are subject to all of the general provisions of this rule in addition to the specific requirements of section 2201.1–1.

Section 2201.1–1 of the rule will require establishing the terms of any assembled land exchange in the agreement to initiate an exchange. For multiple transaction exchanges, the rule will restrict running ledger value differences to no more than 25 percent of the value of the conveyed Federal lands, require balancing values of the Federal and non-Federal lands conveyed with land or money at least every three years, and authorize the authorized officer to require deposits of cash, bonds or other sureties to offset temporary balances owed to the Federal government.

An example of a multiple transaction exchange would be where a State government offers $100,000 worth of land in exchange for an equal value of Federal land. In the agreement to initiate an exchange, it is agreed to use a ledger account and two transactions. The offered and selected lands are identified in the agreement, and all necessary analyses and clearances are conducted. The first transaction results in the conveyance of $50,000 of State land to the United States and the conveyance of $40,000 of Federal land to the State. The difference of $10,000

is noted to the ledger as a credit to the State. The second transaction involves $60,000 of Federal land being transferred to the State and $50,000 of State land being conveyed to the United States. The second transaction erases the $10,000 outstanding balance owed to the State and concludes the exchange.

One respondent felt that it would be useful to allow the Federal or non-Federal party to waive the 25 percent limit. The commenter felt that given that the values are to be balanced at least every two years, the risks of exceeding the 25 percent limit are minimal. The Federal Land Policy and Management Act requires that exchanges be limited to values within 25 percent of the involved public land value. Where ledger accounts are used, the limit will be 25 percent of the sum of the values of the Federal land conveyed in the current transaction and all previous transactions. This limitation provides protection for the Federal government and exchange proponents.

Another respondent noted that "* * * most beneficial exchanges, when a ledger account is established, would easily take longer to complete * * * than the 2-year balancing requirement * * *" This respondent suggested a period longer than two years. This suggestion has been adopted, the two-year balancing requirement has been extended to three years. However, the Department intends that the duration of the period(s) over which there is an outstanding ledger balance be minimized.

Several States expressed concern that under the proposed regulations, States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values of the State lands when compared with assembled multiple ownership exchanges. Section 2201.3–2 of the rule discusses values of the lands assembled from multiple ownerships by any non-Federal party. This section also provides that Federal and non-Federal lands be appraised in a similar manner.

For paragraph (f), it was suggested that termination of the assembled exchange arrangement be effective after 30 days written notice to the other party. Requirements for advance notice of termination should be addressed in the agreement to initiate an exchange. A critical requirement, however, is that values must be equalized, pursuant to § 2201.6 of this rule, prior to termination. Also, it is intended that multiple transaction exchanges otherwise be arranged in a manner that will reasonably protect the public interest throughout each phase of the exchange should the decision be made by either party to terminate the agreement.

Section 2201.1–2 Segregative Effect

This section of the proposed rule provided for the temporary segregation of Federal lands from entry under the public land and mineral laws for up to five years when a proposal is made to exchange Federal lands.

One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." Regarding the first comment, the commenter is referred to the definition of segregation in § 2200.0–5(v). It states the purpose of segregation is "to allow for the orderly administration of the Federal lands." As to the second comment, the commenter is correct. However, due to the purpose stated above, the rule has been expanded to include segregation from the "public land laws" and the "mineral laws." It is well established that the Secretary of the Interior may exercise his rulemaking authority in order to segregate lands temporarily to allow for the orderly administration of the lands under his care and supervision (see, e.g., *Byron* v. *United States*, 259 F. 371, 377 (9th Cir. 1919); *Hopkins* v. *United States*, 414 F.2d 464, 473 (9th Cir. 1969); *Marion Q. Kaiser*, 65 I.D. 485, 488–89 (1958)). Although a two-year segregation from public land laws has been used in other Department rules, this final rule provides for a five-year segregation from the public land laws to be consistent with the five-year segregation from the mineral laws provided by the Act.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt that the holder of a right-of-way should have the ability to renew during the period of segregation. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 2200.0–5(s) deal with the disposal in fee of public lands. Normally rights-of-way are not fee interests, and therefore, would not be affected by the segregation. The discretionary renewal of a right-of-way during the period of segregation likewise would not be precluded.

Several comments were received regarding paragraph (d) pertaining to the 90-day segregation of lands acquired by the United States. That provision has been moved to § 2201.9 of the rule.

Section 2201.1–3 Assumption of Costs

Thirty-one comments were received on this section. The major concern of the respondents related to the requirement to meet the criteria to qualify for compensation of costs. They believed this requirement places unwarranted limitations on the exercise of the cost compensation authority. The Act requires the Secretary to determine when it is in the public interest to make adjustments to values compensating the non-Federal party for assuming certain costs. The requirement to meet the criteria is necessary to ensure that compensation for costs assumed is in the public interest and has been retained in the final rule.

A concern was expressed that the cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Funding arrangements will be dealt with outside of the rulemaking process.

Although § 2200.1–3(b) sets criteria for when costs may be compensated, it appeared to one respondent that there are no such restrictions on the adjustment of relative values as a way of providing compensation, other than the 25 percent cap. The Act states that these amounts be reasonable and accurately reflect the value of the cost and service. This wording is incorporated in § 2201.1–3 of the rule as one of the five criteria that must be met before compensation can be made. Each exchange presents unique circumstances so anything beyond general restrictions may lead to impediments to exchange. The five criteria contained in § 2201.1–3(b), along with the 25 percent limitation, offer the authorized officer reasonable parameters for ensuring that Federal assumption of or compensation for costs assumed by other parties is in the public interest.

A suggestion was made to state which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 2201.1(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two comments stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. Section 2201.1(c)(6) requires an assignment of responsibility for performance of required functions and for costs associated with processing

an exchange in the agreement to initiate. Documentation of environmental analysis is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to confirm that the costs associated with the cultural resources survey, mitigation (including excavation), reports, and coordination with the State Historic Preservation Officer are considered. Section 2201.1–3(a)(2) of the proposed rule states that parties may agree to make adjustments in relative value for a variety of costs, including cultural resource surveys and mitigation. This paragraph has been retained in the final rule.

It was suggested that the term "in the public interest" be defined. Public interest, as used in § 2201.1–3, involves many factors and is best left as a determination based on national and regional concerns as well as Federal, State and local issues and values in the area of the Federal land.

One commenter suggested clarifying § 2201.1–3 as it applies to discussing the assumption of costs with or without compensation in agreements to initiate an exchange under paragraph (a). Paragraph (a) merely states that either party may agree to assume, with or without compensation, the costs that would ordinarily be borne by the other party. Paragraph (b) establishes the criteria for compensation or assumption of costs by the Federal party. No change was made in the final rule in response to this suggestion.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that "section (b) attempts to combine compensation to the non-Federal party with compensation for Federal costs and becomes vague." Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be inappropriate to require compensation of the non-Federal party as a standard practice. Paragraph (b) of the final rule specifically describes the conditions that must be met and documented: (1) To assume non-Federal costs without compensation, or (2) to compensate the non-Federal party for assuming Federal costs.

Section 2201.2 Notice of Exchange Proposal

Several respondents requested that the State government be notified at this stage rather than waiting until the Notice of Decision stage. One of these also requested that the Congressional delegation be included in this notice of exchange proposal. These recommendations have been adopted, but the requirement for notifying State and local governments was retained in the Notice of Decision section of the rule.

An existing right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice of all authorized users, including right-of-way holders, is implied in § 2201.2(a) of the rule. No change was made in the final rule in response to this comment.

One commenter questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in each of the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers or a single newspaper that covers several counties, as needed to notify the public.

A respondent suggested that minor modifications to the Notice of Exchange, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages, or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values will require publication. No change was made in response to this comment.

One respondent suggested that paragraph (a)(4) be revised to clarify that public comments regarding the environmental impacts of the proposed exchange are sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of this section has been revised in the final rule to make it clear that public comments on exchange proposals are sought and that timely comments will be considered in the environmental analysis of the proposal. A primary purpose of the notice of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate this notification the properties must be described legally. However, the authorized officer may include additional descriptions as appropriate. Information regarding uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified of a proposed exchange when the parties enter into an agreement to initiate, and again when a decision is reached. The first notice seeks information and opinion and the second conveys the decision. No changes were made in the final rule in response to these comments.

Two respondents suggested that the notice to authorized users should be by certified mail. The authorized officer may choose to notify authorized users by certified mail or any other means deemed appropriate or necessary. Although certified mail will likely be the most frequently used method of notification, the Department does not feel this should be made a requirement of the rule in order to preserve other options for notification.

A State government official requested that notice be placed in the **Federal Register**. Although **Federal Register** notice would reach groups and other members of the public on a national scale, newspaper publication ordinarily is a more effective way to reach interested and potentially affected persons and groups. The authorized officer, however, has discretion to publish in the **Federal Register** should that official deem it necessary or appropriate to do so.

One respondent expressed confusion as to how the notice of exchange proposal relates to land use planning notices. Unless the proposed exchange requires a plan amendment, this notice of exchange proposal has no relationship to land use planning.

Section 2201.3 Appraisals

A commenter expressed concern with the reference to the Uniform Appraisal Standards for Federal Acquisitions, since it is focused on acquisition under threat of condemnation, and recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. The Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Acquisitions," to the extent practicable. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Appraisal Institute's Standards of Professional

Practice have also been incorporated in this rule.

Section 2201.3-1 Appraiser Qualifications

Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two commenters believed requiring all appraisers to be State certified or licensed was impractical. One of the two suggested that it should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision. Agency compliance will depend upon the applicability of State laws. Seventeen States, as of January 22, 1993, require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for federally regulated financial agencies to be certified or licensed. In some States, appraisers not involved in federally related financial transactions may voluntarily become certified or licensed. Therefore, appraisers should comply with State appraisal certification or licensing requirements.

Federal staff appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, it is important that agency appraisers be equally qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems, we adopted language requiring qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (103 Stat. 183) (FIRREA). Consequently, the agencies will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted regulatory requirements in other States.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. The State agency suggested that the rule be revised to indicate clearly that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers must meet standards generally comparable to State training and experience qualifications as established by the BLM and the Forest Service.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., State agreement to accept certification and licenses issued by other States. The commenter felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue that cannot be resolved in this rule.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three commenters suggested this was unfair and that, instead, the parties should agree on selection of the appraiser. It was not intended that the authorized officer would unilaterally select the appraiser; however, the appraiser must be approved by the authorized officer. No change was made in response to these comments.

One commenter interpreted the first sentence in § 2201.3-1(a) of the rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the section be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

Two professional appraisal organizations suggested that the agencies adopt the Uniform Standards of Professional Appraisal Practice (USPAP) to assure consistency and quality in appraisals. The USPAP includes standards for real estate appraisal, real estate analysis, mass appraisal, personal property, and business appraisal, and are more general since they set standards for the act or process of estimating value. Since the USPAP definition of an appraisal report is different from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by the BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in section 2200.0-5 of the rule. The standards are consistent with the USPAP and incorporate Government-wide standards published by the Interagency Land Acquisition Conference and the Department of Transportation.

Section 2201.3-2 Market Value

A mining industry association suggested that § 2201.3-2(a) include a statement that appraisers disregard any increase in value to Federal lands resulting from the non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted since the appraiser must take into consideration all potential buyers and uses of the property including possible purchase by adjacent property owners. The value estimated should reflect motivational factors evident in similar transactions; e.g., sales of abutting lands.

A commenter suggested inserting "* * * in the same general location as the subject property;" at the end of § 2201.3-2(a)(3). However, this limitation would severely limit the appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic or other resource values; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in § 2201.3-2(a)(3) be expanded to include watershed and archeological values. However, the listing of resource values to be considered by the appraiser is not all inclusive. This paragraph of the rule includes a reference to "other resource values or amenities" which adequately covers these and other resources that may have value in the private competitive market, including watershed and archaeological values.

A commenter suggested that § 2201.3-2(a)(4) be revised to require the appraiser to consider water rights along with timber and mineral interests. The commenter noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." Water rights were added in the final rule to the list of contributory interests that may be considered.

Several comments were received regarding what appear to be conflicting instructions contained in § 2201.3-2(a)(5) and (6). If stipulated in the agreement to initiate, lands assembled from multiple ownerships can be appraised separately. Sections (a)(5) and (6) of this section of the proposed rule

were combined in the final rule to clarify the procedure.

Several States suggested that appraisals of individual tracts required in § 2201.3–2(a)(5) of the rule not be limited to individuals buying lands for purposes of an exchange. The States suggested that the concept be extended to State agencies conveying multiple tracts. This provision is limited to those parties who acquire lands for eventual conveyance to the United States through exchange under the terms of an agreement to initiate. A State agency, or any other party, may qualify for such treatment if it meets the test of acquiring tracts from multiple ownerships for purposes of an exchange.

Several persons commented on § 2201.3–2(a)(7) of the proposed rule that would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this section "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent added that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response to the various comments, this provision has been deleted from the final rule.

One commenter thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. The commenter suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This suggestion was already provided for in proposed paragraph (b) of the rule, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained in the final rule.

One commenter suggested the "departure" provisions of USPAP be followed. The commenter stated that this would require an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income) as required under USPAP in the appraisal report of the property. This suggestion was not adopted. The USPAP is one of several sources used to develop the appraisal standards. There is no intent to depart from these standards nor to require use of all three approaches to value, when it usually is not applicable or necessary.

Section 2201.3–3 Appraisal Report Standards

Three commenters expressed concern that language contained in § 2201.3–3(e) of the proposed rule was vague and could subject appraisers to open ended liability regarding disclosure of potentially hazardous environmental conditions. This provision has been modified to incorporate the comments. The rewritten provision will require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One commenter expressed concern over the lack of sufficient safeguards to protect against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not a reliable indication that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay the land exchange. The decision to require more than one appraisal should be left to the parties involved in the exchange.

One commenter observed that parties to the exchange would be required to invest considerable time and expense in conducting studies, appraisals and title clearances before an informed decision could be made to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. We believe the provisions of § 2201.7–2(a)(3) regarding the signing of an exchange agreement fixing the agreed upon values upon such terms as the parties concur in provide sufficient protection for the exchange parties.

Another commenter suggested that § 2201.3–3(j)(2), requiring all appraisers to certify that they personally examined all comparable sales, may be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. An appraiser cannot perform an accurate comparative analysis without a personal examination of the comparable sales. Therefore, this suggestion was not adopted.

Section 2201.3–4 Appraisal Review

There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although this may be desirable, the standards set forth in § 2201.3–1(b) are adequate in that they require the appraiser to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of FIRREA.

Other comments suggested that the review appraiser be an agency employee and that the reviewer be appointed by the authorized officer. Section 2201.3–1(a) will allow reviewers to be employees or contractors to the Federal or non-Federal exchange parties. However, as a matter of policy, the Federal agencies will use qualified appraisers as review appraisers. Review appraisers are appointed through authority delegated by the Secretary.

Section 2201.4 Bargaining; Arbitration

Sixteen comments were received regarding: (1) Appointment of the arbitrator by the Secretary, (2) allowing the arbitration decision to be binding for a period not to exceed two years, (3) allowing the agency 180 days for review of the appraisal, and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments as these requirements are specific provisions of Section 3 of the Act.

One commenter expressed concern over who would pay the costs of arbitration. Issues regarding arbitration may be addressed in the agreement to initiate. Further, the Act provides that arbitration be conducted under the rules of the American Arbitration Association, which provide for the assignment of costs.

Section 2201.5 Exchanges at Approximately Equal Value

One commenter felt the $150,000 limit was too high, and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act.

Section 2201.6 Value Equalization; Cash Equalization Waiver

One respondent stated that the rule needed to provide safeguards against windfalls, asserting that proponents acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. Section 206(b) of FLPMA protects against such windfalls by limiting cash payment to 25 percent of the value of the involved Federal lands.

One respondent stated that the BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with the BLM. The Act's prohibition on waiver of cash equalization applies only to the Secretary of Agriculture. In cases where values of the Federal and non-Federal lands are close, the waiver of cash equalization may allow consummation of exchanges critical to the objectives of Federal land management. Therefore, the Department of the Interior intends to retain the option of waiving cash equalization.

It was suggested that the 25 percent limitation not be applied in Alaska and that ANILCA guidance be used instead. This is already accommodated in § 2200.0–7(c), which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act (ANCSA)(43 U.S.C. 1601–1628) or ANILCA, except to the extent that the rules conflict with the provisions of those acts.

Two respondents expressed concern about the 25 percent limitation imposed by the regulations. One felt that this limitation is not in compliance with FLPMA and the Act, and that while section 206(b) of FLPMA limits equalization to 25 percent of the value of the Federal lands, the Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting its ability to complete exchanges with this provision. That portion of the Act dealing with adjustments to relative value is an amendment of Section 206 of FLPMA. The compensation of costs is made in lieu of cash equalization payment and, therefore, is subject to the 25 percent limitation found in Section 206(b) of FLPMA.

Section 2201.7–1 Approval of Exchange; Notice of Decision

A State agency felt that notification to States will occur too late, as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposals sent to State and local governments, and others, under § 2201.2 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before appraisal(s) and environmental analysis.

One respondent requested a specific citation for information on appeals. The general reference to part 4 of Title 43 includes all applicable subparts.

In response to a reviewer who asked when the appeal period would begin, paragraphs (b) and (c) of the proposed rule were amended to make it clear that the proposed decision to approve or disapprove an exchange is subject to protest for a period of 45 days after the date of publication of the notice of availability of the decision, and the right to appeal from a protest decision may be pursued in accordance with the procedures of 43 CFR part 4.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the increased workload associated with this requirement. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. This notification provides an opportunity for the collection and submission of data that can be used in the analysis of the proposal. The second notice published at the time the final decision is issued advises the public of the outcome and affords the opportunity to protest and appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before the completion of an exchange. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which may lock in the appraised values or provide a procedure for a reappraisal and adjustment of values or an election to terminate.

Section 2201.7–2 Exchange Agreement

One respondent suggested that appraisals could be reviewed and approved in advance of an exchange agreement. No change is needed. The necessary appraisals will be reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 2201.8 Title Standards

One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degrees of warranty. Since this rule does not change significantly established methods of conveyance, the suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as the Department of Justice Standards.

One respondent suggested that paragraph 2201.8(c)(1) be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. While the parties to an exchange are free to include general terms concerning title closing matters in the agreement to initiate, there is no requirement for addressing terms of title closing in this agreement and the agreement to initiate is not binding. The regulatory requirements for title closing are presented in § 2201.9 of this rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion was not adopted. Property acquired by the United States cannot contain reservations or interests that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated in the text of the rule. This section of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon removal of any personal property.

Several commenters felt the proposed rule did not provide sufficient protection for the continuation of currently existing third party uses of Federal land following an exchange of title. As previously noted, § 2201.1(c)(4) was revised to address authorized uses in the agreement to initiate. Further, agency policy requires recognition and protection of third party uses to an extent consistent with the use authorization.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace Federal authorizations. The land exchange party and the third party user

may agree to an easement. Presumably, authorizations with terms similar to the original authorizations, as opposed to perpetual easements, will generally be the practice. Both are within the purview of the rule.

Three comments offered by the ski industry stated that lands occupied by a permitted ski area should not be exchanged without the specific consent of the permittee. Holders of ski area permits are due the same degree of protection of rights under the terms of the permit as other types of special use authorization holders.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected, generally would not jeopardize the consummation of the exchange. However, the Department believes that third party users adversely affected by the decision should have the right to protest and appeal.

An industry respondent requested that the regulation clarify that: (1) A mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. The rule provides that holders of mineral leases, and other forms of land use authorizations, may reach agreement for disposition of current uses. The holders of Federal use authorizations are in no way required to reach agreement. Unless specifically provided for in the terms of the use authorization, there will be no terminations due to transfer of title to the Federal lands. Other alternatives, such as the issuance of patent subject to existing authorizations, will be used to protect the rights of third party interests.

Another comment from the business sector was that the regulations should permit only those reservations to be placed on the Federal land that were specified in the agreement to initiate. The agreement to initiate is the point to recognize known title issues. However, after an agreement to initiate is entered, additional rights and reservations may be identified and, therefore, should be recognized. The agreement to initiate is a nonbinding agreement. It is not intended to be all inclusive or definitive in all respects.

A commenter suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved, but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses of the involved Federal lands.

Section 2201.9 Case Closing

Much of this section was rewritten in response to comments to clarify the patent issuance process for land exchanges as affected by the Act. A key provision of the Act is the simultaneous issuance of title transfer documents as the standard closing practice. Prior to the Act, Federal title was often conveyed by a procedure that in effect precluded simultaneous title transfers.

One respondent felt that "Case closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation and notice to public officials in addition to title transfers. Therefore, the more general title of "Case closing" has been retained.

It was suggested that paragraph (a) refer to patents or "other documents of conveyance." Paragraph (a) has been changed to refer to "documents of conveyance."

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. Section 2201.9 has been revised to clarify that, unless otherwise agreed, acceptance of title occurs upon recordation of the documents of conveyance in the local land records and that the segregation period terminates at midnight of the 90th day thereafter. Title insurance policies and final binders, or other title evidence (e.g., opinions, certifications), should set forth the date and time of recordation.

A commenter suggested specifying that the date of acceptance be noted on the land records. This suggestion has been adopted. This section of the rule has been revised to clarify that, unless otherwise agreed, title acceptance by the United States occurs upon recordation in the city, county or other local land records. Notation on the official BLM land status records of the date and time of acceptance is determined by that event.

Concern was expressed that in § 2201.9(a) the word "only" reverses the meaning and intent of section 3(a) of the Act regarding the simultaneous issuance of patents or titles and should be deleted. In response to this and other comments, this section has been rewritten in the final rule.

In *United States* v. *Schurz*, 102 U.S. 378 (1880), the United States Supreme Court ruled that delivery of a patent is not required to effect a transfer of the title of the United States to the public lands under its ownership. The concept of a simultaneous transfer of title, ordinarily requiring a simultaneous delivery of title documents, is found in section 3(a) of the Act. It does not comport with the ruling in *Schurz*. For this reason, § 2201.9(a) of the final rule states, in effect, that in simultaneous transfer cases the decision of *Schurz*, to the extent that it might otherwise be applicable, is not to be followed.

It was suggested that § 2201.9(b) concerning automatic segregation include the regulatory citation for the initiation of withdrawals. A citation to the FLPMA withdrawal regulations has been added. However, if Congress enacts other withdrawal authority in special cases, that authority could also be exercised.

Two agency respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. The rule has been revised to make it clear that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process has been completed. This comment was received before 43 CFR 4.21 appeal regulations were amended to delete provisions for automatic stays pending the resolution of appeals. Appeal procedures for this rulemaking are governed by 43 CFR part 4.

A State government respondent suggested that a time constraint be placed on the Solicitor's review. This suggestion has not been implemented. Legal review of complicated title issues can be time consuming, but it is an essential step in any land exchange.

Subpart 2202 Exchanges—National Forest Exchange

One commenter recommended a wording change by deleting "the public

land laws and" from the ninth line. The reference to the public land laws must remain in order to allow the exchange proposal to be protected from other land conveyance options. Should the other conveyances have merit, the exchange should be terminated and the lands open for other filings. This process protects the investment that both parties have in processing the transaction. Therefore, no change was made in the final rule.

Subpart 2203 Exchanges Involving Fee Federal Coal Deposits

It was suggested that there be special requirements for submissions to the Attorney General where coal is involved and that the State should be formally involved earlier in the process. Section 2201.2 of the final rule has been revised to provide "authorized users, jurisdictional State and local governments and the Congressional delegation" with a copy of the Notice of Exchange Proposal. The rule still provides notification 60 days prior to title transfer (2200.0–5 (m)) to State and local jurisdictions.

The principal authors of this final rule are David Cavanaugh, Roger Taylor, Don Simpson, and Mark Stiles of the BLM Washington Office (WO), James Dear of the Forest Service Headquarters Office, and Mike Pool of the BLM New Mexico State Office. This rule was also prepared in cooperation with Paul Tittman, and Phil Bayles of the Forest Service.

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment of the impacts of the rule was conducted and a determination made that no detailed statement was required pursuant to Section 102(2)(C) of NEPA.

This rule has been reviewed under Executive Order 12866.

The Department has further determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Although small entities will benefit from the expedited exchange of lands, the effects will generally be minor. Also, implementation of the rule primarily will affect the parties voluntarily involved in an exchange.

This final rule has been considered in light of E.O. 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessments, activities that are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise taking issues. Accordingly, no further consideration of takings implications was deemed necessary in this rule.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawals, Seashores.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

For the reasons set forth in the preamble and under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716 and 1740), parts 2090 and 2200 of groups 2000 and 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 is revised to read as follows:

Authority: 16 U.S.C. 3124; 25 U.S.C. 334; 30 U.S.C. 189; 43 U.S.C. 322, 641, 869 *et seq.*, 1201, 1624, 1714, 1740; 48 U.S.C. 462 note; 72 Stat. 339–340, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–3 [Amended]

2. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read "Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*)."

§ 2091.2–1 [Amended]

3. Section 2091.2–1 is amended by removing the semicolon and the word "and" at the end of paragraph (b) and adding a period, and removing paragraph (c).

4. Section 2091.2–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 2091.2–2 Opening.

* * * * *

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

5. The heading of § 2091.3 is revised to read as follows:

§ 2091.3 Segregation and opening resulting from a proposal or application.

6. Section 2091.3–1 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1–2 and 36 CFR 254.6).

* * * * *

7. Section 2091.3–2 is revised to read as follows:

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Upon conveyance of public lands under section 206 of the Federal Land

Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(d) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title. (See 43 CFR 2201.9(b))

PART 2200—EXCHANGES—GENERAL PROCEDURES

8. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1716, 1740.

9. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.
2200.0–2 Objective.
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policy.
2200.0–7 Scope.
2200.0–9 Information Collection.

Subpart 2200—Exchanges—General

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of Federal lands for non-Federal lands, found to be in the public interest, in accordance with applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Director of the Bureau of Land Management has the responsibility of carrying out the functions of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) *Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

(b) *Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by the written consent of the parties or terminated at any time upon written notice by any party.

(c) *Appraisal or Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(d) *Approximately equal value* determination means a decision that the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

(e) *Arbitration* means a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

(f) *Assembled land exchange* means the consolidation of multiple parcels of Federal and/or non-Federal lands for purposes of one or more exchange transactions over a period of time.

(g) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.

(h) *Bargaining* means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

(i) *Federal lands* means any lands or interests in lands, such as mineral or timber interests, that are owned by the United States and administered by the Secretary of the Interior through the Director of the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(j) *Hazardous substances* means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

(k) *Highest and best use* means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion.

(l) *Lands* means any land and/or interests in land.

(m) *Ledger account* means an accounting mechanism that tracks the differential in dollar value of lands conveyed throughout a series of transactions. A ledger reports each transaction by date, value of Federal land, value of non-Federal land, the difference between these values upon completion of each transaction, and a cumulative balance and differential.

(n) *Market value* means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(o) *Mineral laws* means the mining laws, mineral leasing laws, and the Geothermal Steam Act, but not the Materials Sales Act, administered by the Secretary of the Interior through the Bureau of Land Management.

(p) *Outstanding interests* means rights or interests in property held by an entity other than a party to an exchange.

(q) *Party* means the United States or any person, State or local government who enters into an agreement to initiate an exchange.

(r) *Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

(s) *Public land laws* means that body of general land laws administered by the Secretary of the Interior through the Bureau of Land Management, excepting, however, the mineral laws.

(t) *Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

(u) *Resource values* means any of the various commodity values (e.g., timber or minerals) or non-commodity values (e.g., wildlife habitat or scenic vistas), indigenous to particular land areas, surface and subsurface.

(v) *Secretary* means the Secretary of the Interior or the individual to whom the authority and responsibilities of that official, as to matters considered in this part, have been delegated.

(w) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

(x) *Statement of value* means a written report prepared by a qualified

appraiser that states the appraiser's conclusion(s) of value.

§ 2200.0-6 Policy.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process, without any obligation to reimburse, or incur any liability to, any party, person or other entity.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 2201.5 of this part, lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), or through arbitration.

(d) *Same-State exchanges.* The Federal and non-Federal lands involved in an exchange authorized pursuant to the Federal Land Policy and Management Act of 1976, as amended, shall be located within the same State.

(e) *O and C land exchanges.* Non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands are required to be located within any one of the 18 counties in which the original grants were made, and, upon acquisition by the United States, automatically shall assume the same status as the lands for which they were exchanged.

(f) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by an exchange that are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress; the California Desert Conservation Area; or any national conservation or national recreation area established by Act of Congress, immediately are reserved for and become part of the unit or area within which they are located, without further action by the Secretary, and thereafter shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(g) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable. Lands acquired by an exchange within a Bureau of Land Management district shall automatically become public lands as defined in 43 U.S.C. 1702 and shall become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans and plan amendments. Lands acquired by an exchange that are located within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(h) *Environmental analysis.* After an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the environmental policies and procedures of the Department of the Interior and the Bureau of Land Management. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 2201.2 of this part.

(i) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(j) *Hazardous substances*— (1) *Federal lands.* The authorized officer shall determine whether hazardous substances may be present on the Federal lands involved in an exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands to the other parties in accordance with the provisions of 40 CFR part 373. The authorized officer shall provide this notice in the exchange agreement. The authorized officer shall also provide such notice, to the extent information is readily available, in the agreement to initiate an exchange. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a), the conveyance document from the United States shall contain a covenant in accordance with 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement, as referenced in 42 U.S.C. 9607(e), whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any known, suspected and/or reasonably ascertainable storage, release, or disposal of hazardous substances on the non-Federal land

pursuant to § 2201.1 of this part. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be included in an exchange agreement, pursuant to § 2201.7–2 of this part.

(k) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(l) *Unsurveyed school sections.* For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "non-Federal" lands and may be used by the State in an exchange with the United States. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(m) *Coordination with State and local governments.* At least 60 days prior to the conveyance of and upon issuance of the deed or patent for Federal lands, the authorized officer will notify the Governor of the State within which the Federal lands covered by the notice are located and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal lands are located.

(n) *Fee coal exchanges.* As part of the consideration of whether public interest would be served by the acquisition of fee coal through exchange, the provisions of subpart 3461 of this title shall be applied and shall be evaluated as a factor and basis for the exchange.

§ 2200.0–7 Scope.

(a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the Bureau of Land Management Manuals and Handbooks 2200 and 9310. The contents of these supplemental materials are not considered to be a part of these rules.

(b) These rules apply to all exchanges involving Federal lands, as defined herein, except to the extent they are inconsistent with the authorities listed in parts 2210, 2240, 2250, and 2270 of this title. These rules also apply to the exchange of interests in either Federal or non-Federal lands, including, but not limited to, minerals, water rights, and timber.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions that do not conflict with the provisions of these Acts.

(d) Pending exchanges initiated prior to December 17, 1993 shall proceed in accordance with this rule unless:

(1) In the judgment of the authorized officer, it would be more expeditious to continue following the procedures in effect prior to December 17, 1993; or

(2) A binding agreement to exchange was in effect prior to December 17, 1993; and

(3) To proceed as provided in paragraphs (d) (1) or (2) of this section would not be inconsistent with applicable law.

(e) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3436 of this title.

§ 2200.0–9 Information collection.

(a) The collection of information contained in part 2200 of Group 2200 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056. The information will be used to initiate and complete land exchanges with the Bureau of Land Management. Responses are required to obtain benefits in accordance with the Federal Land Policy and Management Act of 1976, as amended.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (870), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0056), Office of Management and Budget, Washington, DC 20503.

10. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.
2201.1 Agreement to initiate an exchange.
2201.1–1 Assembled land exchanges.
2201.1–2 Segregative effect.
2201.1–3 Assumption of costs.
2201.2 Notice of exchange proposal.
2201.3 Appraisals.
2201.3–1 Appraiser qualifications.
2201.3–2 Market value.
2201.3–3 Appraisal report standards.
2201.3–4 Appraisal review.
2201.4 Bargaining; arbitration.
2201.5 Exchanges at approximately equal value.
2201.6 Value equalization; cash equalization waiver.
2201.7 Approval of exchanges.
2201.7–1 Notice of decision.
2201.7–2 Exchange agreement.
2201.8 Title standards.
2201.9 Case closing.

Subpart 2201—Exchange—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Bureau of Land Management or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. The preliminary estimate is generally not an appraisal but shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States and State and local governments, certifying that the party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 2201.1–3 of this part;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 2201.7–2 of this part;

(9) A grant of permission by each party to conduct a physical examination of the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 2201.1–1 of this part;

(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to § 2201.8 (c)(1)(iv) of this part;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 2201.8 (c)(1)(iv) of this part; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals, which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate an exchange may be amended by written consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is delayed or is not consummated or to anyone assisting in any way, or doing business with, any such party.

(g) The withdrawal from, and termination of, an exchange proposal, or an agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7–1 of this part, is not protestable or appealable under 43 CFR part 4.

§ 2201.1–1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed in the assembled land exchange up to and including the current transaction;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 3 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(4) Assembled land exchanges are subject to the value equalization and cash equalization waiver provisions of § 2201.6 of this part. Cash equalization waiver shall only be used in conjunction with the final transaction of the assembled land exchange and the termination of any ledger account used.

(f) The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1–2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation by noting the public land status records.

(c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

(d) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States, together with the right to prospect for, mine and remove the minerals, shall be removed from the operation of the mining laws pending issuance of such regulations as the Secretary may prescribe.

§ 2201.1–3 Assumption of costs.

(a) Generally, parties to an exchange will bear their own costs of the exchange. However, if the authorized

officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, cure of deficiencies preventing highest and best use of the land, conduct of public hearings, assemblage of non-Federal parcels from multiple ownerships, expenses of complying with laws, regulations, and policies applicable to exchange transactions, and expenses that are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume without compensation costs ordinarily borne under local custom or practice by the non-Federal party or to compensate the non-Federal party for costs ordinarily borne under local custom or practice by the United States but incurred by the non-Federal party, but only when it is clearly in the public interest and the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of the cost assumed or compensation is reasonable and accurately reflects the value of the goods and services received;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs incurred pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, jurisdictional State and local governments, and the congressional delegation, and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the authorized officer as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 2201.3 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards set forth in §§ 2201.3–1 through 2201.3–4 of this part and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and non-Federal lands involved in an exchange.

§ 2201.3–1 Appraiser qualifications.

(a) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(b) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State does not have approved policies, practices and procedures regulating the activities of appraisers, the Bureau of Land Management may establish appraisal qualification standards commensurate with those adopted by other States meeting the requirements of FIRREA.

§ 2201.3–2 Market value.

(a) In estimating market value, the appraiser shall:

(1) Determine the highest and best use of the property to be appraised;

(2) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(3) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market;

(4) Consider the contributory value of any interest in land such as minerals, water rights, or timber to the extent they are consistent with the highest and best use of the property; and

(5) Estimate separately, if stipulated in the agreement to initiate in accordance with § 2201.1 of this part, the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 2201.1–1 of this part. In this case, the appraiser shall estimate the value of the Federal and non-Federal properties in a similar manner.

(b) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(1) The various interests contribute their full value (pro rata) to the value of the whole; and

(2) The valuation is compatible with the highest and best use of the property.

(c) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

§ 2201.3–3 Appraisal report standards.

Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(a) A summary of facts and conclusions;

(b) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(c) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(d) An adequate description of the physical characteristics of the lands being appraised; a statement of all encumbrances; title information, location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(e) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(f) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(g) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(h) An estimate of market value;

(i) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(j) A certification by the appraiser signing the report to the following:

(1) The appraiser personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(2) The appraiser personally examined the subject property and all comparable sale properties relied upon in the report;

(3) The appraiser has no present or prospective interest in the appraised property; and

(4) The appraiser has not, and will not, receive compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(k) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment that were relied upon by the appraiser to estimate value, which may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

§ 2201.3–4 Appraisal review.

(a) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 2201.3–1 of this part. Statements of value prepared by agency appraisers are not subject to this review.

(b) The review appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent, and supported by a market analysis;

(2) Complies with the standards prescribed in § 2201.3–3 of this part; and

(3) Reasonably estimates the probable market value of the lands appraised.

(c) The review appraiser shall prepare a written review report, containing at a minimum:

(1) A description of the review process used;

(2) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(3) The reviewing appraiser's statement of conclusions regarding the appraiser's estimate of market value; and

(4) A certification by the review appraiser to the following:

(i) The review appraiser has no present or prospective interest in the property that is the subject of the review report; and

(ii) The review appraiser has not, and will not, receive compensation that was contingent on the approval of the appraisal report.

§ 2201.4 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following schedule:

(1) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values of the lands involved in an exchange. If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process to resolve the dispute over values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports. Bargaining or another process to determine values may involve one or more of the following actions:

(i) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(ii) Request for additional appraisals;

(iii) Involvement of an impartial third party to facilitate resolution of the value disputes; or

(iv) Use of some other acceptable and commonly recognized practice for resolving value disputes.

Any agreement based upon bargaining shall be in writing and made part of the administrative record of the exchange. Such agreement shall contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s) may, at the option of either party, be submitted to arbitration unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to

exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands that are of approximately equal value when it is determined that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall determine that the Federal and non-Federal lands are approximately equal in value and shall document how the determination was made.

§ 2201.6 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree:

(1) To modify the exchange proposal by adding or excluding lands; and/or

(2) To use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 2201.1–3 of this part may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive a cash equalization payment if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. This provision shall not be applied to exchanges where the value differential is in excess of $15,000.

(d) A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7–1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. A notice also may be published in the **Federal Register** at the discretion of the authorized officer. At a minimum, the notice shall include:

(i) The date of decision;

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0–6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7–2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7–1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to § 2201.7–1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any legal obligation or right enforceable against or enjoyed by any party.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for the non-Federal lands being conveyed to the United States shall be in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land

Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in recordable form and in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 2200.0–6(j)(1) of this title.

(c) *Title encumbrances.*—(1) *Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the Office of the Solicitor of the Department of the Interior or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to agreed upon covenants or conditions included in the conveyance documents.

(iii) Any personal property owned by the non-Federal party that is not a part of the exchange proposal should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands simultaneously shall pass and be deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner shall be met. The requirements and conditions necessary for recordation at a minimum will include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands; and

(2) The issuance of title evidence as of the date and time of recordation, which conforms to the instructions and requirements of the Office of the Solicitor's preliminary title opinion.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title.

(c) *Notice to State and local governments.* Following the transfer of title to the Federal lands involved in an exchange, notice will be given to State and local officials as prescribed in § 2200.0–6(m) of this part.

Subpart 2202—Exchanges—National Forest Exchange

11. Section 2202.1 is amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) If a proposal is made to exchange lands reserved from the public domain for National Forest System purposes, the authorized officer may request the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and the mineral laws as defined under § 2200.0–5 of this title for a period not to exceed 5 years from the date of notation.

(c) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(d) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

12. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish and distribute a notice of exchange proposal as set forth in § 2201.2 of this title.

13. Section 2203.2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

14. Section 2203.3 is amended by removing the phrase "notice of realty action" in the third line of the introductory paragraph and replacing it with "notice of decision," and in the same paragraph removing the citation "§ 2201.1(e)" and replacing it with the citation "§ 2201.7–1."

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November 18, 1993

Part III

Department of Education

Research in Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces final priorities for the Research in Education of Individuals with Disabilities Program. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1994 and 1995.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support: (1) To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn; and (2) for research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

On July 7, 1993, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (58 FR 36576–36580).

These priorities support the National Education Goals by improving our understanding of how to enable children and youth with disabilities to reach high levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1995 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, fourteen parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority: School-Linked Services to Support Better Outcomes for Children With Disabilities and Their Families

Comment: One commenter indicated the need for close attention to the methods of research employed by the grantee. The commenter further suggested that surveys alone may not be effective but may provide valuable information when conducted with in-depth case studies.

Discussion: The Secretary believes that the priority as written allows applicants to employ the research methodology most appropriate to their particular project. Also, the selection criteria used to evaluate the applications include a specific criterion related to technical soundness that requires the peer reviewers to evaluate the proposed methodology.

Changes: None.

Comment: One commenter suggested that the school be "a" central participant in planning and governing the collaborative effort rather than "the" central participant.

Discussion: It is important that schools, health care providers, and social services agencies collaborate to provide comprehensive services to children and families. The Secretary agrees that the school may be "a" central participant and not necessarily the "the" central participant in planning and governing the collaborative effort.

Changes: The word "the" is replaced by the word "a" in the background description of school-linked services.

Comment: One commenter suggested that "and their families" be added to the title of the priority to emphasize the need for including families in all phases of the educational process.

Discussion: The Secretary agrees with the commenter that families of children and youth with disabilities must be acknowledged and included in all phases of the educational process and believes the priority as written provides for this inclusion.

Changes: The title of the priority has been changed to reflect this comment.

Comment: One commenter suggested that the project provide a description of the implementation process for the school-linked approach to be studied and suggested that the description should include, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations."

Discussion: The Secretary agrees with the commenter on the importance of including a description of the implementation process. Therefore, a new paragraph has been added, and the others are renumbered.

Changes: A new paragraph (c) is added to read: "(c) Provide a description of the implementation process including, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations."

Comment: One commenter indicated the importance of including providers of related services, such as school psychologists, in the school-linked approaches to service delivery.

Discussion: The Secretary agrees with the importance of including the related services called for in the Individuals with Disabilities Education Act (IDEA) as part of school-linked services since they encourage collaboration and facilitate successful inclusion. The priority as written does not exclude related services as an integral part of school-linked services.

Changes: None.

Comment: One commenter suggested the convening of regional conferences in advance of the national meetings.

Discussion: The national meetings are for directors of all projects funded under the Research in Education of Individuals with Disabilities Program. Since the meetings are not just for projects supported under this priority, the Secretary does not consider it necessary to conduct regional meetings prior to the national meeting.

Changes: None.

Priority: Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Comment: One commenter recommended that parents, educators, policy makers, and related agencies

representing all age levels be included in both the initial input and the forum.

Discussion: The Secretary agrees that input from parents, educators, policy makers, and related agencies is critical for guiding the focus of the synthesis and commenting on the synthesis at the Forum described in paragraph (b)(1)(i) of the priority. In addition, the topic of the synthesis will be guided by the state of the research knowledge to date. Researchers will use rigorous methods to objectively synthesize the data. The composition of individuals and organizations providing initial input and comments at the Forum will be matched with the appropriate topic of the synthesis.

Changes: None.

Comment: One commenter recommended that the reviewers for this priority should include family members, individuals with disabilities, and advocates.

Discussion: The Secretary believes that it is important to include parents, individuals with disabilities, and members of traditionally underrepresented populations as panel reviewers. The Secretary is committed to the inclusion of those reviewers for all priorities announced by the Office of Special Education and Rehabilitative Services (OSERS). OSERS is involved in an ongoing effort to identify and recruit members of the aforementioned groups as panel reviewers, and the current field reader pool includes significant increases in the numbers of potential readers identified. The Secretary notes that the process for the recruitment of reviewers and the convening of panels is a separate process from the publication of the priorities, and does not need to be specified in individual priorities.

Changes: None.

Priority: State and Local Education Efforts to Implement the Transition Requirements in the Individuals With Disabilities Education Act

Comment: Three commenters questioned whether the part E authority permits studies of State and local efforts to implement the transition requirements added to the Individuals with Disabilities Education Act (IDEA) by the 1990 amendments. The commenters stated their opinion that these studies might be more appropriately supported under section 618 of part B.

Discussion: The Secretary agrees with the commenters that section 618 specifically authorizes support for studies of progress in implementation of the Act as well as the evaluation of State, local and Department of Interior efforts to provide a free appropriate public education and early intervention. The secretary believes, however, that the authority of part E to support a wide range of research and related activities includes authority for studies that examine local, Statewide, regional, or national effects of implementation of the various requirements of IDEA. The Secretary believes that a contrary reading of the statute would unnecessarily restrict research of potential value in the improvement of education and related services to individuals with disabilities. However, since it has generally been the practice of the Department to fund studies such as this under the section 618 authority, the Department has decided to establish this priority under the section 618 Special Studies Program. A more thorough discussion of this decision will be set forth in the notice of final priorities for the Special Studies Program.

Changes: This activity is removed from the priorities for the Research in Education of Individuals with Disabilities Program and will be published as a FY 1994 and 1995 priority under the section 618 Special Studies Program.

Priority: Center for Policy Research

Comment: One commenter expressed opposition to the proposed Center for Policy Research, stating that stronger enforcement of compliance with the provisions of IDEA by the Department of Education would make it unnecessary to support such a center. The commenter reasoned that if compliance review and enforcement went beyond examination of procedural requirements, the high quality of outcomes of special education would be assured.

Discussion: The Secretary believes that support of a center for policy research that documents the outcomes of special education reform is not inconsistent with ongoing management by States of their funds under IDEA, nor with the administrative responsibilities of the Department. The Secretary believes that this priority will investigate and inform the relationship between implementation of service delivery policies and outcomes.

Changes: None.

Comment: One commenter lauded the study of policy and mentioned the need for consideration of strategic planning at the school district level by persons who are representative of the community.

Discussion: The Secretary agrees that community perspectives are important, and believes that the priority as written allows for the inclusion of community (local) representation.

Changes: None.

Comment: One commenter questioned whether the proposed center for policy research would address issues meaningful to special education personnel and policy-makers. This commenter suggested four specific topical issues that it felt should be addressed: (1) Cost-effective assessment, (2) "real world" issues of inclusion implementation in schools, (3) behavior management of emotionally disturbed children, and (4) the process of internal policy change in SEAs.

Discussion: The Secretary agrees that the topical issues suggested are important, and could be among those addressed by the center. The Secretary, however, believes it is not necessary to prescribe the issues in this detail.

Changes: None.

Comment: One commenter addressed the issue of the disparate quality and quantity of services that may be available to students with disabilities from minority, immigrant and migrant populations. The commenter urged the support of a separate policy research center to address issues of differential impact of possible disparate provision of services to these populations.

Discussion: The Secretary agrees with the concern expressed by the commenter for the equality of resources provided to all students, and further believes that a single comprehensive center for policy research should explicitly address issues of resource allocation.

Changes: The Secretary has revised paragraph (c)(3) to read as follows: "How State and local efforts to restructure the delivery of both general education and special education have affected the delivery of services to students with disabilities, including the differential impact, if any, on those from underrepresented groups such as minority, immigrant, and migrant populations."

Comment: Two commenters questioned whether the part E authority is appropriate for the proposed funding of the Center for Policy Research in view of the legislative authority and the Congressional intent, and took the view that section 618 was the more appropriate authority.

Discussion: The Secretary believes that the statutory and regulatory provisions of part E, section 641, are not inconsistent with the investigation proposed, and have, in fact, regularly provided the authority for support of a wide variety of policy-related research studies of varying magnitude. Historically, including the period following the 1990 amendments, policy studies have been funded under this

authority. These studies range from research initiated by the field that examines current issues and derives policy implications from the research findings, to support of centers for policy studies at major research universities. The statute and implementing regulations do not place limitations on such activities as part of the part E research authority. The Secretary believes the conduct of research under part E from which implications may be drawn that would affect local, State, or national policies in educating children and youth with disabilities is consistent with the expressed intent of part E and contributes to the advancement of knowledge and practice in education of individuals with disabilities.

Changes: None.

Comment: Two commenters urged the Secretary to consider whether there should be multiple, rather than single, awards supported under the Center for Policy Research priority. The reasons expressed were that multiple awards permit inquiry that targets conditions close to the practice level, permitting examination of the complex interaction of features of policy, procedure, practice, resources, history, etc., thus potentially advancing greater understanding and giving greater external validity to overall findings. The commenters felt that the recognized difficulties of multiple awards could be overcome by a requirement to coordinate the information such that it becomes optimally useful from the Federal perspective.

Discussion: The Secretary appreciates the rationale presented by the commenters. However, given the current availability of funds and the need for a national perspective, the Secretary believes that a single award is the most appropriate choice at this time.

Changes: None.

Priority: Initial Career Awards

Comment: One commenter addressed the paucity of research scholars in the field of special education who are representative of minority populations. The writer urged the development of special programs of incentives to encourage new scholars as well as to interest senior research faculty members who might serve as their mentors.

Discussion: The Secretary agrees that greater efforts should be made to encourage minorities and members of other under-represented groups to enter the field of special education research. The priority as written states: "Projects proposing to support individuals who are members of racial or ethnic minority groups, or both, are particularly encouraged by the Secretary to apply for grants under this priority." The Secretary believes that a competitive preference of 10 points should be awarded to otherwise qualified applicants for the support of individuals who are members of groups that are underrepresented in the field of special education research, such as members of racial or ethnic minority groups and individuals with disabilities.

Changes: The priority is revised by deleting language that simply encourages projects supporting individuals who are members of underrepresented groups. Instead, the Secretary will award a competitive preference of up to ten points to applications for projects that will give priority to supporting members of groups that are underrepresented in the field of special education research, such as members of racial or ethnic minority groups and individuals with disabilities. These points would be in addition to any points the application earns under the selection criteria for the program. While a project must give priority to underrepresented groups in order to receive a competitive preference, it may not exclude individuals from consideration for support based on race or national origin.

General Comments

Comment: Two commenters made recommendations concerning dissemination of project findings. One commenter recommended that grantees be required to work with dissemination specialists and professional and parent organizations to ensure the development of appropriate products and communication strategies for findings. The second commenter recommended that all projects funded under these priorities should have some methodology for disseminating findings to local school districts, or, at a minimum, to State Departments of education and the States' special education advisory councils and parent training components.

Discussion: Over the last two years, the Division of Innovation and Development (DID) has worked with dissemination specialists and organizations to ensure products are appropriate for specific audiences and has engaged in activities to encourage not just access to the products, but to facilitate their use. In addition, section 610 of the Individuals with Disabilities Education Act and the program regulations require all grantees, if appropriate, to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. In accordance with section 610, the secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate. The Secretary believes the statute and regulations provide the necessary requirements for dissemination and that it is not necessary to include language in individual priorities.

Changes: None.

Comment: One commenter urged that any studies performed under the proposed priorities include attention to the needs for recreation, including therapeutic recreation, in the lives of individuals with disabilities. The commenter also encouraged the involvement of therapeutic recreation professionals as well as other educators in any programs for individuals with disabilities.

Discussion: The Secretary agrees that recreation and leisure are important considerations in the lives of individuals with disabilities. The Secretary believes, however, that the priorities as written permit consideration of recreational issues in projects supported under these priorities.

Changes: None.

Priorities:

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—School-Linked Services To Support Better Outcomes for Children With Disabilities and Their Families

Background:

Special and general educators are increasingly engaged in the search for and implementation of services that will ensure equity, excellence, and inclusion for children and youth with disabilities. While successful adult outcomes are significantly based on one's education as a child, productivity, independence, and quality of life are also influenced by

access to and provision of health and social services. Schools increasingly acknowledge that many of these noneducational services are vitally needed, but the needs often go unmet. In response, some schools are coordinating and providing these services through policies and approaches described as school-linked services.

The provision of school-linked services appears to offer considerable promise but presents many issues. Multiple service systems must operate in a coordinated and flexible manner to meet the educational, related services, and noneducational needs of children with disabilities. Differences in organization and administrative structures, regulations and mandates, funding mechanisms and incentives, professional roles, and governance can represent barriers and make the development and implementation of school-linked services difficult. Very little is known about the extent of involvement or outcomes of children and youth with disabilities in schools developing or providing school-linked services, or about the policy and programmatic implications of these types of services for these children.

The purpose of this priority is to support research projects to study: (1) The participation of and outcomes for families and students with disabilities who receive services in schools developing or implementing school-linked services, and (2) the programmatic and policy implications associated with the delivery of educational and related services using school-linked approaches.

School-linked services are those (1) provided to children and their families through a collaboration among schools, health care providers, and social services agencies; (2) that place the school as a central participant in planning and governing the collaborative effort; and (3) provided or coordinated by personnel located at or near the school.

Priority:

A project must select one or more sites located in schools that are committed to developing or implementing school-linked approaches to service delivery. In planning and implementing its research, a project must—

(a) Analyze and describe the participation of and academic and social outcomes for students with disabilities and their families;

(b) Provide an in-depth profile of the particular school-linked approach studied including information describing community, school, and student characteristics;

(c) Provide a description of the implementation process including, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations.

(d) Describe the advantages and disadvantages of the particular approach implemented by the project as compared to other approaches (e.g., traditional, community-based, family-based);

(e) Describe the programmatic and policy implications, including barriers that would need to be overcome, associated with the provision of services to students with disabilities within the school-linked approach studied by the project;

(f) Incorporate the ongoing involvement of relevant service systems, parents, and policymakers at the community level in the goals, design, and implementation strategies of the project; and

(g) Develop products and information that are usable by, accessible to, and disseminated to relevant audiences, including the research community, representatives of school and other relevant service systems, and parents.

A project must budget for two trips annually to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

Competitive Priority:

Within this absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), will give preference to applications that meet the following competitive priority. The Secretary will award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

A project that would include a site or sites where, due to high levels of poverty or complicated social, cultural, or geographic relationships, the need for closer ties between schools and the providers of vital noneducational services (e.g., health and social services) is especially great.

For Further Information Contact: Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 2—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Background:

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education.

In recent years the Office of Special Education Programs (OSEP) has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who educate children and youth with disabilities and parents who are involved in the education of their children and youth with disabilities. This goal challenges the research and practice communities to examine beliefs and attitudes about empirical and practice knowledge, the methods for capturing the knowledge, and the communication across professional communities committed to improving the outcomes for children and youth with disabilities.

The purpose of this priority is to synthesize and communicate an extant professional knowledge base on curricular, instructional, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better outcomes for children and youth with disabilities.

Priority:

A project must—

(a) In conducting a synthesis of the literature—

(1) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(2) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(3) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(4) Develop and implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity and generalizability of findings;

(5) Establish criteria and procedures for judging the appropriateness of studies;

(6) Meet with the Office of Special Education Programs and with the other projects funded under this priority to review their topical focus and methodological approach for conducting the synthesis prior to the start of their respective synthesis; and

(7) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals educating children and youth with disabilities; and

(b) In communicating its findings—

(1)(i) Cooperate with OSEP to convene a forum—to be held in Washington, DC between the 18th and 21st months of the project—at which the project would exchange findings from the synthesis activity with researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents; and

(ii) Provide draft copies of its analysis and interpretations to participants;

(2) Based on discussion and feedback from forum participants, prepare final synthesis documents; and

(3)(i) Develop the information products that have the greatest potential for use by national professional education and parent organizations in their existing communication systems and member networks;

(ii) In developing the information products the project must propose products appropriate for the topical focus and audience, provide a rationale for those proposed types of products, and propose communication strategies for fostering the use of the products by the appropriate audience;

(iii) The project must coordinate with OSEP to finalize information products for various systems and networks. Each project must budget for:

(1) A two-day meeting in Washington, DC, during the first year, as described under paragraph (b)(1) of this priority;

(2) The two-day Research Project Directors' meeting to be held in Washington, DC, each year of the project; and

(3) Two trips for up to two days each to Washington, DC, for the activity described under paragraph (b)(3)(iii) of this priority.

For Further Information Contact: Ellen Schiller, U.S. Department of Education, 400 Maryland Avenue, SW, room 3523, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 3—Center for Policy Research

Background:

After 16 years of experience implementing the requirements of the Individuals with Disabilities Education Act, parents, educators, and policymakers are calling for reforms in the ways services are delivered to students with disabilities and for a careful examination of the procedures used to ensure that students with disabilities are effectively and appropriately served. A recent report from the National Association of State Boards of Education (1992) calls for sweeping reforms in the service delivery system and in the way special education has been organized and administered at the Federal, State, and local levels. The Center for Policy Options in Special Education at the University of Maryland has identified issues and options associated with the restructuring of schools and the implications for special education (1992).

Increasingly concerns are expressed with the emphasis that has been placed on procedural compliance, rather than quality outcomes, for special education. A school district could be in full compliance with all procedural requirements and yet have a dropout rate in excess of 40 percent for students with disabilities. Reports from many jurisdictions suggest that much reform in special education service delivery is already emerging at the school building and school district level. However, the anecdotes, while revealing potentially promising innovations, indicate that little systematic research is occurring to document the effects of these reforms. Furthermore, the reform activities themselves have typically not been well described. The need also exists to improve the capacity to conduct policy research in special education.

The Secretary intends to make an award with a project period of up to 36 months. The Secretary may make a continuation award for an additional two-year period, subject to the requirements of 34 CFR 75.253(a). Under 34 CFR 75.234(a)(4), the Secretary would assess in particular the continued need for the center funded by this priority.

Priority:

This priority would establish a center to conduct a program of policy research to examine the impact of general education reform on students with disabilities and the impact of special education reform activities on the education of all students. The specific goals of the center would be—

- To improve educational outcomes for students with disabilities by describing and documenting reforms occurring at the Federal, State, and local levels; assessing the impact of these reforms; and providing policy options to decision-makers at all levels; and
- To contribute to improving the quality of policy research as it relates to the education of students with disabilities. This would require collaboration between special education researchers and nationally recognized policy researchers in related fields.

The center must—

(a) Fund as research assistants at least five graduate students per year who have concentrations in either policy or disability issues;

(b) Contribute to the development and use of rigorous methodologies in conducting policy research by (1) demonstrating the use of innovative and rigorous methodologies in studying critical policy issues, and (2) facilitating the exchange of relevant information with those conducting research in either or both special education and general education;

(c) In consultation with the Office of Special Education Programs (OSEP), develop a program of policy research that addresses the significant reform issues impacting on service delivery to students with disabilities. The reform issues to be considered must include, but are not limited to, the following:

(1) How statutory and regulatory flexibility can be provided at the

Federal, State, and local levels while the rights of students with disabilities are protected.

(2) How performance and compliance monitoring and program audits can promote program improvement, and how other program strategies (e.g., technical assistance) contribute to program improvement.

(3) How State and local efforts to restructure the delivery of both general education and special education have affected the delivery of services to students with disabilities, including the differential impact, if any, on those from underrepresented groups such as minority, immigrant, and migrant populations.

(4) What policies and other strategies have been effective in promoting the inclusion of students with disabilities in regular education programs, and what policies, and other strategies have provided disincentives.

(5) The effects of efforts at the Federal, State, and local levels to coordinate various categorical programs; e.g., the Chapter 1 program for disadvantaged students and programs for students with disabilities;

(d) Develop and use effective communication strategies for ensuring that the center's policy research is available for decision making at the appropriate Federal, State, and local levels. Issues to be addressed in developing communication strategies must include, but are not limited to, the timing and format of information; the method of communication; and the scientific and practical credibility of the information;

(e) Address the needs of various audiences for policy research in both the substance and format of the information; and

(f) Create organizational support for using information through involving decisionmakers in early stages of investigations, prior to the development of communication strategies. Study planning and implementation must include the participation of a group of appropriate policymakers, administrators, people with disabilities, advocates, and other relevant constituents including the National Center on Outcomes funded by the Office of Special Education Programs.

The center must budget for two trips, annually, to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting to meet with the project officer of the Office of Special Education Programs to plan and review project activities and progress.

For Further Information Contact: Louis Danielson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3532, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8119. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 4—Initial Career Awards

Background:

There is need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children and youth with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in 34 CFR 324.1.

The purpose of this priority is to award grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program.

For fiscal year 1994 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1989–90 academic year. For fiscal year 1995 awards, individuals must have completed a doctoral program and graduated no earlier than the 1990–1991 academic year.

Priority:

To be considered for funding under this priority, a project must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for the two-day Research Project Directors' meeting to be held in Washington, D.C., each year of the project.

Competitive Priority:

Within this absolute priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), will give preference to applications that meet the following competitive priority. The Secretary will award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points will be in addition to any points the application earns under the selection criteria for the program:

A project that would give a priority to providing support for individuals who are members of groups that have been underrepresented in the field of special education research, such as members of racial or ethnic minority groups (e.g. Black, Hispanic, American Indian, or Alaskan Native, Asian or Pacific Islander), and individuals with disabilities.

For Further Information Contact: Melville J. Appell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Applicable Program Regulations: 34 CFR part 324.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program.)

Dated: November 10, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-28330 Filed 11-17-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324.

Applications Available: December 7, 1993.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the Federal Register, apply to these competitions.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

[Application Notices for Fiscal Year 1994]

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
School-linked services to support better outcomes for children with disabilities and their families (CFDA 84.023D).	02/11/94	$720,000	$180,000 per year [1]	4	Up to 36.
Synthesize and communicate a professional knowledge base: Contributions to research and practice (CFDA 84.023E).	03/25/94	$450,000	$150,000 for the first year [2]	3	Up to 24.
Center for Policy Research (CFDA 84.023H)	04/08/94	$500,000	$500,000 per year [1]	1	Up to 60.
Initial career awards (CFDA 84.023N)	02/18/94	$300,000	$75,000 per year [1]	4	Up to 36.

NOTE: The Department of Education is not bound by any estimates in this notice.

[1] Amounts listed are the estimated funding levels for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

[2] Amount listed is the estimated funding level for the first 12 months of the projects. The estimated funding level for the second year is $50,000 per project.

For Technical Information Contact: For information on the School-Linked Services to Support Better Outcomes for Children with Disabilities and Their Families competition (CFDA 84.023D) please contact Judith Fein, U.S. Department of Education, 400 Maryland Avenue SW., room 3524, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-8119. For information on Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice competition (CFDA 84.023E) please contact Ellen Schiller, U.S. Department of Education, 400 Maryland Avenue SW., room 3523, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-8123. For information on the Center for Policy Research competition (CFDA 84.023H) please contact Louis Danielson, U.S. Department of Education, 400 Maryland Avenue SW., room 3532, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-8119. For information on the Initial Career Awards competition (CFDA 84.023N) please contact Melville Appell, U.S. Department of Education, 400 Maryland Avenue SW., room 3529, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue SW., room 3525, Switzer Building, Washington, DC 20202-2641. Telephone: (202) 205-8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1441-1443.

Dated: November 10, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-28331 Filed 11-17-93; 8:45 am]

BILLING CODE 4000-01-P

federal register

Thursday
November 18, 1993

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 316, et al.

Offering of United States Savings Bonds and United States Savings Notes; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 332, 342, 351, and 352

Offering of United States Savings Bonds, Series E, EE, and H, HH, and United States Savings Notes

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of the Final Rule is to amend the offering circulars for United States Savings Bonds and Savings Notes to reflect the reductions in their guaranteed minimum investment yields. The reduction affects newly-issued United States Savings Bonds, Series EE and HH, and outstanding United States Savings Bonds, Series E/EE, H/HH, and United States Savings Notes (Freedom Shares), entering into an authorized optional extended maturity period. Also, the reduction has resulted in a lengthening of the initial maturity period of newly-issued United States Savings Bonds, Series EE. The reduction was made to reflect changes in prevailing interest rates.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 219–3320.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has announced, by a press release issued February 28, and a notice published in the **Federal Register** on March 2, 1993, that the guaranteed minimum investment yield for Series EE savings bonds issued on or after March 1, 1993, was reduced from 6 percent per annum, compounded semiannually, to 4 percent. The 4 percent rate applies to all such Series EE bonds issued until the effective date of any subsequent change in the guaranteed minimum investment yield. The guaranteed minimum investment yield for Series EE bonds held for five years or more, and for bonds entering an extended maturity period, had been fixed at 6 percent per annum, compounded semiannually, since November 1, 1986. The new guaranteed minimum investment yield also applies to any Series E, EE, H, and HH savings bond, and savings note, that entered into an authorized extended maturity period on or after March 1, 1993, except for Series E bonds bearing July 1, or August 1, 1953 issue dates. The latter bonds reached final maturity on July 1, and August 1, 1993, respectively, and continued to receive a guaranteed minimum investment rate of six percent through those dates.

Effective March 1, 1993, the investment yield of Series HH savings bonds issued in exchange for Series E/EE savings bonds and/or savings notes, or issued upon the reinvestment of matured Series H savings bonds, was also reduced to 4 percent per annum, paid semiannually. This yield applies to Series HH bonds issued on or after March 1, 1993, until the effective date of any subsequent change in the investment yield.

In addition, effective March 1, 1993, the original maturity period for Series EE savings bonds bearing the issue date of March 1, 1993, or thereafter, has been lengthened from 12 years to 18 years. The original maturity period was lengthened so that the issue prices of the bonds will remain unchanged and their maturity values (calculated at the guaranteed minimum investment yield) will continue to be approximately twice the purchase price at issue.

The guaranteed minimum investment yield is being reduced to reflect a general decline in interest rates. Also, the change preserves the cost-effectiveness of the Savings Bond Program, and avoids undue disparity with other thrift instruments.

The market-based rate program and the basic features of Series E/EE bonds and savings notes remain unchanged, providing owners a fair return given current market conditions. Bonds and notes held five years or longer receive (a) 85 percent of the average market yield on Treasury marketable securities with a remaining term to maturity of approximately 5 years, or (b) the applicable guaranteed minimum investment yield, whichever yield produces the higher value.[1] Series E/EE bonds and savings notes are exempt from State and local income taxes, and the Federal income tax thereon may be deferred until the bonds or notes are redeemed, disposed of, or reached final maturity. The semiannual interest payments on Series H/HH bonds are also exempt from State and local income taxes, but are reportable for Federal income tax purposes for each tax year in which they are paid.

The provisions of the several savings bond and note circulars which describe the guaranteed minimum investment yields have also been revised to improve clarity and to aid understanding. Revised tables of redemption values and interest payments are being published with these amendments of 31 CFR parts 316, 332, 342, 351, and 352.

[1] Monthly averages of the market yield on outstanding Treasury securities with a remaining term to maturity of approximately five years are published in the quarterly Treasury Bulletin and by the Board of Governors of the Federal Reserve System. They may be found in the Board's statistical releases G.13 and H.15, and in Table 1.35 of the monthly Federal Reserve Bulletin.

Procedural Requirements

This Final Rule is not considered a "major rule" for purposes of Executive Order No. 12291. A regulatory impact analysis, therefore, is not required.

Because this Final Rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Final Rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Parts 316, 332, 342, 351, and 352

Bonds, Government Securities.

Dated: November 9, 1993.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II is amended as follows:

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

1. The authority citation for part 316 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 316.8 is amended as follows:

A. Paragraph (c) is amended by completely revising paragraph (c)(1), by removing the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) through (viii), and by redesignating current paragraph (c)(2)(ix) as (c)(2). As revised, paragraph (c)(1) reads as follows:

§ 316.8 Extended terms and yields for outstanding bonds.

* * * * *

(c) *Guaranteed minimum investment yield*—(1) *General.* Except as provided in paragraph (c)(2) of this section, the guaranteed minimum investment yields for outstanding Series E bonds are as follows:

(i) For Series E bonds that were in original or extended maturity periods prior to November 1, 1982, the guaranteed minimum investment yield

was 8.5 percent per annum, compounded semiannually, effective for the period from the first semiannual interest accrual date on or after May 1, 1981, through the end of such periods, unless the bonds reached final maturity before November 1, 1981.[3] For bonds that entered extensions, see paragraphs (c)(1)(ii) through (c)(1)(iv) of this section.

(ii) For Series E bonds that entered extended maturity periods during the period of November 1, 1982, through October 1, 1986, the guaranteed minimum yield was or is 7.5 percent per annum, compounded semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered on 1st day of—
Mar. 1953–Nov. 1957.	3rd	Nov. 1982–Oct. 1986.
Feb. 1965–Dec. 1970.	2nd	Nov. 1982–Oct. 1986.
Nov. 1977–June 1980.	1st	Nov. 1982–June 1985.

(iii) For Series E bonds that entered into extended maturity periods during the period of November 1, 1986, through February 1, 1993, the guaranteed minimum yield was or is 6 percent per annum, compounded semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension[4]	Entered on 1st day of—
May 1952–Aug. 1953.	4th (final)[5]	Jan. 1992–Apr. 1993.
Dec. 1957–May 1965.	3rd	Nov. 1986–Feb. 1993.
Dec. 1965–Feb. 1966.	3rd (final)	Dec. 1992–Feb. 1993.
Jan. 1971–Feb. 1978.	2nd	Nov. 1986–Feb. 1993.

[4] Interest for interest accrual periods of less than 6 months is prorated.

[5] All Series E bonds issued between May 1, 1941 and April 1, 1953, have matured and are no longer earning interest.

(iv) For Series E bonds entering extended maturity periods on or after March 1, 1993, the guaranteed minimum yield is 4 percent per annum, compounded semiannually, or the guaranteed minimum investment yield in effect at the beginning of the period, including bonds that enter extended maturity periods, as shown below:[6]

Issue dates—1st day of—	Extension[7]	Entered on 1st day of—
Sep. 1953–May 1965.	4th (final)	May 1993–Feb. 2003.
Jun. 1965–Nov. 1965.	3rd	Mar. 1993–Aug. 1993.
Jun. 1965–Nov. 1965.	4th (final)	Mar. 2003–Aug. 2003.
Mar. 1966–Feb. 1978.	3rd (final)	Mar. 1993–Feb. 2003.
Mar. 1978–Jun. 1980.	2nd	Mar. 1993–Jun. 1995
Mar. 1978–Jun. 1980.	3rd (final)	Mar. 2003–Jun. 2005.

[7] See footnote 2 above.

* * * * *

B. Paragraph (e) is amended by redesignating footnote 12 as footnote 8 and by removing the reference to paragraph (b)(1)(ix) and replacing it with a reference to paragraph (b)(2).

PART 332—OFFERING OF U.S. SAVINGS BONDS, SERIES H

3. The authority citation for part 332 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

4. In § 332.8, paragraph (b) is revised to read as follows:

§ 332.8 Extended terms and yield for outstanding bonds.

* * * * *

(b) *Investment yields for outstanding bonds—General—interest rates.* The investment yields on outstanding Series H bonds are as set out below:

(1) For Series H bonds that were in original or extended maturity periods prior to November 1, 1982, the investment yield was 8.5 percent per annum, paid semiannually, effective for the period from the first semiannual interest payment date occurring on or after May 1, 1981, through the end of such periods. For bonds that entered extensions, see paragraphs (b)(2) through (b)(4) of this section.

(2) For Series H bonds that entered extended maturity periods from November 1, 1982, through October 1, 1986, the investment yield was 7.5 percent per annum, paid semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Nov. 1962–Oct. 1966.	2nd (final)	Nov. 1982–Oct. 1986.
Nov. 1972–Oct. 1976.	1st	Nov. 1982–Oct. 1986.

(3) For Series H bonds that entered extended maturity periods from November 1, 1986, through February 1, 1993, the investment yield was 6 percent per annum, paid semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Nov. 1966–Feb. 1973.	2nd (final)	Nov. 1986–Feb. 1993.
Nov. 1976–Dec. 1979.	1st	Nov. 1986–Dec. 1989.

(4) For Series H bonds that entered or enter extended maturity periods on or after March 1, 1993, the guaranteed minimum investment yield is 4 percent per annum, paid semiannually, or the investment yield in effect at the beginning of such periods, including bonds that enter into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Mar. 1973–Dec. 1979.	2nd (final)	Mar. 1993–Dec. 1999.

* * * * *

PART 342—OFFERING OF UNITED STATES SAVINGS NOTES

5. The authority for Part 342 continues to read as follows:

Authority: 31 U.S.C. 3103, 5 U.S.C. 301.

6. In § 342.3 paragraph (b) is amended by completely revising paragraph (b)(1), removing the introductory text of paragraph (b)(2) as well as (b)(2)(i) and (ii), and redesignating current paragraph (b)(2)(iii) as (b)(2), as follows:

§ 342.3 [Amended]

* * * * *

(b) *Guaranteed minimum investment yield—(1) General.* Except as provided in paragraph (b)(2) of this section, the guaranteed minimum investment yields for outstanding savings notes are as follows:

(i) For savings notes in extended maturity periods prior to November 1, 1982, the guaranteed minimum investment yield was 8.5 percent per annum, compounded semiannually, effective for the period from the first semiannual interest accrual date on or

[3] Series E bonds issued from May 1, 1941, through October 1, 1941, had reached final maturity May 1, 1981, through October 1, 1981, before the 8.5 percent yield had become effective.

[6] Series E bonds with issue dates of July 1 and August 1, 1953, entered a final maturity period of 4 months on March 1, and April 1, 1993, respectively, and received a minimum investment yield of 6 percent per annum, compounded semiannually, for that period.

after May 1, 1981, through their next extended maturity dates on or after November 1, 1982.

(ii) For savings notes that entered extended maturity periods during the period of November 1, 1982, through October 1, 1986, the guaranteed minimum investment yield was 7.5 percent per annum, compounded semiannually, for such periods, including notes that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
May 1968–Oct. 1970.	2nd	Nov. 1982–Apr. 1985.

(iii) For savings notes that entered into extended maturity periods during the period of November 1, 1986, through February 1, 1993, the guaranteed minimum investment yield is 6 percent per annum, compounded semiannually, for such periods, including notes that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
May 1967–Aug. 1968.	3rd (final)	Nov. 1991–Feb. 1993.

(iv) For savings notes that entered or enter extended maturity periods on or after March 1, 1993, the guaranteed minimum investment yield is 4 percent per annum, compounded semiannually, for such periods, or the investment yield in effect at the beginning of such periods, including notes that enter into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Sep. 1968–Oct. 1970.	3rd (final)	Mar. 1993–Apr. 1995.

* * * * *

7. Footnotes 1 and 2 are removed and footnote 3 is redesignated footnote 1. Further, reference in redesignated footnote 1 to paragraph (b)(2)(iii) is removed and replaced with paragraph (b)(2).

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

8. The authority citation for part 351 continues to read as follows:

Authority: 31 U.S.C. 3105, 31 U.S.C. 301.

§ 351.0 [Amended]

9. In § 351.0, "January 1, 1990" is removed and "March 1, 1993" is added in its place.

§ 351.2 [Amended]

10. Section 351.2 is amended as follows:

A. The table in paragraph (c) is amended by revising the last line and adding a new line to read as follows:

Nov. 1986–Feb. 1993.	Nov. 1998–Feb. 2005.	12 years.
Mar. 1993, and thereafter.	Mar. 2011, and thereafter.	18 years.

B. In the introductory text of paragraph (e) is amended by removing "table 1 and 2 in the appendix" and adding in its place "tables 1, 2, and 3 in the appendix."

C. In paragraph (e)(1), the text beginning with the words "for a bond", after the last comma, is revised and a new sentence is added at the end of the paragraph to read, as follows:

§ 351.2 Description of bonds

* * * * *

(e) * * *

(1) * * * for a bond bearing an issue date of November 1, 1986, through February 1, 1993; and, 4 percent per annum, compounded semiannually, for a bond bearing an issue date of March 1, 1993, or thereafter. Interest that accrues on a Series EE bond becomes part of its redemption value and is paid, as set out in § 351.2(h).

D. The tables at the end of paragraph (g)(2) are revised to read as follows:

Issues dates—1st day of:	Original terms	Original maturity dates—day of:	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	11 years	Jan. 1991–Oct. 1991	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	9 years	Nov. 1989–Apr. 1990	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	8 years	May 1989–Oct. 1990	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	10 years	Nov. 1992–Oct. 1996	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	12 years	Nov. 1998–Feb. 2005	Nov. 2016–Feb. 2023.
Mar. 1993, and thereafter	18 years	Mar. 2011, and thereafter	Mar. 2023, and thereafter.

Issues dates—1st day of:	1st extended maturity dates—1st day of:	Years to final maturity	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	Jan. 2001–Oct. 2001	9 years	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	Nov. 1999–Apr. 2000	11 years	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	May 1999–Oct. 2000	12 years	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	Nov. 2002–Oct. 2006	10 years	Nov. 2010–Oct. 2016.
Nov. 1986–Feb. 1993	Nov. 2008–Feb. 2015	8 years	Nov. 2016–Feb. 2023.
Mar. 1993, and thereafter	Mar. 2021, and thereafter	2 years	Mar. 2023, and thereafter.

[1] At 10 years after original maturity.

* * * * *

E. Paragraph (g)(3)(i) is amended by revising the second sentence to read as follows:

* * * * *

(g) * * *

(3) * * *

(i) * * * Bonds that entered an extended maturity period from May 1, 1989, through February 1, 1993, have a guaranteed minimum investment yield of 6 percent per annum, compounded semiannually, during that extended maturity period. Bonds that entered or enter an extended maturity period on or after March 1, 1993, have a guaranteed minimum investment yield of 4 percent per annum, compounded semiannually, during that extended maturity period, or the guaranteed minimum investment yield in effect at the beginning of that period. * * *

* * * * *

F. Paragraph (h) is amended by revising the fourth sentence and adding a new sentence following it to read as follows:

* * * * *

(h) * * * For bonds with issue dates from November 1, 1986, through February 1, 1993, the redemption values

increase on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period. For bonds with issue dates on and after March 1, 1993, the redemption values increase on the first day of each month from the third through the sixtieth month after issue, and thereafter either on the first day of each month or on the first day of each successive 6-month period, whichever accrual schedule ensures that the actual yield from issue date to redemption date is in no case less than 4 percent per annum, compounded semiannually. * * *

* * * * *

G. The first sentence of paragraph (i) is amended by removing "Tables 1, 2," and adding in its place "Tables 1, 2, and 3,".

Appendix to Part 351 [Amended]

10. The Appendix to Part 351 is amended as follows:

A. Table 2 is revised to read as set forth below.

B. A new Table 3 is added at the end of the Appendix to read as follows:

BILLING CODE 4810-39-P

TABLE 2

EE BONDS BEARING ISSUE DATES FROM NOVEMBER 1, 1986 THROUGH FEBRUARY 1, 1993

SSUE PRICE ATURITY VALUE	$25.00 50.82	$37.50 76.23	$50.00 101.64	$100.00 203.28	$250.00 508.20	$500.00 1016.40	$2500.00 5082.00	$ 5000.00 10164.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
PERIOD ARS AND MONTHS AFTER ISSUE)	(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
									PERCENT	PERCENT	PERCENT
0- 0 TO 0- 2	1/(11/1/86)	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$ 5000.00	----	4.35	6.00
0- 2 TO 0- 3	(1/1/87)	25.18	37.77	50.36	100.72	251.80	503.60	2518.00	5036.00	4.35	3.84	6.02
0- 3 TO 0- 4	(2/1/87)	25.26	37.89	50.52	101.04	252.60	505.20	2526.00	5052.00	4.18	3.83	6.04
0- 4 TO 0- 5	(3/1/87)	25.34	38.01	50.68	101.36	253.40	506.80	2534.00	5068.00	4.09	3.82	6.05
0- 5 TO 0- 6	(4/1/87)	25.42	38.13	50.84	101.68	254.20	508.40	2542.00	5084.00	4.04	4.77	6.07
0- 6 TO 0- 7	(5/1/87)	25.52	38.28	51.04	102.08	255.20	510.40	2552.00	5104.00	4.16	3.79	6.08
0- 7 TO 0- 8	(6/1/87)	25.60	38.40	51.20	102.40	256.00	512.00	2560.00	5120.00	4.11	4.73	6.10
0- 8 TO 0- 9	(7/1/87)	25.70	38.55	51.40	102.80	257.00	514.00	2570.00	5140.00	4.19	3.76	6.11
0- 9 TO 0-10	(8/1/87)	25.78	38.67	51.56	103.12	257.80	515.60	2578.00	5156.00	4.14	4.70	6.12
0-10 TO 0-11	(9/1/87)	25.88	38.82	51.76	103.52	258.80	517.60	2588.00	5176.00	4.19	4.68	6.14
0-11 TO 1- 0	(10/1/87)	25.98	38.97	51.96	103.92	259.80	519.60	2598.00	5196.00	4.24	4.66	6.15
1- 0 TO 1- 1	(11/1/87)	26.08	39.12	52.16	104.32	260.80	521.60	2608.00	5216.00	4.27	4.65	6.16
1- 1 TO 1- 2	(12/1/87)	26.18	39.27	52.36	104.72	261.80	523.60	2618.00	5236.00	4.30	4.63	6.17
1- 2 TO 1- 3	(1/1/88)	26.28	39.42	52.56	105.12	262.80	525.60	2628.00	5256.00	4.33	4.61	6.18
1- 3 TO 1- 4	(2/1/88)	26.38	39.57	52.76	105.52	263.80	527.60	2638.00	5276.00	4.34	4.59	6.19
1- 4 TO 1- 5	(3/1/88)	26.48	39.72	52.96	105.92	264.80	529.60	2648.00	5296.00	4.36	4.57	6.21
1- 5 TO 1- 6	(4/1/88)	26.58	39.87	53.16	106.32	265.80	531.60	2658.00	5316.00	4.37	5.48	6.22
1- 6 TO 1- 7	(5/1/88)	26.70	40.05	53.40	106.80	267.00	534.00	2670.00	5340.00	4.43	4.54	6.22
1- 7 TO 1- 8	(6/1/88)	26.80	40.20	53.60	107.20	268.00	536.00	2680.00	5360.00	4.44	5.43	6.24
1- 8 TO 1- 9	(7/1/88)	26.92	40.38	53.84	107.68	269.20	538.40	2692.00	5384.00	4.49	5.41	6.24
1- 9 TO 1-10	(8/1/88)	27.04	40.56	54.08	108.16	270.40	540.80	2704.00	5408.00	4.53	5.38	6.25
1-10 TO 1-11	(9/1/88)	27.16	40.74	54.32	108.64	271.60	543.20	2716.00	5432.00	4.57	5.36	6.26
1-11 TO 2- 0	(10/1/88)	27.23	40.92	54.56	109.12	272.80	545.60	2728.00	5456.00	4.61	5.34	6.27
2- 0 TO 2- 1	(11/1/88)	27.40	41.10	54.80	109.60	274.00	548.00	2740.00	5480.00	4.64	5.31	6.27
2- 1 TO 2- 2	(12/1/88)	27.52	41.28	55.04	110.08	275.20	550.40	2752.00	5504.00	4.66	5.29	6.28
2- 2 TO 2- 3	(1/1/89)	27.64	41.46	55.28	110.56	276.40	552.80	2764.00	5528.00	4.69	5.27	6.29
2- 3 TO 2- 4	(2/1/89)	27.76	41.64	55.52	111.04	277.60	555.20	2776.00	5552.00	4.71	6.13	6.30
2- 4 TO 2- 5	(3/1/89)	27.90	41.85	55.80	111.60	279.00	558.00	2790.00	5580.00	4.76	5.22	6.30
2- 5 TO 2- 6	(4/1/89)	28.02	42.03	56.04	112.08	280.20	560.40	2802.00	5604.00	4.78	6.07	6.31
2- 6 TO 3- 0	(5/1/89)	28.16	42.24	56.32	112.64	281.60	563.20	2816.00	5632.00	4.82	5.97	6.31
3- 0 TO 3- 6	(11/1/89)	29.00	43.50	58.00	116.00	290.00	580.00	2900.00	5800.00	5.01	6.76	6.33
3- 6 TO 4- 0	(5/1/90)	29.98	44.97	59.96	119.92	299.80	599.60	2998.00	5996.00	5.26	7.20	6.31
4- 0 TO 4- 6	(11/1/90)	31.06	46.59	62.12	124.24	310.60	621.20	3106.00	6212.00	5.50	7.86	6.25
4- 6 TO 5- 0	(5/1/91)	32.28	48.42	64.56	129.12	322.80	645.60	3228.00	6456.00	5.76	8.18	6.14
5- 0 TO 5- 6	(11/1/91)	33.60	50.40	67.20	134.40	336.00	672.00	3360.00	6720.00	6.00	6.07	6.00
5- 6 TO 6- 0	(5/1/92)	34.62	51.93	69.24	138.48	346.20	692.40	3462.00	6924.00	6.01	6.01	5.99
6- 0 TO 6- 6	(11/1/92)	35.66	53.49	71.32	142.64	356.60	713.20	3566.00	7132.00	6.01	5.95	5.99
6- 6 TO 7- 0	(5/1/93)	36.72	55.08	73.44	146.88	367.20	734.40	3672.00	7344.00	6.00	5.99	6.00
7- 0 TO 7- 6	(11/1/93)	37.82	56.73	75.64	151.28	378.20	756.40	3782.00	7564.00	6.00	6.03	6.00
7- 6 TO 8- 0	(5/1/94)	38.96	58.44	77.92	155.84	389.60	779.20	3896.00	7792.00	6.00	5.95	5.99
8- 0 TO 8- 6	(11/1/94)	40.12	60.18	80.24	160.48	401.20	802.40	4012.00	8024.00	6.00	6.08	6.00
8- 6 TO 9- 0	(5/1/95)	41.34	62.01	82.68	165.36	413.40	826.80	4134.00	8268.00	6.01	6.00	5.99
9- 0 TO 9- 6	(11/1/95)	42.58	63.87	85.16	170.32	425.80	851.60	4258.00	8516.00	6.01	5.92	5.98
9- 6 TO 10- 0	(5/1/96)	43.84	65.76	87.68	175.36	438.40	876.80	4384.00	8768.00	6.00	6.02	6.00
10- 0 TO 10- 6	(11/1/96)	45.16	67.74	90.32	180.64	451.60	903.20	4516.00	9032.00	6.00	6.02	5.99
10- 6 TO 11- 0	(5/1/97)	46.52	69.78	93.04	186.08	465.20	930.40	4652.00	9304.00	6.00	6.02	5.98
11- 0 TO 11- 6	(11/1/97)	47.92	71.88	95.84	191.68	479.20	958.40	4792.00	9584.00	6.00	5.93	5.96
11- 6 TO 12- 0	(5/1/98)	49.34	74.01	98.68	197.36	493.40	986.80	4934.00	9868.00	6.00	6.00	6.00
12- 0 2/	(11/1/98)	50.82	76.23	101.64	203.28	508.20	1016.40	5082.00	10164.00	6.00		

MONTH, DAY, AND YEAR ON WHICH ISSUES OF NOVEMBER 1, 1986 ENTER EACH PERIOD. FOR SUBSEQUENT ISSUE MONTHS ADD THE APPROPRIATE NUMBER OF MONTHS.
MATURITY VALUE IS REACHED 12 YEARS AND 0 MONTHS AFTER ISSUE DATE.

THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES BEFORE FIVE YEARS AFTER ISSUE ARE THOSE ESTABLISHED UNDER SECTION 351.2(e) OF THIS CIRCULAR.
THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES FIVE YEARS AFTER ISSUE AND THEREAFTER REPRESENT THE MINIMUM GUARANTEED INVESTMENT YIELDS PROVIDED BY SECTION 351.2(e)(1) OF THIS CIRCULAR. THESE REDEMPTION VALUES WILL APPLY UNLESS APPLICATION OF THE VARIABLE RATE PRESCRIBED UNDER SECTION 351.2(e)(2) PRODUCES A HIGHER REDEMPTION VALUE.

TABLE 3

EE BONDS BEARING ISSUE DATES BEGINNING MARCH 1, 1993

ISSUE PRICE / MATURITY VALUE	$25.00 / 51.00	$37.50 / 76.50	$50.00 / 102.00	$100.00 / 204.00	$250.00 / 510.00	$500.00 / 1020.00	$2500.00 / 5100.00	$5000.00 / 10200.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
PERIOD (YEARS AND MONTHS AFTER ISSUE)	(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2) FROM ISSUE DATE TO START OF PERIOD	(3) DURING EACH PERIOD	(4) FROM START OF PERIOD TO MATURITY
									PERCENT	PERCENT	PERCENT
A/ 0- 0 TO 0- 2 1/(3/1/93)	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$ 5000.00	----	4.35	4.00
0- 2 TO 0- 3 (5/1/93)	25.18	37.77	50.36	100.72	251.80	503.60	2518.00	5036.00	4.35	3.84	4.00
0- 3 TO 0- 4 (6/1/93)	25.26	37.89	50.52	101.04	252.60	505.20	2526.00	5052.00	4.18	3.83	4.00
0- 4 TO 0- 5 (7/1/93)	25.34	38.01	50.68	101.36	253.40	506.80	2534.00	5068.00	4.09	3.82	4.00
0- 5 TO 0- 6 (8/1/93)	25.42	38.13	50.84	101.68	254.20	508.40	2542.00	5084.00	4.04	3.81	4.00
0- 6 TO 0- 7 (9/1/93)	25.50	38.25	51.00	102.00	255.00	510.00	2550.00	5100.00	4.00	4.75	4.00
0- 7 TO 0- 8 (10/1/93)	25.60	38.40	51.20	102.40	256.00	512.00	2560.00	5120.00	4.11	3.78	4.00
0- 8 TO 0- 9 (11/1/93)	25.68	38.52	51.36	102.72	256.80	513.60	2568.00	5136.00	4.07	3.77	4.00
0- 9 TO 0-10 (12/1/93)	25.76	38.64	51.52	103.04	257.60	515.20	2576.00	5152.00	4.03	3.76	4.00
0-10 TO 0-11 (1/1/94)	25.84	38.76	51.68	103.36	258.40	516.80	2584.00	5168.00	4.01	4.69	4.00
0-11 TO 1- 0 (2/1/94)	25.94	38.91	51.88	103.76	259.40	518.80	2594.00	5188.00	4.07	3.73	4.00
1- 0 TO 1- 1 (3/1/94)	26.02	39.03	52.04	104.08	260.20	520.40	2602.00	5204.00	4.04	3.72	4.00
1- 1 TO 1- 2 (4/1/94)	26.10	39.15	52.20	104.40	261.00	522.00	2610.00	5220.00	4.01	4.64	4.00
1- 2 TO 1- 3 (5/1/94)	26.20	39.30	52.40	104.80	262.00	524.00	2620.00	5240.00	4.06	3.69	4.00
1- 3 TO 1- 4 (6/1/94)	26.28	39.42	52.56	105.12	262.80	525.60	2628.00	5256.00	4.03	3.68	4.00
1- 4 TO 1- 5 (7/1/94)	26.36	39.54	52.72	105.44	263.60	527.20	2636.00	5272.00	4.01	4.60	4.00
1- 5 TO 1- 6 (8/1/94)	26.46	39.69	52.92	105.84	264.60	529.20	2646.00	5292.00	4.05	3.66	4.00
1- 6 TO 1- 7 (9/1/94)	26.54	39.81	53.08	106.16	265.40	530.80	2654.00	5308.00	4.03	3.64	4.00
1- 7 TO 1- 8 (10/1/94)	26.62	39.93	53.24	106.48	266.20	532.40	2662.00	5324.00	4.01	4.55	4.00
1- 8 TO 1- 9 (11/1/94)	26.72	40.08	53.44	106.88	267.20	534.40	2672.00	5344.00	4.03	3.62	4.00
1- 9 TO 1-10 (12/1/94)	26.80	40.20	53.60	107.20	268.00	536.00	2680.00	5360.00	4.01	4.52	4.00
1-10 TO 1-11 (1/1/95)	26.90	40.35	53.80	107.60	269.00	538.00	2690.00	5380.00	4.04	3.60	4.00
1-11 TO 2- 0 (2/1/95)	26.98	40.47	53.96	107.92	269.80	539.60	2698.00	5396.00	4.02	4.49	4.00
2- 0 TO 2- 1 (3/1/95)	27.08	40.62	54.16	108.32	270.80	541.60	2708.00	5416.00	4.04	3.57	4.00
2- 1 TO 2- 2 (4/1/95)	27.16	40.74	54.32	108.64	271.60	543.20	2716.00	5432.00	4.02	4.46	4.00
2- 2 TO 2- 3 (5/1/95)	27.26	40.89	54.52	109.04	272.60	545.20	2726.00	5452.00	4.03	3.55	4.00
2- 3 TO 2- 4 (6/1/95)	27.34	41.01	54.68	109.36	273.40	546.80	2734.00	5468.00	4.02	4.43	4.00
2- 4 TO 2- 5 (7/1/95)	27.44	41.16	54.88	109.76	274.40	548.80	2744.00	5488.00	4.03	3.52	4.00
2- 5 TO 2- 6 (8/1/95)	27.52	41.28	55.04	110.08	275.20	550.40	2752.00	5504.00	4.01	4.40	4.00
2- 6 TO 2- 7 (9/1/95)	27.62	41.43	55.24	110.48	276.20	552.40	2762.00	5524.00	4.03	3.50	4.00
2- 7 TO 2- 8 (10/1/95)	27.70	41.55	55.40	110.80	277.00	554.00	2770.00	5540.00	4.01	4.37	4.00
2- 8 TO 2- 9 (11/1/95)	27.80	41.70	55.60	111.20	278.00	556.00	2780.00	5560.00	4.02	3.48	4.00
2- 9 TO 2-10 (12/1/95)	27.88	41.82	55.76	111.52	278.80	557.60	2788.00	5576.00	4.00	4.34	4.00
2-10 TO 2-11 (1/1/96)	27.98	41.97	55.96	111.92	279.80	559.60	2798.00	5596.00	4.01	4.33	4.00
2-11 TO 3- 0 (2/1/96)	28.08	42.12	56.16	112.32	280.80	561.60	2808.00	5616.00	4.02	3.44	4.00
3- 0 TO 3- 1 (3/1/96)	28.16	42.24	56.32	112.64	281.60	563.20	2816.00	5632.00	4.01	4.30	4.00
3- 1 TO 3- 2 (4/1/96)	28.26	42.39	56.52	113.04	282.60	565.20	2826.00	5652.00	4.02	4.28	4.00
3- 2 TO 3- 3 (5/1/96)	28.36	42.54	56.72	113.44	283.60	567.20	2836.00	5672.00	4.02	3.41	4.00
3- 3 TO 3- 4 (6/1/96)	28.44	42.66	56.88	113.76	284.40	568.80	2844.00	5688.00	4.01	4.26	4.00
3- 4 TO 3- 5 (7/1/96)	28.54	42.81	57.08	114.16	285.40	570.80	2854.00	5708.00	4.01	4.24	4.00
3- 5 TO 3- 6 (8/1/96)	28.64	42.96	57.28	114.56	286.40	572.80	2864.00	5728.00	4.02	3.38	4.00
3- 6 TO 3- 7 (9/1/96)	28.72	43.08	57.44	114.88	287.20	574.40	2872.00	5744.00	4.00	4.21	4.00
3- 7 TO 3- 8 (10/1/96)	28.82	43.23	57.64	115.28	288.20	576.40	2882.00	5764.00	4.01	4.20	4.00
3- 8 TO 3- 9 (11/1/96)	28.92	43.38	57.84	115.68	289.20	578.40	2892.00	5784.00	4.01	4.19	4.00
3- 9 TO 3-10 (12/1/96)	29.02	43.53	58.04	116.08	290.20	580.40	2902.00	5804.00	4.02	3.33	4.00
3-10 TO 3-11 (1/1/97)	29.10	43.65	58.20	116.40	291.00	582.00	2910.00	5820.00	4.00	4.16	4.00
3-11 TO 4- 0 (2/1/97)	29.20	43.80	58.40	116.80	292.00	584.00	2920.00	5840.00	4.00	4.14	4.00
4- 0 TO 4- 1 (3/1/97)	29.30	43.95	58.60	117.20	293.00	586.00	2930.00	5860.00	4.01	4.13	4.00
4- 1 TO 4- 2 (4/1/97)	29.40	44.10	58.80	117.60	294.00	588.00	2940.00	5880.00	4.01	4.12	4.00
4- 2 TO 4- 3 (5/1/97)	29.50	44.25	59.00	118.00	295.00	590.00	2950.00	5900.00	4.01	4.10	4.00
4- 3 TO 4- 4 (6/1/97)	29.60	44.40	59.20	118.40	296.00	592.00	2960.00	5920.00	4.01	4.09	4.00
4- 4 TO 4- 5 (7/1/97)	29.70	44.55	59.40	118.80	297.00	594.00	2970.00	5940.00	4.02	3.25	4.00

ISSUE PRICE / MATURITY VALUE	$25.00 / 51.00	$37.50 / 76.50	$50.00 / 102.00	$100.00 / 204.00	$250.00 / 510.00	$500.00 / 1020.00	$2500.00 / 5100.00	$ 5000.00 / 10200.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
PERIOD (YEARS AND MONTHS AFTER ISSUE)	(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
									PERCENT	PERCENT	PERCENT
4- 5 TO 4- 6 (8/1/97)	29.78	44.67	59.56	119.12	297.80	595.60	2978.00	5956.00	4.00	4.06	4.00
4- 6 TO 4- 7 (9/1/97)	29.88	44.82	59.76	119.52	298.80	597.60	2988.00	5976.00	4.00	4.05	4.00
4- 7 TO 4- 8 (10/1/97)	29.98	44.97	59.96	119.92	299.80	599.60	2998.00	5996.00	4.00	4.04	4.00
4- 8 TO 4- 9 (11/1/97)	30.08	45.12	60.16	120.32	300.80	601.60	3008.00	6016.00	4.00	4.02	4.00
4- 9 TO 4-10 (12/1/97)	30.18	45.27	60.36	120.72	301.80	603.60	3018.00	6036.00	4.00	4.01	4.00
4-10 TO 4-11 (1/1/98)	30.28	45.42	60.56	121.12	302.80	605.60	3028.00	6056.00	4.00	4.00	4.00
4-11 TO 5- 0 (2/1/98)	30.38	45.57	60.76	121.52	303.80	607.60	3038.00	6076.00	4.00	3.98	4.00
B/ 5- 0 TO 5- 1 (3/1/98)	30.48	45.72	60.96	121.92	304.80	609.60	3048.00	6096.00	4.00	3.97	4.00
5- 1 TO 5- 2 (4/1/98)	30.58	45.87	61.16	122.32	305.80	611.60	3058.00	6116.00	4.00	3.96	4.00
5- 2 TO 5- 3 (5/1/98)	30.68	46.02	61.36	122.72	306.80	613.60	3068.00	6136.00	4.00	3.94	4.00
5- 3 TO 5- 4 (6/1/98)	30.78	46.17	61.56	123.12	307.80	615.60	3078.00	6156.00	4.00	3.93	4.00
5- 4 TO 5- 5 (7/1/98)	30.88	46.32	61.76	123.52	308.80	617.60	3088.00	6176.00	4.00	4.71	4.00
5- 5 TO 5- 6 (8/1/98)	31.00	46.50	62.00	124.00	310.00	620.00	3100.00	6200.00	4.01	3.90	4.00
5- 6 TO 5- 7 (9/1/98)	31.10	46.65	62.20	124.40	311.00	622.00	3110.00	6220.00	4.01	3.89	4.00
5- 7 TO 5- 8 (10/1/98)	31.20	46.80	62.40	124.80	312.00	624.00	3120.00	6240.00	4.01	3.88	4.00
5- 8 TO 5- 9 (11/1/98)	31.30	46.95	62.60	125.20	313.00	626.00	3130.00	6260.00	4.01	3.86	4.00
5- 9 TO 5-10 (12/1/98)	31.40	47.10	62.80	125.60	314.00	628.00	3140.00	6280.00	4.00	3.85	4.00
5-10 TO 5-11 (1/1/99)	31.50	47.25	63.00	126.00	315.00	630.00	3150.00	6300.00	4.00	4.62	4.00
5-11 TO 6- 0 (2/1/99)	31.62	47.43	63.24	126.48	316.20	632.40	3162.00	6324.00	4.01	3.83	4.00
6- 0 TO 6- 1 (3/1/99)	31.72	47.58	63.44	126.88	317.20	634.40	3172.00	6344.00	4.01	3.81	4.00
6- 1 TO 6- 2 (4/1/99)	31.82	47.73	63.64	127.28	318.20	636.40	3182.00	6364.00	4.00	3.80	4.00
6- 2 TO 6- 3 (5/1/99)	31.92	47.88	63.84	127.68	319.20	638.40	3192.00	6384.00	4.00	4.55	4.00
6- 3 TO 6- 4 (6/1/99)	32.04	48.06	64.08	128.16	320.40	640.80	3204.00	6408.00	4.01	3.77	4.00
6- 4 TO 6- 5 (7/1/99)	32.14	48.21	64.28	128.56	321.40	642.80	3214.00	6428.00	4.01	3.76	4.00
6- 5 TO 6- 6 (8/1/99)	32.24	48.36	64.48	128.96	322.40	644.80	3224.00	6448.00	4.00	4.51	4.00
6- 6 TO 6- 7 (9/1/99)	32.36	48.54	64.72	129.44	323.60	647.20	3236.00	6472.00	4.01	3.74	4.00
6- 7 TO 6- 8 (10/1/99)	32.46	48.69	64.92	129.84	324.60	649.20	3246.00	6492.00	4.01	3.73	4.00
6- 8 TO 6- 9 (11/1/99)	32.56	48.84	65.12	130.24	325.60	651.20	3256.00	6512.00	4.00	4.46	4.00
6- 9 TO 6-10 (12/1/99)	32.68	49.02	65.36	130.72	326.80	653.60	3268.00	6536.00	4.01	3.70	4.00
6-10 TO 6-11 (1/1/00)	32.78	49.17	65.56	131.12	327.80	655.60	3278.00	6556.00	4.00	3.69	4.00
6-11 TO 7- 0 (2/1/00)	32.88	49.32	65.76	131.52	328.80	657.60	3288.00	6576.00	4.00	4.42	4.00
7- 0 TO 7- 1 (3/1/00)	33.00	49.50	66.00	132.00	330.00	660.00	3300.00	6600.00	4.01	3.66	4.00
7- 1 TO 7- 2 (4/1/00)	33.10	49.65	66.20	132.40	331.00	662.00	3310.00	6620.00	4.00	4.39	4.00
7- 2 TO 7- 3 (5/1/00)	33.22	49.83	66.44	132.88	332.20	664.40	3322.00	6644.00	4.01	3.64	4.00
7- 3 TO 7- 4 (6/1/00)	33.32	49.98	66.64	133.28	333.20	666.40	3332.00	6664.00	4.00	4.36	4.00
7- 4 TO 7- 5 (7/1/00)	33.44	50.16	66.88	133.76	334.40	668.80	3344.00	6688.00	4.01	3.62	4.00
7- 5 TO 7- 6 (8/1/00)	33.54	50.31	67.08	134.16	335.40	670.80	3354.00	6708.00	4.00	4.33	4.00
7- 6 TO 7- 7 (9/1/00)	33.66	50.49	67.32	134.64	336.60	673.20	3366.00	6732.00	4.01	3.59	4.00
7- 7 TO 7- 8 (10/1/00)	33.76	50.64	67.52	135.04	337.60	675.20	3376.00	6752.00	4.00	4.30	4.00
7- 8 TO 7- 9 (11/1/00)	33.88	50.82	67.76	135.52	338.80	677.60	3388.00	6776.00	4.00	4.29	4.00
7- 9 TO 7-10 (12/1/00)	34.00	51.00	68.00	136.00	340.00	680.00	3400.00	6800.00	4.01	3.56	4.00
7-10 TO 7-11 (1/1/01)	34.10	51.15	68.20	136.40	341.00	682.00	3410.00	6820.00	4.00	4.26	4.00
7-11 TO 8- 0 (2/1/01)	34.22	51.33	68.44	136.88	342.20	684.40	3422.00	6844.00	4.01	3.53	4.00
8- 0 TO 8- 1 (3/1/01)	34.32	51.48	68.64	137.28	343.20	686.40	3432.00	6864.00	4.00	4.23	4.00
8- 1 TO 8- 2 (4/1/01)	34.44	51.66	68.88	137.76	344.40	688.80	3444.00	6888.00	4.00	4.22	4.00
8- 2 TO 8- 3 (5/1/01)	34.56	51.84	69.12	138.24	345.60	691.20	3456.00	6912.00	4.00	4.20	4.00
8- 3 TO 8- 4 (6/1/01)	34.68	52.02	69.36	138.72	346.80	693.60	3468.00	6936.00	4.01	3.49	3.99
8- 4 TO 8- 5 (7/1/01)	34.78	52.17	69.56	139.12	347.80	695.60	3478.00	6956.00	4.00	4.18	4.00
8- 5 TO 8- 6 (8/1/01)	34.90	52.35	69.80	139.60	349.00	698.00	3490.00	6980.00	4.00	4.16	4.00
8- 6 TO 8- 7 (9/1/01)	35.02	52.53	70.04	140.08	350.20	700.40	3502.00	7004.00	4.00	4.15	4.00
8- 7 TO 8- 8 (10/1/01)	35.14	52.71	70.28	140.56	351.40	702.80	3514.00	7028.00	4.01	3.44	3.99
8- 8 TO 8- 9 (11/1/01)	35.24	52.86	70.48	140.96	352.40	704.80	3524.00	7048.00	4.00	4.12	4.00
8- 9 TO 8-10 (12/1/01)	35.36	53.04	70.72	141.44	353.60	707.20	3536.00	7072.00	4.00	4.11	4.00
8-10 TO 8-11 (1/1/02)	35.48	53.22	70.96	141.92	354.80	709.60	3548.00	7096.00	4.00	4.09	4.00
8-11 TO 9- 0 (2/1/02)	35.60	53.40	71.20	142.40	356.00	712.00	3560.00	7120.00	4.00	4.08	4.00

ISSUE PRICE / MATURITY VALUE	$25.00 / 51.00	$37.50 / 76.50	$50.00 / 102.00	$100.00 / 204.00	$250.00 / 510.00	$500.00 / 1020.00	$2500.00 / 5100.00	$ 5000.00 / 10200.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
PERIOD (YEARS AND MONTHS AFTER ISSUE)	(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
									PERCENT	PERCENT	PERCENT
9- 0 TO 9- 1 (3/1/02)	35.72	53.58	71.44	142.88	357.20	714.40	3572.00	7144.00	4.00	4.07	4.00
9- 1 TO 9- 2 (4/1/02)	35.84	53.76	71.68	143.36	358.40	716.80	3584.00	7168.00	4.00	4.05	4.00
9- 2 TO 9- 3 (5/1/02)	35.96	53.94	71.92	143.84	359.60	719.20	3596.00	7192.00	4.01	4.04	4.00
9- 3 TO 9- 4 (6/1/02)	36.08	54.12	72.16	144.32	360.80	721.60	3608.00	7216.00	4.01	4.02	3.99
9- 4 TO 9- 5 (7/1/02)	36.20	54.30	72.40	144.80	362.00	724.00	3620.00	7240.00	4.01	4.01	3.99
9- 5 TO 9- 6 (8/1/02)	36.32	54.48	72.64	145.28	363.20	726.40	3632.00	7264.00	4.01	4.00	3.99
9- 6 TO 9- 7 (9/1/02)	36.44	54.66	72.88	145.76	364.40	728.80	3644.00	7288.00	4.01	3.98	3.99
9- 7 TO 9- 8 (10/1/02)	36.56	54.84	73.12	146.24	365.60	731.20	3656.00	7312.00	4.01	3.97	3.99
9- 8 TO 9- 9 (11/1/02)	36.68	55.02	73.36	146.72	366.80	733.60	3668.00	7336.00	4.01	3.96	3.99
9- 9 TO 9-10 (12/1/02)	36.80	55.20	73.60	147.20	368.00	736.00	3680.00	7360.00	4.00	3.95	3.99
9-10 TO 9-11 (1/1/03)	36.92	55.38	73.84	147.68	369.20	738.40	3692.00	7384.00	4.00	3.93	4.00
9-11 TO 10- 0 (2/1/03)	37.04	55.56	74.08	148.16	370.40	740.80	3704.00	7408.00	4.00	3.92	4.00
10- 0 TO 10- 1 (3/1/03)	37.16	55.74	74.32	148.64	371.60	743.20	3716.00	7432.00	4.00	3.91	4.00
10- 1 TO 10- 2 (4/1/03)	37.28	55.92	74.56	149.12	372.80	745.60	3728.00	7456.00	4.00	3.89	4.00
10- 2 TO 10- 3 (5/1/03)	37.40	56.10	74.80	149.60	374.00	748.00	3740.00	7480.00	4.00	3.88	4.00
10- 3 TO 10- 4 (6/1/03)	37.52	56.28	75.04	150.08	375.20	750.40	3752.00	7504.00	4.00	4.52	4.00
10- 4 TO 10- 5 (7/1/03)	37.66	56.49	75.32	150.64	376.60	753.20	3766.00	7532.00	4.00	3.85	3.99
10- 5 TO 10- 6 (8/1/03)	37.78	56.67	75.56	151.12	377.80	755.60	3778.00	7556.00	4.00	3.84	4.00
10- 6 TO 10- 7 (9/1/03)	37.90	56.85	75.80	151.60	379.00	758.00	3790.00	7580.00	4.00	3.83	4.00
10- 7 TO 10- 8 (10/1/03)	38.02	57.03	76.04	152.08	380.20	760.40	3802.00	7604.00	4.00	4.46	4.00
10- 8 TO 10- 9 (11/1/03)	38.16	57.24	76.32	152.64	381.60	763.20	3816.00	7632.00	4.00	3.80	3.99
10- 9 TO 10-10 (12/1/03)	38.28	57.42	76.56	153.12	382.80	765.60	3828.00	7656.00	4.00	3.79	4.00
10-10 TO 10-11 (1/1/04)	38.40	57.60	76.80	153.60	384.00	768.00	3840.00	7680.00	4.00	4.42	4.00
10-11 TO 11- 0 (2/1/04)	38.54	57.81	77.08	154.16	385.40	770.80	3854.00	7708.00	4.00	3.77	3.99
11- 0 TO 11- 1 (3/1/04)	38.66	57.99	77.32	154.64	386.60	773.20	3866.00	7732.00	4.00	3.75	4.00
11- 1 TO 11- 2 (4/1/04)	38.78	58.17	77.56	155.12	387.80	775.60	3878.00	7756.00	4.00	4.37	4.00
11- 2 TO 11- 3 (5/1/04)	38.92	58.38	77.84	155.68	389.20	778.40	3892.00	7784.00	4.00	3.73	4.00
11- 3 TO 11- 4 (6/1/04)	39.04	58.56	78.08	156.16	390.40	780.80	3904.00	7808.00	4.00	4.34	4.00
11- 4 TO 11- 5 (7/1/04)	39.18	58.77	78.36	156.72	391.80	783.60	3918.00	7836.00	4.00	3.70	3.99
11- 5 TO 11- 6 (8/1/04)	39.30	58.95	78.60	157.20	393.00	786.00	3930.00	7860.00	4.00	4.31	4.00
11- 6 TO 11- 7 (9/1/04)	39.44	59.16	78.88	157.76	394.40	788.80	3944.00	7888.00	4.00	3.68	3.99
11- 7 TO 11- 8 (10/1/04)	39.56	59.34	79.12	158.24	395.60	791.20	3956.00	7912.00	4.00	4.28	4.00
11- 8 TO 11- 9 (11/1/04)	39.70	59.55	79.40	158.80	397.00	794.00	3970.00	7940.00	4.00	3.65	3.99
11- 9 TO 11-10 (12/1/04)	39.82	59.73	79.64	159.28	398.20	796.40	3982.00	7964.00	4.00	4.26	4.00
11-10 TO 11-11 (1/1/05)	39.96	59.94	79.92	159.84	399.60	799.20	3996.00	7992.00	4.00	3.63	4.00
11-11 TO 12- 0 (2/1/05)	40.08	60.12	80.16	160.32	400.80	801.60	4008.00	8016.00	4.00	4.23	4.00
12- 0 TO 12- 1 (3/1/05)	40.22	60.33	80.44	160.88	402.20	804.40	4022.00	8044.00	4.00	4.21	4.00
12- 1 TO 12- 2 (4/1/05)	40.36	60.54	80.72	161.44	403.60	807.20	4036.00	8072.00	4.00	3.59	3.99
12- 2 TO 12- 3 (5/1/05)	40.48	60.72	80.96	161.92	404.80	809.60	4048.00	8096.00	4.00	4.19	4.00
12- 3 TO 12- 4 (6/1/05)	40.62	60.93	81.24	162.48	406.20	812.40	4062.00	8124.00	4.00	4.17	4.00
12- 4 TO 12- 5 (7/1/05)	40.76	61.14	81.52	163.04	407.60	815.20	4076.00	8152.00	4.00	4.16	3.99
12- 5 TO 12- 6 (8/1/05)	40.90	61.35	81.80	163.60	409.00	818.00	4090.00	8180.00	4.00	3.55	3.99
12- 6 TO 12- 7 (9/1/05)	41.02	61.53	82.04	164.08	410.20	820.40	4102.00	8204.00	4.00	4.13	4.00
12- 7 TO 12- 8 (10/1/05)	41.16	61.74	82.32	164.64	411.60	823.20	4116.00	8232.00	4.00	4.12	4.00
12- 8 TO 12- 9 (11/1/05)	41.30	61.95	82.60	165.20	413.00	826.00	4130.00	8260.00	4.00	4.10	3.99
12- 9 TO 12-10 (12/1/05)	41.44	62.16	82.88	165.76	414.40	828.80	4144.00	8288.00	4.00	4.09	3.99
12-10 TO 12-11 (1/1/06)	41.58	62.37	83.16	166.32	415.80	831.60	4158.00	8316.00	4.00	3.49	3.99
12-11 TO 13- 0 (2/1/06)	41.70	62.55	83.40	166.80	417.00	834.00	4170.00	8340.00	4.00	4.06	4.00
13- 0 TO 13- 1 (3/1/06)	41.84	62.76	83.68	167.36	418.40	836.80	4184.00	8368.00	4.00	4.05	4.00
13- 1 TO 13- 2 (4/1/06)	41.98	62.97	83.96	167.92	419.80	839.60	4198.00	8396.00	4.00	4.04	4.00
13- 2 TO 13- 3 (5/1/06)	42.12	63.18	84.24	168.48	421.20	842.40	4212.00	8424.00	4.00	4.02	4.00
13- 3 TO 13- 4 (6/1/06)	42.26	63.39	84.52	169.04	422.60	845.20	4226.00	8452.00	4.00	4.01	4.00
13- 4 TO 13- 5 (7/1/06)	42.40	63.60	84.80	169.60	424.00	848.00	4240.00	8480.00	4.00	4.00	4.00
13- 5 TO 13- 6 (8/1/06)	42.54	63.81	85.08	170.16	425.40	850.80	4254.00	8508.00	4.00	3.98	4.00
13- 6 TO 13- 7 (9/1/06)	42.68	64.02	85.36	170.72	426.80	853.60	4268.00	8536.00	4.00	3.97	4.00

ISSUE PRICE / MATURITY VALUE		$25.00 / 51.00	$37.50 / 76.50	$50.00 / 102.00	$100.00 / 204.00	$250.00 / 510.00	$500.00 / 1020.00	$2500.00 / 5100.00	$ 5000.00 / 10200.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
PERIOD (YEARS AND MONTHS AFTER ISSUE)		(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2) FROM ISSUE DATE TO START OF PERIOD	(3) DURING EACH PERIOD	(4) FROM START OF PERIOD TO MATURITY
										PERCENT	PERCENT	PERCENT
13- 7 TO 13- 8	(10/1/06)	42.82	64.23	85.64	171.28	428.20	856.40	4282.00	8564.00	4.00	3.96	4.00
13- 8 TO 13- 9	(11/1/06)	42.96	64.44	85.92	171.84	429.60	859.20	4296.00	8592.00	4.00	3.94	4.00
13- 9 TO 13-10	(12/1/06)	43.10	64.65	86.20	172.40	431.00	862.00	4310.00	8620.00	4.00	3.93	4.00
13-10 TO 13-11	(1/1/07)	43.24	64.86	86.48	172.96	432.40	864.80	4324.00	8648.00	4.00	4.48	4.00
13-11 TO 14- 0	(2/1/07)	43.40	65.10	86.80	173.60	434.00	868.00	4340.00	8680.00	4.00	3.90	3.99
14- 0 TO 14- 1	(3/1/07)	43.54	65.31	87.08	174.16	435.40	870.80	4354.00	8708.00	4.00	3.89	3.99
14- 1 TO 14- 2	(4/1/07)	43.68	65.52	87.36	174.72	436.80	873.60	4368.00	8736.00	4.00	3.88	4.00
14- 2 TO 14- 3	(5/1/07)	43.82	65.73	87.64	175.28	438.20	876.40	4382.00	8764.00	4.00	3.86	4.00
14- 3 TO 14- 4	(6/1/07)	43.96	65.94	87.92	175.84	439.60	879.20	4396.00	8792.00	4.00	4.41	4.00
14- 4 TO 14- 5	(7/1/07)	44.12	66.18	88.24	176.48	441.20	882.40	4412.00	8824.00	4.00	3.84	3.99
14- 5 TO 14- 6	(8/1/07)	44.26	66.39	88.52	177.04	442.60	885.20	4426.00	8852.00	4.00	3.83	4.00
14- 6 TO 14- 7	(9/1/07)	44.40	66.60	88.80	177.60	444.00	888.00	4440.00	8880.00	4.00	4.36	4.00
14- 7 TO 14- 8	(10/1/07)	44.56	66.84	89.12	178.24	445.60	891.20	4456.00	8912.00	4.00	3.80	3.99
14- 8 TO 14- 9	(11/1/07)	44.70	67.05	89.40	178.80	447.00	894.00	4470.00	8940.00	4.00	3.79	3.99
14- 9 TO 14-10	(12/1/07)	44.84	67.26	89.68	179.36	448.40	896.80	4484.00	8968.00	4.00	4.32	4.00
14-10 TO 14-11	(1/1/08)	45.00	67.50	90.00	180.00	450.00	900.00	4500.00	9000.00	4.00	3.76	3.99
14-11 TO 15- 0	(2/1/08)	45.14	67.71	90.28	180.56	451.40	902.80	4514.00	9028.00	4.00	4.29	4.00
15- 0 TO 15- 1	(3/1/08)	45.30	67.95	90.60	181.20	453.00	906.00	4530.00	9060.00	4.00	3.74	3.99
15- 1 TO 15- 2	(4/1/08)	45.44	68.16	90.88	181.76	454.40	908.80	4544.00	9088.00	4.00	4.26	4.00
15- 2 TO 15- 3	(5/1/08)	45.60	68.40	91.20	182.40	456.00	912.00	4560.00	9120.00	4.00	3.71	3.99
15- 3 TO 15- 4	(6/1/08)	45.74	68.61	91.48	182.96	457.40	914.80	4574.00	9148.00	4.00	4.23	4.00
15- 4 TO 15- 5	(7/1/08)	45.90	68.85	91.80	183.60	459.00	918.00	4590.00	9180.00	4.00	3.69	3.99
15- 5 TO 15- 6	(8/1/08)	46.04	69.06	92.08	184.16	460.40	920.80	4604.00	9208.00	4.00	4.21	4.00
15- 6 TO 15- 7	(9/1/08)	46.20	69.30	92.40	184.80	462.00	924.00	4620.00	9240.00	4.00	4.19	3.99
15- 7 TO 15- 8	(10/1/08)	46.36	69.54	92.72	185.44	463.60	927.20	4636.00	9272.00	4.00	3.65	3.99
15- 8 TO 15- 9	(11/1/08)	46.50	69.75	93.00	186.00	465.00	930.00	4650.00	9300.00	4.00	4.16	4.00
15- 9 TO 15-10	(12/1/08)	46.66	69.99	93.32	186.64	466.60	933.20	4666.00	9332.00	4.00	4.15	3.99
15-10 TO 15-11	(1/1/09)	46.82	70.23	93.64	187.28	468.20	936.40	4682.00	9364.00	4.00	3.62	3.99
15-11 TO 16- 0	(2/1/09)	46.96	70.44	93.92	187.84	469.60	939.20	4696.00	9392.00	4.00	4.12	4.00
16- 0 TO 16- 1	(3/1/09)	47.12	70.68	94.24	188.48	471.20	942.40	4712.00	9424.00	4.00	4.11	4.00
16- 1 TO 16- 2	(4/1/09)	47.28	70.92	94.56	189.12	472.80	945.60	4728.00	9456.00	4.00	4.10	3.99
16- 2 TO 16- 3	(5/1/09)	47.44	71.16	94.88	189.76	474.40	948.80	4744.00	9488.00	4.00	4.08	3.99
16- 3 TO 16- 4	(6/1/09)	47.60	71.40	95.20	190.40	476.00	952.00	4760.00	9520.00	4.00	3.56	3.98
16- 4 TO 16- 5	(7/1/09)	47.74	71.61	95.48	190.96	477.40	954.80	4774.00	9548.00	4.00	4.06	4.00
16- 5 TO 16- 6	(8/1/09)	47.90	71.85	95.80	191.60	479.00	958.00	4790.00	9580.00	4.00	4.04	4.00
16- 6 TO 16- 7	(9/1/09)	48.06	72.09	96.12	192.24	480.60	961.20	4806.00	9612.00	4.00	4.03	4.00
16- 7 TO 16- 8	(10/1/09)	48.22	72.33	96.44	192.88	482.20	964.40	4822.00	9644.00	4.00	4.01	4.00
16- 8 TO 16- 9	(11/1/09)	48.38	72.57	96.76	193.52	483.80	967.60	4838.00	9676.00	4.00	4.00	3.99
16- 9 TO 16-10	(12/1/09)	48.54	72.81	97.08	194.16	485.40	970.80	4854.00	9708.00	4.00	3.99	3.99
16-10 TO 16-11	(1/1/10)	48.70	73.05	97.40	194.80	487.00	974.00	4870.00	9740.00	4.00	3.98	3.99
16-11 TO 17- 0	(2/1/10)	48.86	73.29	97.72	195.44	488.60	977.20	4886.00	9772.00	4.00	3.96	4.00
17- 0 TO 17- 1	(3/1/10)	49.02	73.53	98.04	196.08	490.20	980.40	4902.00	9804.00	4.00	3.95	4.00
17- 1 TO 17- 2	(4/1/10)	49.18	73.77	98.36	196.72	491.80	983.60	4918.00	9836.00	4.00	4.43	4.00
17- 2 TO 17- 3	(5/1/10)	49.36	74.04	98.72	197.44	493.60	987.20	4936.00	9872.00	4.00	3.92	3.96
17- 3 TO 17- 4	(6/1/10)	49.52	74.28	99.04	198.08	495.20	990.40	4952.00	9904.00	4.00	3.91	3.97
17- 4 TO 17- 5	(7/1/10)	49.68	74.52	99.36	198.72	496.80	993.60	4968.00	9936.00	4.00	3.90	3.97
17- 5 TO 17- 6	(8/1/10)	49.84	74.76	99.68	199.36	498.40	996.80	4984.00	9968.00	4.00	3.88	3.98
17- 6 TO 17- 7	(9/1/10)	50.00	75.00	100.00	200.00	500.00	1000.00	5000.00	10000.00	4.00	4.36	4.00
17- 7 TO 17- 8	(10/1/10)	50.18	75.27	100.36	200.72	501.80	1003.60	5018.00	10036.00	4.00	3.86	3.93
17- 8 TO 17- 9	(11/1/10)	50.34	75.51	100.68	201.36	503.40	1006.80	5034.00	10068.00	4.00	3.84	3.95
17- 9 TO 17-10	(12/1/10)	50.50	75.75	101.00	202.00	505.00	1010.00	5050.00	10100.00	4.00	4.32	3.98
17-10 TO 17-11	(1/1/11)	50.68	76.02	101.36	202.72	506.80	1013.60	5068.00	10136.00	4.00	3.82	3.81
17-11 TO 18- 0	(2/1/11)	50.84	76.26	101.68	203.36	508.40	1016.80	5084.00	10168.00	4.00	3.81	3.81
18- 0 2/	(8/1/11)	51.00	76.50	102.00	204.00	510.00	1020.00	5100.00	10200.00	4.00		

1/ MONTH, DAY, AND YEAR ON WHICH ISSUES OF MARCH 1, 1993 ENTER EACH PERIOD. FOR SUBSEQUENT ISSUE MONTHS ADD THE APPROPRIATE NUMBER OF MONTHS.
2/ MATURITY VALUE IS REACHED 18 YEARS AND 0 MONTHS AFTER ISSUE DATE.

A/ THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES BEFORE FIVE YEARS AFTER ISSUE ARE THOSE ESTABLISHED UNDER SECTION 351.2(e) OF THIS CIRCULAR.
B/ THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES FIVE YEARS AFTER ISSUE AND THEREAFTER REPRESENT THE MINIMUM GUARANTEED INVESTMENT YIELDS PROVIDED BY SECTION 351.2(e)(1) OF THIS CIRCULAR. THESE REDEMPTION VALUES WILL APPLY UNLESS APPLICATION OF THE VARIABLE RATE PRESCRIBED UNDER SECTION 351.2(e)(2) PRODUCES A HIGHER REDEMPTION VALUE.

BILLING CODE 4810-39-C

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

11. The authority citation for part 352 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 352.0 [Amended]

12. In § 352.0, the words "October 1, 1989," are removed and the words "March 1, 1993," are added.

13. Section 352.2 is amended as follows:

A. Current paragraphs (e)(1)(i) through (e)(1)(vi) are redesignated paragraphs (e)(1)(ii) through (e)(1)(vii).

B. New paragraph (e)(1)(i) is added, and redesignated paragraph (e)(1)(ii) is revised, to read as set forth below.

C. In paragraph (e)(1), wherever the word "compounded" is found, it should be removed and the word "paid", is added.

D. Paragraph (e)(2) is revised to read as set forth below.

§ 352.2 Description of bonds.

* * * * *

(e) * * *

(1) * * *

(i) *Current offering.* Series HH bonds issued on or after March 1, 1993, yield 4 percent per annum, paid semiannually, to original maturity. See Table 1 in the Appendix to this Circular.

(ii) *Bonds with issue dates of November 1, 1986, through February 1, 1993.* Series HH bonds with issue dates of November 1, 1986, through February 1, 1993, yield 6 percent per annum, paid semiannually, to original maturity.

* * * * *

(2) *During extended maturity.* The investment yield during the 10-year extended maturity period authorized for Series HH bonds is 4 percent per annum, paid semiannually, unless changed prior to the beginning of such period, for any Series HH bond that entered or enter such period on or after March 1, 1993; and, 6 percent per annum, paid semiannually, for any Series HH bond that entered into such period from January 1, 1990, through February 1, 1993.

* * * * *

14. The Table at the end of part 352 is revised to read as follows:

BILLING CODE 4810-39-P

TABLE 1

HH BONDS BEARING ISSUE DATES BEGINNING MARCH 1, 1993

ISSUE PRICE	$500	$1,000	$5,000	$10,000	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
REDEMPTION AND MATURITY VALUE 1/	500	1,000	5,000	10,000			
PERIOD OF TIME BOND IS HELD AFTER ISSUE DATE	(1) AMOUNTS OF INTEREST PAYMENTS FOR EACH DENOMINATION				(2) FROM ISSUE TO EACH INTEREST PAYMENT DATE	(3) FOR HALF-YEAR PERIOD PRECEDING INTEREST PAYMENT DATE	(4) FROM EACH INTEREST PAYMENT DATE TO MATURITY
					PERCENT	PERCENT	PERCENT
0.5 YEARS	$10.00	$20.00	$100.00	$200.00	4.00	4.00	4.00
1.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
1.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
2.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
2.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
3.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
3.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
4.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
4.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
5.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
5.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
6.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
6.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
7.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
7.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
8.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
8.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
9.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
9.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
10.0 YEARS 2/	10.00	20.00	100.00	200.00	4.00	4.00	----

1/ AT ALL TIMES, EXCEPT THAT BOND IS NOT REDEEMABLE DURING FIRST 6 MONTHS.

2/ MATURITY REACHED AT 10 YEARS AND 0 MONTHS AFTER ISSUE DATE.

[FR Doc. 93-28081 Filed 11-17-93; 8:45 am]

BILLING CODE 4810-39-C

federal register

Thursday
November 18, 1993

Part V

Environmental Protection Agency

40 CFR Parts 72 and 73
Acid Rain Program: Permits and Allowance System; Proposed Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL-4800-4]

RIN 2060-AD40 and AD46

Acid Rain Program: Permits and Allowance System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulations and notice of public hearing.

SUMMARY: Title IV of the Clean Air Act, as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 (the Act), authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program. The instant notice includes proposed revisions of rules that implement sections 404 (b) and (c) (Phase I substitution plans) and 408(c)(1)(B) (reduced utilization plans) of the Act.

EPA has determined that the existing rules can be read to give utilities an ability to use substitution and reduced utilization plans to create excess, new allowances. These allowances—potentially 200,000 allowances per year in Phase I—will authorize emissions in excess of total emissions without the plans and will result from emission reductions made, or required by federal or State law adopted, before enactment of title IV of the Act. This creation of allowances can compromise the achievement of the sulfur dioxide emissions reductions intended under title IV and is contrary to the statutory purposes of sections 404 (b) and (c) and 408(c)(1)(B).

Consequently, EPA is proposing today to modify sections of part 72 of the January 11, 1993 regulations, implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization, and to make minor changes to part 73. The intended effect of the proposed modifications is to prevent the use of substitution and reduced utilization plans to create excess, new allowances.

DATES: *Comments.* Comments on the regulations proposed by this action must be received on or before January 3, 1994, except as provided below in connection with the public hearing. The request for comments is strictly limited to the matters addressed in this proposal. The Agency will deem irrelevant, and will not respond to, any comments pertaining to other aspects of the Acid Rain Program.

Public Hearing. The Agency will hold a public hearing, strictly limited to the matters addressed in the proposal, on December 3, 1993. The hearing will begin at 12:30 p.m., with registration at 12:15 p.m. Requests to schedule oral testimony must be received by the Acid Rain Division at (202) 233-9077 on or before November 26, 1993. Persons must restrict oral presentations to 10 minutes and may submit written copies of their complete comments. The record of the public hearing will be kept open until January 3, 1994 to allow submission of written information that rebuts or supplements the information presented at the public hearing.

ADDRESSES: *Comments.* All written comments (including those submitted in connection with the hearing) must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE-131), Attention, Docket No. A-93-40, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Hearing. The Agency will hold the December 3, 1993 public hearing at the EPA Education Center, Waterside Mall, 401 M Street, SW., Washington DC 20460.

Docket. Docket No. A-93-40, containing supporting information used to develop the proposal and copies of all comments received, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section in room 1500, first floor at 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233-9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Acid Rain Hotline at (202) 233-9620.

SUPPLEMENTARY INFORMATION: The contents of the preamble to the proposed rule are as follows:

I. Statutory Purposes of Substitution and Reduced Utilization Provisions
II. January 11, 1993 Regulations
III. Need to Modify January 11, 1993 Regulations
A. January 11, 1993 regulations can be read to give utilities ability to bring Phase II units into Phase I in order to create excess, new allowances
B. Under January 11, 1993 regulations, entry of Phase II units into Phase I can compromise emissions reduction goals of title IV
C. Other statutory provisions support limiting entry of Phase II units into Phase I and creation of new allowances
IV. Proposed Modifications of January 11, 1993 Regulations
A. Substitution Plans
1. Limiting allowances allocated to each substitution unit
a. Emissions rate used to allocate allowances
b. Utilization used to allocate allowances
2. Limiting number of substitution units
3. Requiring common owner or operator
4. Other changes
B. Reduced Utilization Plans
1. Option 1: end-of-year review of need for compensating units
a. Requiring actual reduced utilization and provision of compensating generation
b. Limiting number of compensating units
c. Reporting requirements and allowance surrender
2. Option 2: limiting units that can qualify as compensating units
V. Applicability of Rule Revisions to Existing Permit Applications
VI. Administrative Requirements
A. Executive Order 12291 and Regulatory Flexibility Act
B. Paperwork Reduction Act

I. Statutory Purposes of Substitution and Reduced Utilization Provisions

The provisions in sections 404 (b) and (c) and 408(c)(1)(B) of the Act concerning substitution and reduced utilization plans have specific statutory purposes related to the achievement of the sulfur dioxide emissions reduction goals of title IV. Upon reflection, the Agency believes that Congress did not intend that these provisions provide utilities an ability to create excess, new allowances by bringing Phase II units into Phase I. Because the January 11, 1993 regulations implementing these provisions can be read to allow the creation of potentially 200,000 excess, new allowances per year in Phase I, the Agency proposes to revise the regulations to ensure that this does not occur.

Congress established substitution plans as a compliance option to "expand the compliance flexibility" of the units specified in Table A of section 404 as required to reduce emissions in Phase I. Senate Rep. No. 101-228, 101st Cong., 1st Sess. at 327 (Dec. 20, 1989). The purpose of a substitution plan is to allow a Table A unit (i.e., a unit listed in Table A) to reassign all or part of such reduction obligation to a non-Table A unit under the owner's or operator's control. *Id.* at 307 and 327-8. With this reassignment or "emissions reduction trading," the non-Table A unit will make emissions reductions in lieu of the Table A unit. *Id.* at 328. The non-Table A unit's reduction will free up allowances for the Table A unit that is not making the reductions. The

substitution will be requested presumably because the non-Table A unit can reduce emissions at a lower cost than the Table A unit. Thus, the purpose of substitution plans is to increase flexibility and reduce the overall costs of compliance in Phase I while still achieving the emissions reductions intended by Congress under title IV.

The requirement that the intended emissions reductions still be achieved is stated plainly in section 404(b)(5) of the Act. That section requires that, in approving a substitution plan, the Administrator ensure that the substitution results in total emissions reductions at least equal to the total reductions that otherwise "would have been achieved" by these Table A and non-Table A units "without such substitution." 42 U.S.C. 7651c(b)(5); see also Senate Rep. No. 101–228 at 328. In short, the substitution provision is intended to provide an alternative means of achieving Phase I reductions, not a mechanism for creating excess, new allowances and avoiding emission reductions.

The provision for reduced utilization plans has a statutory purpose that is also aimed at ensuring realization of emission reductions. Congress recognized that the potential for circumvention of emission limitation requirements exists because in Phase I only a minority of all utility units are subject to such requirements. A utility could circumvent the required reductions "simply by utilizing an affected unit less and an [sic] unit with no tonnage limitations in its place." Senate Rep. No. 101–228 at 334. Such load-shifting "would not yield a true net reduction in emissions: whatever emissions were avoided from the first [Phase I] unit would only occur at the second [e.g., a Phase II unit]." *Id.* While the Phase II unit would not have to use up allowances for its increased emissions, the Phase I unit would use up fewer allowances. Since there would be more unused allowances available to authorize future emissions in Phase I or Phase II, this "practice, if unchecked [,] could [] frustrate the emissions reduction objectives of the program." *Id.*

In section 408(c)(1)(B), Congress adopted the solution of requiring owners and operators of any Phase I unit that, for compliance purposes, propose reducing utilization of the unit below 1985–87 utilization (i.e., its baseline) to submit a reduced utilization plan. 42 U.S.C. 7651g(c)(1)(B). In such a plan, the owners and operators must specify "the unit or units that will provide electrical generation to compensate for the reduced output" at the Phase I unit or demonstrate that the reduced utilization "will be accomplished through energy conservation or improved unit efficiency." *Id.* The Administrator approves or disapproves each plan after determining whether it meets the requirements of title IV. 42 U.S.C. 7651g(c)(2). These requirements include, of course, achievement of the full amount of sulfur dioxide emissions reductions intended under the Acid Rain Program.

Each compensating unit designated in an approved plan becomes subject to all requirements for Phase I units with regard to sulfur dioxide, including the emissions limitations, and is allocated allowances equal to that unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. Congress made compensating units subject to Phase I in order to:

> Ensure that total emissions from the initially affected units and the units to which the production is shifted together equal no greater amount of emissions than would have occurred at the affected unit had it reduced emissions without load-shifting * * *
>
> In enforcing this provision, the Administrator should consider any pattern or practice that is counter to the intent of section 404 and this title. Shifting load use, e.g., from a baseload to a peak load unit, without accounting for the emissions consequences of increasing use at another unit is not an acceptable compliance strategy * * *.

Senate Rep. No. 101–228 at 334. Thus, like the substitution provisions, the provisions for designating compensating units in a reduced utilization plan are intended to both allow flexibility in compliance and protect the emission reduction goals of title IV by requiring that such a plan not result in more emissions than would occur in the absence of the plan.

II. January 11, 1993 Regulations

On January 11, 1993, EPA promulgated regulations that implemented the major provisions of title IV, including the substitution and reduced utilization provisions. Under § 72.41 of the January 11, 1993 regulations, the designated representative for a unit on Table A (which covers the same units as Table 1 of § 73.10(a)) may include in the Phase I permit application a substitution plan designating, as substitution units, one or more existing units that are Phase II units not on Table A. 40 CFR 72.41(b). There is no express requirement that the substitution unit make reductions in addition to those that it would have made without the plan or actually provide allowances for the Table A unit. Moreover, there is no express limit on the number of substitution units that a Table A unit may designate. Thus, the regulations can be read to allow substitution plans that, with few limitations, bring Phase II units into Phase I in a manner that creates excess, new allowances. See 58 FR 3600.

Section 72.43 of the January 11, 1993 regulations requires that the designated representative for a Phase I unit submit a reduced utilization plan under certain circumstances. A plan must be submitted if the owners and operators of the unit plan to reduce utilization of the unit below its baseline for purposes of complying with Phase I emissions limitations and to accomplish this by shifting generation to a non-Phase I unit or to a sulfur-free generator or by using energy conservation or improved unit efficiency measures. 40 CFR 72.43(b). However, the regulation establishes broad exceptions to the requirement to submit a plan. For example, where underutilization is caused by system sales decline, forced outage, or economic dispatching, a plan is not required. 40 CFR 72.43(e). Instead, §§ 72.91 and 72.92 require allowances to be surrendered to the extent a Phase I unit is underutilized and shifts generation to a non-Phase I unit.

Once a reduced utilization plan is approved (or a conditionally approved plan is activated), § 72.43 does not expressly require termination of the plan for years during which the Phase I unit does not actually have any reduced utilization or the compensating unit does not actually provide any compensating generation to the Phase I unit. Moreover, there is no express limit on the number of compensating units that a Phase I unit may designate and no express bar on a compensating unit itself designating a compensating unit. (However, the designation of a large number of compensating units or a compensating unit's designation of its own compensating unit or a sulfur-free generator might throw into question the validity of the Phase I unit's reduced utilization plan.) Thus, as with substitution plans, the regulations can be read to allow utilities to use reduced utilization plans that, with few limitations, bring Phase II units into Phase I and create excess, new allowances.

Under the current regulations, early entry of Phase II units through substitution or reduced utilization plans can create excess, new allowances: i.e., allowances that would not otherwise be available and that reflect reductions that would occur in the absence of the plans. For each year that a plan remains in effect, each substitution or

compensating unit under the plan becomes a Phase I unit allocated a number of allowances equal to the unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. See 40 CFR 72.41(c)(3) and (d) and 72.43(c)(4)(ii) and (d). Since there is no cap on total allowances in Phase I, the allocations to substitution and compensating units do not reduce the allowances already allocated to Phase I units. Moreover, a substitution or compensating unit that reduces its emissions rate after 1985 for reasons other than the reduction requirements and allowance trading under title IV may receive a Phase I allowance allocation significantly in excess of what its emissions would have been in Phase I in the absence of the plan. For example, before the enactment of title IV, some units had reduced emissions rates for economic reasons and some States had already enacted laws requiring their utilities to reduce emissions rates prior to Phase II; all such reductions have taken, or will take, place for reasons independent of the substitution and reduced utilization provisions of title IV.

To provide allowances—potentially 200,000 allowances per year in Phase I—for emissions reductions that would occur in the absence of these compliance options under title IV will create excess authorizations to emit sulfur dioxide. As discussed below, this can compromise achievement of the emissions reductions that Congress intended to result from title IV.

III. Need to Modify January 11, 1993 Regulations

Beginning in February 1993, EPA received Phase I permit applications covering all 263 Table A units. These applications included many substitution and reduced utilization plans proposing to designate a total of 250 Phase II units as substitution and compensating units. Further, on March 12, 1993, petitions for judicial review of the January 11, 1993 regulations were filed with the U.S. Court of Appeals for the District of Columbia Circuit. Three of the petitioners raised issues concerning, inter alia, substitution and reduced utilization plans. On May 21, 1993, some of the petitioners also submitted to EPA a petition for reconsideration of the reduced utilization provisions of the regulations. Based in large part on its review of the permit applications, the reconsideration motion, and issues raised by the petitioners in litigation, the Agency is proposing to modify the January 11, 1993 regulations implementing substitution and reduced utilization plans.[1]

A. January 11, 1993 Regulations Can Be Read To Give Utilities Ability To Bring Phase II Units Into Phase I in Order To Create Excess, New Allowances

The Agency is concerned that the current regulations can be read to give utilities an ability to use substitution and reduced utilization plans to bring selected Phase II units into Phase I and create excess, new allowances. Moreover, the number of new allowances created may greatly exceed the number needed by those Phase II units to cover their emissions in the absence of the plans. This result does not appear to be consistent with the statutory purposes of the substitution and reduced utilization provisions. The potential number of excess, new allowances can be sufficient to compromise achievement of the emissions reductions intended by Congress under title IV. This prospect is highlighted by the large number of substitution and compensating unit designations that have already been submitted in permit applications. EPA's review of these submissions indicates that approval of such designations for the full five years of Phase I would result in the creation of excess, new allowances. The Agency is therefore proposing to modify the regulations in order to ensure that these compliance options are used in a manner consistent with Congressional intent.

Several factors give rise to this problem. First, the current regulations can be read to give utilities a largely unlimited ability to bring selected Phase II units into Phase I. A utility arguably can elect to designate Phase II units as substitution or compensating units whether or not the Phase I unit for which they are designated actually reassigns any emissions reduction obligation or reduces its utilization below baseline. To submit a reduced utilization plan, the utility must merely plan to have reduced utilization at the original Phase I unit while, for substitution plans, there are no prerequisites.

Moreover, a Phase I unit can arguably designate an unlimited number of Phase II units as substitution or compensating units. The regulations do not expressly establish any minimum amount of substitution or compensation that an individual substitution or compensating unit must provide in order to be designated in a plan. The only express limits on the number of substitution or compensating units are that the designated representatives of the units must agree to the designation of the units and, with regard to substitution plans, the Table A unit and its substitution unit must have a common owner or operator. Each designated substitution or compensating unit approved by EPA is then allocated allowances equal to its baseline times the lesser of its 1985 actual or allowable emissions rate.

Second, a utility's decision on whether to bring a given Phase II unit into Phase I as a substitution or compensating unit is largely discretionary. In the case of substitution plans, there is no requirement to designate a particular Phase II unit as a substitution unit except under very limited circumstances involving units with a common stack. See, e.g., 58 FR 3599 and 40 CFR 75.15(a)(2)(ii). In the case of reduced utilization plans, there are broad exemptions from the requirement to submit a plan. 58 FR 3605–3606.

Further, the regulations give utilities flexibility to decide, near the end of the year, whether or not a particular Phase II unit will be brought in as a substitution or compensating unit in that year. Utilities may submit substitution and reduced utilization plans for approval or conditional approval. An approved plan goes into effect for the years selected in the plan but may be terminated for a given year so long as the utility informs the Agency by 60 days (i.e., generally December 1) before the allowance transfer deadline for the year. 40 CFR 72.41(e)(3)(ii) and 72.43(e)(4)(ii). A conditionally approved plan may be activated for a given year so long as the utility informs the Agency by that same date. Thus, a utility with approved or conditionally approved plans can decide whether a Phase II unit will be a substitution or compensating unit in a given year after the utility reviews actual operating results for most of that year.

[1] Although the Agency is addressing in this proposal the concerns raised in the petition for reconsideration, it is doing so because of the significant of the issues raised and not due to any obligation under section 307(d)(7)(B) of the Act. That section would apply with regard to an objection that "was impracticable to raise" during the public comment period on the January 11, 1993 regulations or if the grounds for the objection "arose after the period for public comment (but within the time specified for judicial review)." 42 U.S.C. 7607(d)(7)(B). On July 2 and 6, 1993, the Utility Air Regulatory Group (UARG) and Ohio Edison Company (Edison) submitted comments on the petition for reconsideration. Contrary to those comments, the Agency maintains (as discussed in this proposal) that it has the authority under title IV to limit the designation of compensation units. UARG and Ohio Edison will have the opportunity, during the comment period, to present their positions and address the specific proposal presented here. The Agency will address, in the course of the rulemaking, all relevant comments.

Consequently, Phase II units will likely enter Phase I only if they will benefit from early entry, e.g., where they will create new allowances because they have actual emissions in Phase I that are lower than the allowances (i.e., baseline times 1985 actual or allowable emissions rate) they will receive as substitution or compensating units.[2] Some of the Phase II units entering Phase I may create allowances in excess of emissions because of emissions rate reductions that would not otherwise have been made in the absence of such early entry. However, entry into Phase I will also enable other Phase II units that would have reduced their emissions rate after 1985 even in the absence of such early entry (e.g., for economic reasons or due to State law) to convert these reductions into additional allowances in excess of their Phase I emissions. Phase II units with actual emissions in Phase I that exceed their allowance allocation as substitution or compensating units are less likely to voluntarily enter Phase I because they would have to obtain more allowances or reduce emissions. By remaining outside Phase I, they are free to increase their emissions until Phase II. Thus, voluntary entry into Phase I is likely to be selective: Phase II units that can create new allowances in excess of emissions are more likely to become and remain substitution or compensating units.

B. Under the January 11, 1993 Regulations, Entry of Phase II Units Into Phase I Can Compromise Emissions Reduction Goals of Title IV

The Agency estimates that if all Phase II units that reduced emissions rates between 1985 and 1991 for economic reasons or that are required to reduce emissions rates between 1985 and 1995 due to federal law (other than title IV) or State law—thus putting emissions below each unit's allowances as a substitution or compensating unit under the current rule—were to enter Phase I, about 200,000 allowances in excess of emissions without such entry would be created per year in Phase I.[3] See Calculation of Potential Impacts of Phase I Substitution Units, ICF Inc. (July 7, 1993). Additional allowances could be created by early entry of other Phase II units projected to reduce their emissions rate between 1990 and 2000 for economic reasons. However, today's proposal focuses on the allowances created by early entry of the former group of Phase II units because their new allowances result from emissions rate changes that are most reasonably viewed as reductions that would have taken place in the absence of the substitution and reduced utilization provisions of title IV.

These estimates are based on the following data for Phase II units: Baseline and 1985 actual and allowable emissions rates from the National Allowance Data Base, version 2.11 (58 FR 15720 (March 23, 1993)); 1990 actual emissions rates derived from data submitted by utilities to the Department of Energy on EIA form 767;[4] and 1995 projected emissions rates and utilization in the data base relied on by Congress in developing and passing the Act (see Senate Rep. No. 101–228 at 302). The study addressed only the excess, new allowances that could result from designating Phase II units as substitution units. However, the same Phase II units could instead be designated as compensating units and, under the January 11, 1993 rules, would be allocated allowances under the same formula. Further, because the study relied on the same 1995 projected utilization figures as were relied on by Congress in passing the Act, the study does not reflect the impact of future utility dispatch decisions that may be aimed at maximizing the creation of new allowances under the current regulations. The analysis still provides a reasonable, but conservative, estimate of the potential aggregate impact of the early entry of Phase II units that may be allowed under the current regulations.

Thus, as a result of early entry of Phase II units, 200,000 excess, new allowances may become available to affected units in Phase I and/or in Phase II and may enable such units to avoid making emissions reductions that title IV would otherwise require them to make. The excess allowances will result from emissions rate reductions that would occur at Phase II units in the absence of the substitution and reduced utilization provisions of title IV and will therefore diminish the emissions reductions that Congress intended to be achieved by virtue of title IV. In sum, under a possible reading of the regulations, the statutory substitution and reduced utilization provisions are inadvertently turned on their heads and transformed from provisions for facilitating and protecting anticipated emissions reductions under title IV into potential means of creating new allowances that can be used to avoid such reductions.

The potential magnitude of the number of excess, new allowances that may be created through substitution and reduced utilization plans is sufficient to compromise achievement of the emissions reductions that Congress expected under title IV. Congress expected the emission limitations in title IV to result in annual emissions reductions of 2.8 to 4.4 million tons in Phase I. Senate Rep. No. 101–228 at 327; Cong. Rec. S16980 (Oct. 27, 1990). The range in the annual expected reductions in Phase I was due, in large part, to uncertainty over what reductions or increases in emissions would occur at Phase II units during Phase I. With regard to Phase I units alone, the expected reductions during Phase I are more precisely known: About 2.4 million tons in 1995 and 1996; and about 3.5 million tons in 1997, 1998, and 1999. Under the current regulations, Phase I units could avoid some of these reductions by offsetting their emissions in Phase I with excess, new allowances resulting from the plans. The use of 200,000 excess, new allowances per year in Phase I would negate a significant portion (i.e., 6 to 8 percent) of the expected reductions for Phase I units.

Alternatively, banking these new allowances for use in Phase II would diminish the intended emissions reduction impact of the 8.95 million ton cap established by Congress for Phase II. The cap—which was regarded as the "centerpiece" of title IV—was adopted because, without it, Congress expected that there would be an additional 1.2 to 3 million tons of emissions per year in 2000 and up to 5 million additional tons by 2010. House Rep. No. 101–490 at 364 (May 17, 1990). Congress therefore required (with limited exceptions) that, if the total allowances allocated in Phase II exceeded the cap, EPA was to "make pro rata adjustments to reduce the total to 8.9 million" in order to guarantee that "neither extra allowances

[2] Phase II units may also benefit from early entry because, by becoming Phase I units, they may be subject to Phase I NO_x emissions limitations and may be grandfathered under any future action by EPA to promulgate more stringent NO_x limitations for Phase II. See 15 U.S.C. 7651(f)(b)(2).

[3] The Agency also estimated the number of allowances that would be allocated, under the current rule and the proposal, to all the substitution and compensating units under the active and conditional plans already submitted to the Agency. For purposes of making that estimate, the Agency calculated allowances for compensating units by using the same allocation formulas as for substitution units. EPA estimates that, assuming all the plans would be active for each year in Phase I, approval of the plans under the current rule would result in about 385,000 more allowances being allocated than would approval of the plans under the proposal.

[4] There information for 1990 was missing from the EIA forms, data were substituted from the EPA AIRS inventory if possible. If the information was still unavailable and the boiler was not reported as off-line or retired, a value was substituted by scaling data for the unit from the closest calendar year with data (1985, 1988, or 1989). The scaling was done using the ratio of the estimated national totals for 1990 and the closest calendar year.

for clean utilities nor other provisions granting allowances in this title violate the cap." *Id.* at 368. Congress recognized that the precise amount of reductions resulting from the imposition of the cap may vary depending on the extent to which units make greater than required reductions in Phase I and carry forward a corresponding number of allowances. Senate Rep. No. 101–228 at 315. However, the carryover and use of the excess, new allowances created by early entry of Phase II units into Phase I (e.g., the use of 200,000 allowances per year for the first five years of Phase II) could result in emissions exceeding the cap for each of those years by 200,000 tons.

The Agency concludes that Congress did not intend to provide Phase II units, through sections 404(b) and (c) and 408(c)(1)(B), the ability to create excess, new allowances for pre-Phase II emissions reductions that would have been achieved in the absence of substitution and reduced utilization plans under title IV.

C. Other Statutory Provisions Support Limiting Entry of Phase II Units Into Phase I and Creation of New Allowances

The Agency's conclusion that Congress did not intend to allow creation of excess, new allowances through entry of Phase II units into Phase I is supported not only by the emission reduction goals of title IV and the purposes of the substitution and reduced utilization provisions, but also by Congress' approach in other sections of title IV.

In section 405 of the Act, Congress set forth the procedures for allocating allowances to Phase II units for each year in Phase II. Beginning in 2000, each Phase II unit that would otherwise have emissions exceeding its allowances must reduce emissions or acquire more allowances. With the limited exception in section 404(e), a Phase II unit that reduces emissions before 2000 is not allocated any additional allowances for making reductions early.

Under section 404(e), Congress permitted the allocation of additional allowances for early emissions reductions by Phase II units but only under very limited circumstances. In order for a Phase II unit to qualify for such allowances, the unit must meet stringent criteria, including the following:

1. The Governor of the State in which the unit is located authorized the unit to reduce emissions prior to 1995.

2. The total coal-fired electric generation of the unit's utility system as a percentage of total system generation decreased by more than 20% between January 1, 1980 and December 31, 1985.

3. The weighted capacity factor for all coal-fired units within the utility system, averaged from January 1, 1985 to December 31, 1987, was less than 50%.

4. The emission reductions are achieved by physical changes or changes in methods of operation made after November 15, 1990, including changes in the type or quality of fuel being burned.

5. The emission reductions are made during 1995 through 1999.

See 42 U.S.C. 7651d(e); 40 CFR 73.16(a) and (b) and 73.20(a) and (b); and 57 FR 29942–29943 (July 7, 1992).

Further, in section 410 of the Act, Congress directly addressed the matter of units voluntarily entering the Acid Rain Program. In this section, Congress established a procedure under which owners and operators of units can elect to enter the Acid Rain Program, receive allowances, and become subject to the emissions limitations and other requirements of the program. Congress was careful to limit such voluntary entry to "any unit that is not, nor will become, an affected unit under section 403(e), 404, or 405 [of the Act]." 42 U.S.C. 7651i(a). Congress thereby excluded Phase II units from electing into Phase I under section 410.

The fact that Congress was so careful in sections 404(e), 405, and 410 to limit the ability of Phase II units to obtain allowances for emissions reductions made before Phase II strongly suggests that other sections of the Act should not be interpreted to allow allowance allocations for all such reductions.

IV. Proposed Modifications of the January 11, 1993 Regulations

A. Substitution Plans

The Agency proposes to modify the January 11, 1993 regulations concerning substitution plans by limiting the allowances allocated to the substitution unit to the baseline times the lesser of 1985 actual or allowable emissions rate, 1990 actual emissions rate, or the most stringent federal or State allowable rate for sulfur dioxide for Phase I as of November 15, 1990, the date of enactment of title IV of the Act. In addition, it is proposed that the regulations provide that having a common designated representative does not meet the common owner or operator requirement for substitution plans.

1. Limiting Allowances Allocated to Each Substitution Unit

a. Emissions rate used in allocating allowances. Under today's proposal, as in the January 11, 1993 regulations, each unit designated as a substitution unit in an approved plan becomes a Phase I unit and is allocated allowances. However, consistent with the purposes of section 404, the proposal limits the number of allowances allocated to each substitution unit by calculating the allocation based on an emissions rate that is more representative of what would have been achieved without the substitution plan. A substitution unit will be allocated allowances equal to baseline times the lesser of the unit's 1985 actual or allowable emissions rate, the unit's 1990 actual emissions rate, or the most stringent federal or State allowable emissions rate as of November 15, 1990 that applies to the unit in 1995–99. In contrast, the January 11, 1993 regulations consider only the unit's 1985 actual or allowable emissions rate.

As discussed above, section 404(c) requires that the substitution plan include a demonstration "to the satisfaction of the Administrator" that the plan will "achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution." 42 U.S.C. 7651c(b)(5). Upon reflection, the Agency interprets this provision to require that the plan achieve total reductions equal to or greater than both; (i) The Table A unit's reduction obligation in Phase I, and (ii) the reductions that the substitution unit would have made if it had not entered Phase I, including reductions made for economic reasons prior to passage of title IV and reductions mandated by federal or State emissions limitations adopted prior to title IV. The preamble to the January 11, 1993 regulations set forth a different interpretation that the Agency now concludes is erroneous.

In the January 11, 1993 preamble, the Agency stated that any reductions in emissions rate that have been, or will be, made at the substitution unit after 1985 without the substitution plan (e.g., reductions for economic reasons or required by federal or State law) "will not have resulted from title IV" and so should "*not* be counted as reductions that would have occurred without the plan." 58 FR 3601 (emphasis added). The difficulty with this interpretation is that it appears to read out of section 404(b)(5) the requirement to ensure that a substitution plan does not negate reductions "that would have been achieved by * * * the substitute unit * * * without such substitution." 42 U.S.C. 7651c(b)(5). In the absence of the plan, the substitution unit would not be subject to title IV until Phase II. If only reductions required by title IV were considered under section 404(b)(5), the

amount of reductions that would have been achieved by the substitution unit without the plan (i.e., the reductions in Phase I) would always be zero. See Comments of Utility Air Regulatory Group (UARG) at 85 n. 90 (filed February 12, 1992); and 56 FR 63015 (December 3, 1991). The reference to such reductions would therefore be meaningless. In interpreting the Act, it should not be presumed that Congress adopted meaningless language. *See U.S.* v. *Menache*, 348 U.S. 528, 538–9 (1955); *Motor & Equipment Manufacturers Assn.* v. *E.P.A.*, 627 F.2d 1095, 1107–8 (D.C. Cir. 1979), *cert. den.*, 446 U.S. 952 (1980).

The Agency concludes that the better interpretation of section 404(b)(5) is to take into account, and avoid allocating allowances to the substitution unit for, all reductions that would otherwise have been made at the substitution unit since 1985.[5] Moreover, the Agency maintains that all emissions rate reductions by a substitution unit between 1985 and 2000 that were mandated by federal or State law as of the enactment of title IV are, by definition, reductions that would otherwise have been made in the absence of the substitution plan. Substitution units therefore will not be allocated allowances based on an emissions rate that is greater than the most stringent emissions limitation imposed in Phase I by federal or State law, as of November 15, 1990.

The Agency notes that some units may have multiple emissions rate limitations whose applicability depends on certain conditions (e.g., the operations of other units at the same plant). In such cases, the Agency proposes to use the most stringent of those limitations for the unit.

The Agency also notes that some mandated emissions limitations are not unit specific. For example, under some State laws (e.g., the acid rain laws for Massachusetts and Wisconsin), a utility has a maximum, average emissions rate for all its units in the State. Under other State laws (e.g., for Minnesota), a utility has a total tonnage emissions cap for all its units in the State. In order to account for this variation in way that emissions limitations are expressed, the Agency proposes to reserve the authority to determine on a case-by-case basis the federally enforceable or State enforceable emissions limitations that will be used in establishing the allowance allocation for substitution units. Where a utility is required to submit upfront to the State a plan for complying in 1995 with a State maximum, average emissions rate or total tonnage emissions cap, the Agency may exercise this authority and require use of the individual-unit emissions rates set forth in or underlying such a plan as the applicable State limits in Phase I for purposes of determining allowance allocations for substitution units.

Comment is requested on how to establish the State limitation when no State plan is submitted upfront for 1995. Further, comment is requested on the Agency's general approach to establishing the most stringent emissions limitation and on whether the discussion here concerning how the Agency will determine the federal or State emissions limitation in particular circumstances should be incorporated in the regulations. After reviewing the comments, the Agency may incorporate in the final rule detailed provisions explaining how to determine the emissions limitation. The Agency also requests comment on alternative approaches, for example, where if a State law imposes a maximum utility-wide average emissions rate, that average rate would be used as the applicable State limit for each unit.

Comment is also requested concerning whether the Agency should provide for an end-of-year review in Phase I with regard to substitution units subject to a State utility-wide average emissions rate or tonnage cap. In the end-of-year review, each utility subject to such a State limit would have to demonstrate whether, if the allowances allocated to substitution units covered by that State limit were treated for purposes of the review as emissions by those units, the utility would be in compliance for that year with the State limit. In this demonstration, the State methodology for determining compliance would be applied, but using the allocated allowances, rather than actual annual emissions, for each substitution unit whose allocation exceeded its emissions. To the extent that the utility would not be in compliance, allowances allocated to the substitution units for that year would be surrendered. To the extent that the utility would overcomply with the State limit, additional allowances would be allocated to the substitution units for the year but the total allowances allocated to any substitution unit could still not exceed the amount based on the lesser of 1985 actual or allowable emissions rate or the 1990 actual emissions rate. The allowance surrender or the allocation of additional allowances would be distributed among the substitution units involved in proportion to the number of allowances that they were originally allocated. Comment is requested on this approach and on whether any limits should be imposed on the trading of allowances allocated to such substitution units prior to this end-of-year review. (To the extent such limits are appropriate, § 73.52, in addition to § 72.41, would be revised to incorporate such limits.)

In addition to federal or State mandated emissions rate reductions, some substitution units' emissions rates have been, or will be, reduced after 1985 for economic reasons. To the extent a unit's emissions rate reductions are caused by economic factors that would have existed even if the unit did not become a substitution unit, such reductions should also be taken into account under section 404(b)(5). For example, some units may have found it economical to switch to lower sulfur fuel even in the absence of any obligation to hold allowances to cover emissions. Allowances should not be allocated for such reductions. EPA believes that this approach is reasonable because prior to enactment of the Clean Air Act Amendments of 1990, utilities had no reason to believe that such reductions would generate nationally tradable allowances under the Act.

For the implementation of section 404(b)(5) to be administratively feasible, the Agency believes that there must be a bright line drawn to determine whether a unit's voluntary reductions (i.e., those that are not mandated by law) in emissions rate between 1985 and 2000 would have occurred even if the unit were not a substitution unit. The Agency is concerned about the time- and resource-consuming process of case-by-case determination. In order to avoid the need to resolve issues such as whether a particular unit took actions to reduce its emissions rate in anticipation of becoming a substitution unit, the Agency proposes to treat all voluntary emissions rate reductions after 1985 and through 1990, the year in which title IV of the Act was passed, as reductions that would have occurred in the absence of a substitution plan. Even though reductions after 1990 perhaps would have occurred in the absence of the substitution plan, this is difficult to determine for periods after the

[5] EPA may have some authority to implement the proper interpretation of section 404(b)(5) without revising the current regulations, e.g., by announcing its rejection of the preamble discussion noted above and disapproving substitution plans that would result in allowance allocations for emissions reductions since 1985 that are not the result of substitution plans under title IV. See 40 CFR 72.41(b)(1)(ii) (repeating the requirement in section 404(b)(5)). However, the Agency believes that a more straightforward solution is to amend the allowance allocation formula for substitution units to reflect clearly the proper interpretation of the statute.

substitution provision was enacted. December 31, 1990 is used as the cut-off point since emissions rate data is available on a calendar year basis. A unit's 1990 emissions rate (which is the most recent, actual rate prior to the enactment of title IV) will therefore be treated as representative of its emissions rate in Phase I in the absence of a substitution plan. All voluntary emissions rate reductions after 1990 will be treated as reductions that would not otherwise have occurred. Consequently, substitution units should not be allocated allowances at a rate greater than either the 1990 actual emissions rate or the emissions limitation required by federal or State law for Phase I as of November 15, 1990.

Consistent with the approach proposed with regard to voluntary reductions, the Agency proposes to use 1990 as the cut-off point with regard to federal or State mandated emissions rate reductions. The Agency believes that the best approach is to establish a bright line as to whether a federal or State law mandating an emissions rate reduction would have been adopted in the absence of substitution plans under title IV. Consequently, only those emissions rate reductions that were mandated by federal or State law adopted on or before November 15, 1990, the enactment date of title IV, will be treated as reductions that would otherwise have occurred. Since dates of adoption of mandated emissions limitations can be precisely determined, there is no need to use December 31, 1990 as the cut-off point.

In sum, the Agency proposes that substitution units be allocated allowances based on the lesser of four emissions rates: 1985 actual emissions rate, 1985 allowable emissions rate, 1990 actual emissions rate, or the most stringent federal or State allowable emissions rate applicable in 1995–99 as of November 15, 1990. The first two emissions rates are set forth in section 404(b)(2) of the Act. The latter two are added in order to ensure, in accordance with section 404(b)(5), that a substitution plan will result in at least the same amount of reductions that would have occurred without the plan. Consistent with the position adopted in the January 11, 1993 regulations concerning the use of current allowable emissions rate with regard to Phase I extensions (58 FR 3604), the most stringent allowable rate for purposes of substitution plans will be the most stringent rate (as of November 15, 1990) after conversion to pounds per mmBtu but without any annualization.

The Agency recognizes that the proposal relies on information (i.e., the 1990 actual emissions rate and the most stringent federal or State allowable emissions rate for the substitution unit) that is not specifically listed in section 404(b) as information required in a proposed substitution plan. However, the Agency concludes that section 404(b) provides adequate authority to require submission of the additional data and to use the data to calculate the allowance allocation under the plan. Section 404(b)(6) requires designated representatives to submit "such other information as the Administrator may require." 42 U.S.C. 7651c(b)(6). Moreover, using the 1990 emissions rate and the most stringent allowable rate to allocate allowances is a reasonable exercise of the Administrator's broad discretion, in approving substitution plans under section 404(c), to impose "modifications or conditions * * * which will ensure the emissions reductions contemplated by [ ] title [IV]." 42 U.S.C. 7651c(c).[6] Finally, since reliance on substitution plans is optional and the use of the most stringent allowable rate (in conjuction with the 1985 actual or allowable rate and the 1990 actual rate) to allocate allowances under such plans is necessary to meet statutory emissions reduction goals, it is difficult to see how such use of the most stringent allowable rate could be viewed as unfair to utilities located in States that mandated reductions. This approach simply prevents the creation of excess, new allowances and thereby ensures that reductions mandated by such States are not used to increase emissions elsewhere above the levels that title IV was intended to achieve.

Comment is requested on whether it would be appropriate for the Agency to consider only emissions rate reductions mandated by federal or State law in determining, under section 404(b)(5) of the Act, what emissions reductions would have been achieved without the substitution plan and therefore how many allowances should be allocated to substitution units (either upfront or in an end-of- year review). In this regard, the Agency also asks for comment on the need for, and policy and practical implications of, including or not including voluntary reductions in determining the emissions reductions without the plan. Comment is also requested on whether it is appropriate for the Agency to consider voluntary reductions by using the 1990 emissions rate as one of the criteria for determining how many allowances should be allocated. Comment on alternatives to the 1990 emissions rate and the policy and practical implications of such alternatives is requested.

b. Utilization used in allocating allowances. Under today's proposal, a substitution unit's allowance allocation is calculated by multiplying the lower of the above-discussed four emissions rates by the baseline, which reflects 1985–87 utilization. In the public comments that preceded the January 11, 1993 regulations, some commenters suggested that the allowance allocation be based on current utilization at the time the permit application is submitted. Allegedly, current utilization would be a more reasonable projection, than baseline, of the substitution unit's utilization in Phase I in the absence of a substitution plan. 58 FR 3600–3601; Comments of National Rural Electric Cooperative Association (NRECA) at 6–7 (filed February 12, 1992). In developing today's proposal, the Agency reconsidered the option of requiring utilities to project what future utilization of the substitution units would be in Phase I without the substitution plan. The Agency concludes that, particularly since utilization can vary greatly from year to year, there is no basis for assuming that such future utilization would equal current utilization, which occurs before Phase I, and that it would be very difficult for the utilities to make accurate utilization projections. Similarly, it would be difficult for the Agency to evaluate such projections to ensure that they would not result in the creation of excess, new allowances. See Comments of UARG at 58 and n. 57 and 92.

While projections are used to allocate allowances from the Phase I extension reserve, the use of projections under substitution plans is more problematic. The Phase I extension reserve is fixed and thus there is a limit on the total number of allowances that can be allocated based on projections. 42 U.S.C. 7651c(a)(2). Unduly high projections in that context will affect the distribution of Phase I extension allowances among applicants for the Phase I extension but will not increase the total number of allowances allocated under the Phase I extension.

[6] The proposal is also a reasonable exercise of the Administrator's authority under section 404(c) to ensure that substitution plans are approved to the extent that they are "consistent with the orderly functioning of the allowance system." 42 U.S.C. 7651c(c). The creation of excess, new allowances interferes with the allowance system in two ways. First, introducing allowances into the system that were not intended by Congress and that are in excess of the substitution unit's emissions in the absence of the plan will tend to skew the market price of an allowance. Second, allowing such allowances into the system undermines its integrity and may encourage further attempts at gaming.

In contrast, there is no express statutory limit on the total number of allowances that can be allocated to substitution units. Allocating allowances based on projected utilization would mean that the higher the projection, the greater the total number of excess, new allowances that would be created. Consequently, allocating allowances based on a higher utilization than the substitution unit would have had without the substitution plan would have the same result as allocating allowances based on a higher emissions rate than that which the unit would otherwise have had. In either case, new allowances would be created that could result in fewer total reductions than in the absence of the substitution plan. This is precisely the result that Congress required the Administrator to prevent. The Agency does not believe that it would have sufficient information or expertise to ensure that the utilization projections were sufficiently accurate to prevent this result.

Moreover, even if the Agency could ensure sufficiently accurate utilization projections, allocating allowances based on them could still compromise the statutory requirement of no fewer reductions than without the substitution plan. A substitution unit that was allocated allowances based on projected utilization could decrease its utilization below the projected level and shift the generation to another Phase II unit that was not subject to the requirement to hold allowances in Phase I. This is analogous to the problem that Congress recognized with regard to "initially affected units" in Phase I (and other Phase I units) and resolved in section 408(c)(1)(B) by requiring reduced utilization plans. Senate Rep. No. 101-228 at 334. However, section 408(c)(1)(B) addresses only decreases of utilization below baseline, not decreases below a projected utilization.

Rather than attempting to craft a second "reduced utilization" requirement solely for substitution units, the Agency concludes that the better and more administratively feasible approach is to allocate allowances to substitution units using their baseline. The existing reduced utilization provisions in section 408(c)(1)(B) will then continue to apply to such substitution units and ensure that reductions that would have been achieved without the substitution plan will not be circumvented by the substitution unit shifting generation to other units not subject to allowance requirements in Phase I. The Agency requests comment on whether an up-dated or projected level of utilization should be used, rather than baseline, in allocating allowances to substitution units.

2. Limiting number of substitution units

The Agency considered modifying the January 11, 1993 regulations to make upfront approval of the designation of substitution units and allocation of allowances to such units contingent on an end-of-year review of the need for such units for each year that the plan was in effect. Under such an approach, the Agency would allow only those designations of substitution units that actually proved to be needed.

The Agency would determine at the end of each year whether the Table A unit actually had any reduction obligation to reassign to a substitution unit, i.e., whether the Table A unit had emissions in excess of its allowance allocation. The Agency would also determine each year the extent to which each substitution unit had an allowance allocation exceeding actual emissions and thus could provide extra allowances to the Table A unit.

The number of units treated as substitution units for the year would be limited to the minimum necessary to provide allowances needed to ensure that the Table A unit could cover its emissions. Any additional units that had been designated, and allocated allowances, as substitution units would be de-designated for the year and would be required to surrender their allocated allowances. In order to ensure that there would be sufficient allowances for the surrender, the substitution units could be barred from transferring their allocated allowances for a given year until completion of the year-end review for that year.

The Agency believes that requiring end-of-year review of the need for substitution units and thereby limiting the number of such units is probably unnecessary but only if allowance allocations for substitution units are limited as proposed above. If each substitution unit is allocated allowances based on no greater an emissions rate than its 1985 actual or allowable, 1990 actual, or most stringent allowable emissions rate and is subject to reduced utilization requirements, the substitution unit will have to use up all or almost all of its allocated allowances—either to cover its emissions or to account for its reduced utilization—unless that unit voluntarily reduces its emissions rate to an even lower level. This significantly limits the ability of a substitution unit to create new allowances in excess of its Phase I emissions, which allowances could be banked or transferred to other units. Moreover, since any new allowances will result from reductions that would be unlikely to occur in the absence of a substitution plan, the allowances will not result in fewer total reductions than would have been achieved without the substitution plan.

The Agency requests comment on its determination that end-of- year review of the need for substitution units is not necessary. To the extent commenters believe that end-of-year review is needed, they are requested to address the above explanation of how the review would be conducted.

3. Requiring Common Owner or Operator

The January 11, 1993 regulations provide that the statutory requirement that the Table A unit and its substitution unit have a common owner or operator is satisfied where such units have a common designated representative. 40 CFR 72.41(b)(1)(i); see also 42 U.S.C. 7651c(b). The regulations also allow the selection of an alternate designated representative to act in lieu of the designated representative. 40 CFR 72.22(a). The regulations do not expressly address whether having a common alternate designated representative alone meets the common owner or operator requirement.

The Agency proposes to reverse its interpretation that having a common designated representative meets the statutory requirement of a common owner or operator. In the January 11, 1993 regulations, the Agency concluded that, "[i]n general, a designated representative is not considered to be an operator." 58 FR 3600. This is because the Act distinguishes between designated representatives and owners and operators. See 58 FR 3599. On one hand, the Act states that designated representatives represent owners and operators and, in that capacity, are responsible, along with owners and operators, for holding and transfering allowances and submitting and complying with permit applications and compliance plans. 15 U.S.C. 7651a(26), 7651b(b), 7651g(c)(1), (d)(2), and (h)(1). On the other hand, the Act makes only owners and operators responsible for meeting emissions limitations and monitoring requirements. 15 U.S.C. 7651(c)(a), 7651d(a), and 7651k.

However, the Agency determined, in the preamble of the January 11, 1993 regulations, that "[i]n some cases" the designated representative's "duties and level of responsibility can be equivalent to that of an operator." Id. One such case, identified by the Agency, was where a designated representative represents multiple sources

participating in a substitution plan and lacking any other common owner or operator. In that case, the designated representative's responsibilities are allegedly "broad enough to bring him or her within the definition of operator." Id. The problem with that analysis, upon reflection, is that it is difficult to see how a designated representative's responsibilities in a multi-source substitution plan are actually any broader or more complex than they are under other compliance options involving multiple owners and operators and multiple units and sources.

In order to use the substitution compliance option, a designated representative must submit a substitution plan that covers all the units involved and that is included in the permit applications of the sources at which such units are located. See 40 CFR 72.41(b)(2). A common designated representative must coordinate among owners and operators of the sources that he or she represents to the extent necessary to ensure that he or she is authorized by the owners and operators to submit such a plan. See 40 CFR 72.21(b)(1). Once the substitution plan is approved, the owners and operators of a unit under the plan are liable for violations of the plan at that unit or at any other unit that is its substitution unit or for which it is a substitution unit. 40 CFR 72.41(e)(2).

Designated representatives have similar responsibilities under other multi-unit compliance options. For example, Phase I extension plans can involve a control unit at one source and transfer units at other sources and the sources involved need not have common owners or operators. In that case, the designated representatives of the sources involved must coordinate among owners and operators of the sources, agree on a single Phase I extension plan, and sign and submit the plan as part of their respective permit applications. See 40 CFR 72.40(b)(1)(i) and 72.42(b)(2)(ii). Under an approved Phase I extension plan, owners and operators are potentially liable for violations of the plan by other units governed by the plan. See 40 CFR 72.42(f)(1) and (4).

The situation is similar for reduced utilization plans, which can involve a Phase I unit and compensating units located at multiple sources. All the designated representatives must agree on and submit a single plan. See 40 CFR 72.40(b)(1)(i) and 72.43(b)(4). Further, under § 72.91(a), the designated representatives of the Phase I unit and compensating units under a plan must use consistent figures in their annual compliance certification reports to calculate the adjusted utilization of the respective units. See 40 CFR 72.91(a)(3)(ii) and (4). Under Option 1 of today's proposal, the designated representatives of units under an approved plan will also have to cooperate in order to meet the special end-of-year reporting requirements for determining which compensating units are necessary. See section IV(B)(1) of this preamble. Again, owners and operators are potentially liable for violations of the plan by other units governed by the plan. 40 CFR 72.43(f)(3).

In short, the common designated representative's responsibilities under a multi-source substitution plan are no broader or more complex than those of designated representatives under multi-source Phase I extension or reduced utilization plans. The Agency concludes that there is no basis for treating designated representatives in the context of substitution plans differently than in the context of other compliance options. Moreover, there is nothing unique to substitution plans (other than the declaration, in the January 11, 1993 regulations, that a common designated representative "is" an operator under a substitution plan) that would make the designated representative, rather than simply the owners and operators, responsible for meeting emissions limitations or monitoring requirements that are applicable to all Phase I units. Under all these multi-unit compliance plans, the designated representative actually has less extensive responsibilities than, and thus should not be considered to be, an owner or operator.

Finally, in the preamble of the January 11, 1993 regulations, the Agency suggested that treating a common designated representative as an operator would give small utilities flexibility to use substitution plans. However, the Agency notes that none of the permit applications submitted in February 1993 included substitution plans using a common designated representative as the common owner or operator. Subsequently, one such plan involving four permit applications was submitted but none of the applications involved small utilities. The Agency requests comment on the effect that the proposed interpretation of the requirement of a common owner or operator would have on the ability of utilities to bring in selected Phase II units into Phase I as substitution units and, as a result, on their ability to create new allowances.

While the Agency proposes to change its interpretation in the January 11, 1993 regulations that a common designated representative meets the statutory common-owner-or-operator requirement for substitution plans, the Agency notes that in the absence of such a change, it would still be necessary to clarify that having a common alternate designated representative would not meet the statutory requirement. Whatever determination is made concerning the responsibilities of designated representatives as compared to those of owners and operators, the Agency believes that an alternate designated representative clearly does not carry the same level of responsibilities as a designated representative.

While the alternate designated representative can act in lieu of the designated representative, the latter is expected to be the primary representative. For this reason, where the Administrator determines that the designated representative and the alternate designated representative have taken "concurrent and conflicting" actions, the action of the designated representative "shall take precedence." 40 CFR 72.22(c). Moreover, the purpose of allowing a unit to have an alternate designated representative is to ensure that there will be someone to represent the unit in the event that the designated representative is unavailable. See 56 FR 63009. It is possible that the alternate designated representative will never actually have to take any actions. There is therefore no logical basis to treat a common alternate designated representative as equivalent to a common designated representative.

4. Other Changes

The Agency proposes to make other minor changes to clarify the current § 72.41. For example, under the current rule, substitution allowances may be distributed in the plan between the substitution unit and the Table A unit. However, there may be more than one Table A unit in a plan and each substitution unit may not be designated by all the Table A units. The language of the current regulation is not clear on how allowance distribution is to occur in such a case. The Agency proposes to modify the regulation to make it clear that substitution allowances may be distributed from a given substitution unit only to the respective Table A unit that designated that substitution unit.

B. Reduced Utilization Plans

The January 11, 1993 regulations concerning reduced utilization—and the rulemaking proposal and public comments that preceded those regulations—focused primarily on concerns that utilities might be unabl

to designate a compensating unit and therefore might engage in uneconomic dispatching in order to avoid reduced utilization that would require such designation. See 56 FR 63020; Comments of UARG at 35; Comments of NRECA at 23–4; and Comments of Environmental Defense Fund at 3 (filed February 12, 1992). To allay these concerns, § 72.43 of the January 11, 1993 regulations establishes broad safe harbors under which the requirement to submit a reduced utilization plan may be avoided. 40 CFR 72.43(e). Further, §§ 72.91 and 72.92 of the regulations set forth an allowance surrender procedure for accounting for the emission consequences of utilizing a Phase I unit below baseline. 40 CFR 72.91(a) and 72.92(a) and (c). The allowance surrender procedure gives utilities the flexibility to use economic dispatching without designating compensating units and still accounts for the emissions consequences of load shifts from Phase I units to non-Phase I units.

While the January 11, 1993 regulations address when utilities can avoid submitting reduced utilization plans, the significant number of reduced utilization plans and compensating units proposed in the Phase I permit applications highlight the opposite problem: utilities actively seeking reduced utilization plans and designating compensating units in order to create excess, new allowances by bringing Phase II units into Phase I. The designation of compensating units under reduced utilization plans should be limited to cases where the designation will serve the statutory purpose of section 408(c)(1)(B), i.e., to account for emissions from generation that is provided by a Phase II unit and that is needed to compensate for the reduced utilization of a Phase I unit.

Although the current regulations implementing substitution and reduced utilization plans pose similar problems concerning the creation of allowances, the Agency is proposing different approaches in modifying the requirements for the two compliance options. In contrast with sections 404 (b) and (c), which give the Administrator discretion in determining how many allowances to allocate to substitution units, section 408(c)(1)(B) states the formula for allocating allowances for compensating units. In order to ensure that reduced utilization plans are used as a means of accounting for emissions from load shifting and not as a method of creating excess, new allowances through early entry of Phase II units into Phase I, the Agency must limit the circumstances under which Phase II units can become compensating units.[7]

Today, the Agency is proposing two basic options for limiting the designation of compensating units. The Agency requests comment on both options.

Under Option 1, units will be allowed to become compensating units and will be allocated allowances only where there is a demonstration that the compensating units are actually needed to account for reduced utilization. The Agency proposes in Option 1 to modify the reduced utilization provisions by granting upfront approval of a reduced utilization plan with compensating units but making approval contingent on an end-of-year determination by the Administrator that each compensating unit is needed for the year. A unit designated as a compensating unit will become a Phase I unit and will be allocated allowances upon upfront approval of the reduced utilization plan and issuance of the Acid Rain permit containing the plan.

However, a compensating unit will not be allowed to transfer allowances allocated for any given year in Phase I unless and until an end-of-year determination of need is made for that unit for that year. A compensating unit will be deemed to be needed only if certain specified conditions are met. If those conditions are not met, the unit will be retroactively de-designated for the year and the allowances allocated for the year will be deducted. The limitation on transfer will ensure the availability of the allowances for such end-of-year deduction and will prevent the use of what are potentially excess allowances by other units in the meantime. Since section 408(c)(1)(B) of the Act does not specify when allowances are to be allocated to compensating units, the Agency could have delayed any allocation until completion of the end-of-year review. The Agency maintains that the approach proposed here is within its authority and is more consistent with the overall operation of the Acid Rain Program.

Current § 73.52 will be revised both to reflect this transfer limitation and to make it clear the transfer limitation (and the one under § 72.44 (repowering)) apply to transfers of specific allowances and of allowances in perpetuity. (The latter revision to § 73.52 will also be made under Option 2 (discussed below) with regard to the § 72.44 transfer limitation.)

In the end-of-year review, a unit will be deemed to be needed as a compensating unit only for years in which: the Phase I unit actually had utilization below baseline; the Phase I units in the initial Phase I unit's dispatch system actually had total net utilization below the sum of their baselines after taking account of all sulfur-free generation acquired by the dispatch system; and the proposed compensating unit actually provided compensating generation to that dispatch system. Further, the number of compensating units allowed under a single reduced utilization plan will be limited to the number needed. As part of the end-of-year review, the Administrator will determine how much compensating generation all the original Phase I units in the dispatch system potentially needed and how much excess generation each compensating unit proposed for any such Phase I unit potentially could have provided. The only compensating-unit designations that will be allowed for any of the Phase I units in the dispatch system will be designations of compensating units whose potential excess generation was necessary to meet the potential need for compensating generation for the dispatch system as a whole.

Under Option 2, the category of units that may be designated as compensating units will be limited to those units whose designation cannot create excess, new allowances. A unit can be designated as a compensating unit only if: The unit's baseline times the lesser of its 1985 actual or allowable SO_2 emissions rate does not exceed the unit's baseline times the lesser of its 1990 actual SO_2 emissions rate or its most stringent federally enforceable or State enforceable emissions limitation for SO_2 for 1995–99 as of November 15, 1990.

Comment is requested on policy and practical implications of both Option 1 and Option 2, including whether they are workable and what impact they would have on the functioning and development of the allowance system and the allowance trading market. Comment is also requested concerning

[7] EPA believes that it has authority under the current regulations to limit, at least to some extent, the ability of utilities to designate compensating units and create excess, new allowances. For example, where a reduced utilization plan designates compensating units that are not shown to provide compensating generation under the plan or the approval of a plan would result in fewer total emissions reductions than intended by Congress, the Administrator may rely on her authority under section 408(c)(2) of the Act to disapprove the plan or approve it with changes necessary to prevent the creation of excess, new allowances. Although the Agency is reviewing the reduced utilization plans already submitted and determining whether they are consistent with section 408(c)(1)(B) and title IV generally, the Agency also maintains that the current rule should be revised to establish detailed criteria for approval of such plans.

the consistency of Options 1 and 2 with section 408(c)(1)(B) and title IV in general.

1. Option 1: end-of-year review of need for compensating units

a. Requiring actual reduced utilization and provision of compensating generation. Under Option 1, the requirements for upfront approval of reduced utilization plans with compensating units remain essentially the same as under the current regulations. Compensating units designated under an approved plan will be allocated allowances under the statutory formula. However, during each year for which the plan is approved, certain conditions must be met in order for the plan to be effective for that year and for a unit to remain a compensating unit and retain the allowances that it is allocated under the plan for that year. The Administrator will determine after the end of the year whether these conditions have been met.

First, the Phase I unit's need for compensating generation from a compensating unit, i.e., the Phase I unit's "potential reduced generation," will be calculated. "Potential reduced generation" equals: (i) The Phase I unit's baseline, adjusted for any decline in total sales of electricity by the dispatch system, less (ii) the Phase I unit's actual utilization, (iii) estimated savings from conservation and unit efficiency measures, (iv) compensating generation received from designated sulfur-free generators, and (v) compensating generation provided by the Phase I unit if the unit itself is a compensating unit for other Phase I units. These factors are already defined and used in § 72.91 of the January 11, 1993 regulations to calculate "adjusted utilization" in order to determine whether a reduced utilization plan is required under § 72.43(e) and whether allowances must be surrendered under § 72.92.

The Phase I unit's "potential reduced generation" for the year must be greater than zero in order to be allowed to have a compensating unit for that year. This requirement is aimed at allowing only needed compensating units to enter into Phase I. If a Phase I unit's "potential reduced generation" is less than or equal to zero, then the Phase I unit is not actually underutilized compared to its baseline or the unit already has sufficient conservation or unit efficiency savings or sulfur-free generation to account for its underutilization. Consequently, there is no need for generation from a compensating unit. It should be noted that although year-end estimates of conservation and unit efficiency savings may be altered by subsequent verification procedures, the Agency proposes to evaluate the need for compensating units using estimated savings rather than waiting for verified savings figures, which may not be available until as long as six months after the end of the year. See 58 FR 3607; and § 72.91(b)(1) (requiring submission of verified savings figures by July 1 and providing for extension of the deadline for good cause).

The second requirement is that the "dispatch system potential reduced generation" (which is the sum of the "potential reduced generation" for all Phase I units in the Phase I unit's dispatch system less sulfur-free generation acquired by the dispatch system from any non-designated sulfur-free generators) must be greater than zero. If "dispatch system potential reduced generation" is less than or equal to zero, then either no Phase I unit needs compensating generation or the potential reduced generation of underutilized Phase I units in the dispatch system is fully offset by utilization above baseline of the other Phase I units in the same system or by sulfur-free generation.

Where there is a full offset (or to the extent there is any partial offset) by other Phase I units, there is no basis for concluding that Phase II units, rather than other Phase I units, provided to the dispatch system the generation that compensated for underutilized Phase I units. See Comments of UARG at 32. To prevent unnecessary designation of compensating units, underutilized Phase I units are assumed to first shift generation to other Phase I units. Phase II units may become compensating units only to the extent necessary to compensate for net potential reduced generation of the Phase I units. This approach is consistent with § 72.43(e)(1)(ii)(A) of the January 11, 1993 regulations, which removes the requirement to submit a reduced utilization plan to the extent that underutilization at a Phase I unit is offset by overutilization at other Phase I units in the dispatch system. See also 40 CFR 72.92(c)(2)(i); and 58 FR 3608 (explaining that allowance surrender is based on the net underutilization of all Phase I units in the dispatch system).

For similar reasons, in calculating "dispatch system potential reduced generation", the designated representative must subtract any sulfur-free generation acquired by the dispatch system from sulfur-free generators that were not designated under a reduced utilization plan. This is because, to the extent that a dispatch system acquired increased sulfur-free generation since 1985–87 from generators that could have been designated, there is no basis for concluding that Phase II units, rather than sulfur-free generators, provided compensating generation for underutilized Phase I units.

The third requirement considered in the end-of-year review concerns the designated compensating unit, which must actually provide compensating generation to the Phase I unit's dispatch system during the year. The utility must show that the compensating unit—whether inside or outside the Phase I unit's dispatch system—provided to the dispatch system an amount of electricity at least equal to the amount of claimed compensating generation.

b. Limiting number of compensating units. In order to prevent the unnecessary creation of new allowances, the Agency proposes to limit the number of compensating units under a reduced utilization plan to those necessary to provide compensating generation. This will be done by determining how much compensating generation can potentially be provided by the compensating units designated by the utility and comparing that potential with the amount of compensating generation that is needed. A unit will be allowed to remain a compensating unit for a given year only if it is shown, in the year-end review, that the unit's potential for providing compensating generation is necessary to meet the potential need for such generation for that year.

As discussed above, the Agency proposes to determine the need for compensating generation on a dispatch system basis, i.e., by calculating the dispatch system potential reduced generation. Similarly, the number and identity of the allowed compensating units will be determined on a dispatch system basis, and the same list of compensating units must be used in all reduced utilization plans for Phase I units in a given dispatch system. The dispatch system potential reduced generation will be compared with the compensating generation potentially provided by all the compensating units designated by any Phase I units in the dispatch system. This is appropriate because, while individual Phase I units designate compensating units, the electricity resulting from all compensating generation is actually transmitted to the Phase I unit's dispatch system (not to the Phase I unit itself) for resale. A compensating unit designated to provide compensating generation for one Phase I unit in a dispatch system is equally capable of providing compensating generation for other Phase I units in that system until

the compensating unit reaches its full potential for generation.

Under Option 1, the "potential compensating generation" for each designated compensating unit will equal the higher of: the unit's baseline (converted to Kwhs) or the highest annual generation by the unit since 1987 as of the date of submission of the plan. The highest actual generation is used, rather than the nameplate capacity of the generator served by the unit, in order to obtain a realistic figure for the full generation capability of the unit.

The designated compensating units will then be considered in the order that they are listed in the reduced utilization plans for the dispatch system. Only those units whose potential compensating generation is necessary to cover the dispatch system's need for compensating generation for the year will be allowed to remain as compensating units for that year for any Phase I unit in the dispatch system. This is accomplished by requiring that the sum of the "potential compensating generation" of all units that are listed ahead of the last allowed compensating unit not exceed the "dispatch system potential reduced utilization." Comment is requested as to whether designated representatives should be allowed to revise, after the end of the year, the order in which compensating units are listed in the plans.

The Agency anticipates that the above-described requirements for allowing compensating units will minimize the need for case-by-case review of reduced utilization plans to ensure that the reduced utilization provisions are used for their statutory purposes and not simply to create excess, new allowances. However, in accordance with section 408(c)(2) of the Act, the Agency will continue to review proposed plans with compensating units to determine whether the designated representative demonstrates that the units will provide compensating generation to Phase I units or whether the plan is otherwise consistent with the purposes and requirements of title IV. For example, the Administrator will scrutinize and may disapprove plans that create a daisy chain of compensating units, i.e., where a compensating unit is itself underutilized and designates its own compensating unit. The Administrator will consider, *inter alia*, whether there is a sufficient showing that the compensating generation will really be provided to the Phase I unit by its proposed compensating unit, rather than by a subsequent compensating unit in the daisy chain. As a further example, the Administrator may well disapprove plans where Phase I units in two dispatch systems designate different compensating units in a third dispatch system or designate the same compensating units in a third dispatch system but in a different order. Moreover, under section 408(c)(2), the Agency also reserves the right, after the end of each year, to review any compensating unit designation to determine whether it is consistent with the purposes and requirements of title IV (e.g., whether the designation unnecessarily creates excess, new allowances), even if the designation otherwise meets the requirements of proposed § 72.91(c). Where a plan is disapproved or a compensating unit designation is not allowed to be in effect, the allowance surrender formula will, of course, apply.

c. Reporting requirements and allowance surrender. In order to implement the above-described limitations on designation of compensating units, the proposal augments the requirements for the annual compliance certification report submitted by Phase I units. In particular, the annual report submitted for any Phase I unit with a designated compensating unit must include demonstrations that the above-described conditions for compensating-unit designation and the limitations on the number of compensating units are met.

These proposed requirements are in addition to the requirements in the January 11, 1993 regulations concerning: calculation, in the annual compliance certification report, of a unit's "adjusted utilization" (40 CFR 72.91(a)); and submission of the confirmation report by Phase I units claiming to have realized kilowatt hour savings or reductions in heat input from conservation or improved unit efficiency measures (40 CFR 72.91(b)). These existing reporting provisions are not, for the most part, substantively altered. Several minor, nonsubstantive changes are proposed. For example, the terminology used in § 72.91(a) (such as the terms "shifts to designated sulfur-free generators" and "compensating generation provided to other units") is corrected to make it consistent throughout the section. Also, the definition of "compensating generation provided to other units" (40 CFR 72.91(a)(4)) is clarified by, *inter alia*, removing the superfluous but potentially confusing sentence at the end of the definition.

In addition to these minor changes, the proposal clarifies several other aspects of the provisions concerning reduced utilization plans and the calculation of adjusted utilization. For example, § 72.43 of the January 11, 1993 rule requires that energy conservation measures under a reduced utilization plan must be installed after the baseline period, i.e., after December 31, 1987. That section is amended to make it clear that unit efficiency measures, which are a category of energy conservation measures, must meet the same requirement.

As a further example, under § 72.91 of the January 11, 1993 regulations, where there are shifts to sulfur-free generators outside a unit's dispatch system, the designated representative must document that electricity of at least the amount claimed to have been shifted was actually "purchased" by the unit's dispatch system from the generator. Some sulfur-free generators have multiple owners and may be owned in part by the unit's dispatch system. In such cases, the unit's dispatch system may not "purchase" electricity from the generator but rather may acquire the electricity based on its ownership share. The proposal therefore requires that there be documentation that the dispatch system "acquired" the electricity from the sulfur-free generator. An analogous change is proposed for § 72.43(c)(4)(iv). Further, in order to ensure that multiple owners of sulfur-free generators claim only their respective shares of the sulfur-free generation, the documentation requirement is proposed to apply whether the sulfur-free generator is in or outside the dispatch system. For similar reasons, the documentation requirement is also applied to compensating units in or outside the dispatch system, for purposes of calculating "adjusted utilization."

Further, under § 72.91 of the current regulations, two or more Phase I units may include savings or generation from the same conservation measure or sulfur-free generator, provided that the designated representatives submit a certification that apportions the savings or generation among the units. Section 72.91 is revised to require the same approach where savings and improvement in heat rate from the same supply-side measure are claimed by two or more Phase I units.

In addition, under current § 72.91, plan reductions (i.e., underutilization accounted for by conservation or improved unit efficiency measures, sulfur-free generation, or shifts to compensating units under a reduced utilization plan) are considered only to the extent that they account for underutilization of the Phase I unit for which the plan was approved. 40 CFR 72.91(a)(3) (defining "plan reductions"). This approach was taken in order to

prevent the plan reductions of one Phase I unit from being used to offset the underutilization of another Phase I unit that has no reduced utilization plan. Today's proposal adds a provision at § 72.91(a)(7) to make this limitation clear.

2. Option 2: Limiting Units That Can Qualify as Compensating Units

The Agency also requests comment on Option 2, which is an alternative approach to restricting the designation of compensating units and thereby preventing the creation of excess, new allowances. Under Option 2, the Agency will adopt an upfront limitation on the category of units that can qualify for designation as compensating units. Once the Agency determines that a proposed compensating unit meets the upfront limitation, the Agency will approve the designation and allocate allowances for the unit and, as under the current regulations, will not conduct any end-of-year review of the need for the compensating unit.

Option 2 takes the approach that excess allowances will likely be created by the designation of any Phase II unit whose baseline, multiplied by what its annual emissions rate in Phase I would be in the absence of the designation, is less than the annual allowances allocated to the unit as a compensating unit. Without making any more emission rate reductions than it would have otherwise made, such a Phase II unit can increase its own generation (or purchase generation from a third party) to provide compensating generation and use its own allowance allocation to cover its own emissions. In addition, the unit may still have extra allowances to transfer, sell, or bank for future use. In order to prevent the creation of excess, new allowances, such units will not be allowed to be designated as compensating units.

Consistent with the reasoning underlying the approach proposed above with regard to substitution units, the lesser of a prospective compensating unit's 1990 actual emisssions rate or most stringent federally enforceable or State enforceable emission rate in Phase I as of November 15, 1993 will be treated as the unit's likely emissions rate in the absence of the reduced utilization plan. That emissions rate times baseline will be compared with, and must equal or exceed, the unit's potential allowance allocation (i.e., baseline times the lesser of 1985 actual or allowable emissions rate). Only compensating-unit designations that meet this requirement can be approved. Because of the inherent unreliability of projected utilization figures (discussed above in section IV(A)(1)(b) of this preamble), baseline, rather than projected utilization, will be used to determine whether a unit qualifies as a compensating unit. If a utilization projection less than baseline were used to determine that a unit qualified as a compensating unit but subsequently the unit had a higher actual utilization in Phase I that would have otherwise disqualified the unit, the unit could create excess, new allowances. In order to be approved, the designation of a compensating unit, of course, must meet the requirements in the current regulations for reduced utilization plans as well as the additional requirement proposed in Option 2.

Comment is requested on whether only emission rate reductions mandated by federal or State law should be considered in determining which units qualify to be designated as compensating units. In this regard, the Agency also asks for comment on the need for, and policy and practical implications of, including or not including voluntary reductions in this determination. Comment is also requested on whether the Agency should consider voluntary reductions by using the 1990 emissions rate as one of the criteria for determining which units qualify. Comment on alternatives to the 1990 emissions rate and the policy and practical implications of such alternatives is requested. The Agency also requests comment on whether an up-dated or projected level of utilization should be used, rather than baseline, in determining which units qualify.

If a designated representative of a Phase I unit has no Phase II unit that will provide compensating generation and that will qualify under Option 2, the designated representative will not be required to submit a reduced utilization plan designating a compensating unit. Instead, the allowance surrender provisions in §§ 72.91 and 72.92 will apply. The Agency proposes to adopt, under Option 2, the same clarifications and other revisions, as proposed under Option 1, to the portions of § 72.91 concerning calculation of adjusted utilization and confirmation reports. See section IV(B)(1)(c) of this preamble.

V. Applicability of Rule Revisions to Existing Permit Applications

As discussed above, the Agency has determined that rule revisions are necessary to ensure that the rule, and compliance plans approved under the rule, are consistent with the purposes of title IV of the Act. However, owners and operators of some affected sources have already submitted to EPA substitution or reduced utilization plans based on their reading of the January 11, 1993 regulations. In order to provide these owners and operators an opportunity to adjust their compliance strategies in the event of revision of the regulations, EPA has recently proposed, in draft permits, to approve for 1995 those substitution plans, and those reduced utilization plans (and parts of plans) with compensating units, that EPA determined to be in compliance with the existing regulations. In the draft permits, EPA also proposed to defer action on those compliance options for 1996–99 pending completion of the instant rulemaking. 58 FR 38371 (July 16, 1993); 58 FR 39542 (July 23, 1993); 58 FR 40812 (July 30, 1993); 58 FR 42065 (Aug. 6, 1993); and 58 FR 43107 (Aug. 13, 1993).

In the July 16, 1993 **Federal Register** notice of the issuance of draft permits, the Agency also first gave notice of its concern that the January 11, 1993 regulations can be read to allow the creation of excess, new allowances contrary to title IV and announced its intention to propose revisions of the regulations. 58 FR 38371. In that notice, the Agency further indicated that it intended to adopt a consistent approach with regard to all substitution plans, and reduced utilization plans with compensating units, that were submitted to EPA before the date of the notice and that are consistent with the January 11, 1993 regulations: the Agency stated that it intends, in issuing five-year Phase I permits, to approve such plans for 1995 and defer action on them for 1996–99. *Id.* This approach will be taken even where such plans are revised after their submittal so long as the revisions do not add units to the plans.

As stated in the July 16, 1993 notice, however, the Agency does not intend to give one-year approval for substitution plans or reduced utilization plans with compensating units that are submitted, or revised to add units, on or after July 16, 1993. The Agency notes that where such new or revised plans are submitted before issuance of Phase I permits for the units involved, the revisions must undergo a completeness review under § 72.61. The Agency's six-month period for acting on a permit addressing the revisions will run from the date that they are received by EPA, provided that the revisions are determined, or deemed, to be complete under § 72.61(a). In those cases where the Agency issues such permit before completion of the instant rulemaking, the Agency intends to defer action for 1995–99 on the substitution plans and reduced utilization plans with compensating units. *Id.* Similarly,

where substitution plans or reduced utilization plans with compensating units are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the Phase I units involved, EPA intends to defer action on those plans for 1995–99. To the extent that action on a plan is deferred, the plan will be reviewed and acted on in accordance with the regulations resulting from the instant rulemaking. *Id.*; see also 58 FR 39542–39543.

This seems appropriate because in such cases the owners and operators of the Phase I units involved will have originally developed compliance strategies and submitted compliance plans (as part of their Phase I permit applications) that did not include the newly submitted substitution or compensating units. Consequently, with regard to the newly proposed substitution or compensating units, these owners and operators will not have relied, prior to July 16, 1993, on the current regulations revised in today's proposal. Similarly, the owners and operators of the newly proposed substitution or compensating units will not have previously submitted plans based on the current regulations and, in any event, such units are not otherwise required to comply with title IV emissions limitations until 2000. Any submissions of new or revised plans on or after July 16, 1993 are made after the Agency gave notice of its intent to amend the current regulations to make them consistent with the purposes and requirements of title IV and to prevent the creation of excess, new allowances.

However, the Agency is considering a modification of this general approach in response to comment on the draft permits. Some commenters on the draft permits have suggested that the Agency approve for 1995–99 those plans that clearly would not result in the creation of excess, new allowances and thus would not be affected by the revised regulations proposed today. The Agency is considering these comments in connection with the draft permits. If the Agency were to approve plans for 1995–99 for the reasons noted, any such approval would make it clear that the Agency retained the right to reopen the permits under 40 CFR 72.85 and revise the plans for 1996–99, where necessary, if the final regulations resulting from the instant rulemaking differ from today's proposal in a way that would be inconsistent with the five-year approval of such plans.

The Agency requests comment on its approach to addressing any reliance by owners and operators on the January 11, 1993 regulations, including the one-year period for which plans submitted before July 16, 1993 will be approved. This includes comment on whether the one-year approval period is too generous or too short. For example, comment is requested on whether it is appropriate to limit the application of the revised regulations proposed here to amendments of existing substitution and reduced utilization plans, and to new plans, submitted in the future. Under such a limitation, substitution and reduced utilization plans that have already been submitted to EPA and that are in compliance with the current regulations would be approved for 1995–99.

Finally, the Agency maintains that it has the authority under section 408 of the Act and the current § 72.62(a) to defer ruling on substitution or reduced utilization plans or parts of such plans. Under section 408(c)(2), the Administrator must "review each proposed compliance plan to determine whether it satisfies the requirements of * * * title [IV]" and must "approve or disapprove such plan within six months of receipt of a complete submission." 15 U.S.C. 7651g(c)(2). In carrying out its statutory responsibilty to resolve issues concerning the consistency of a compliance plan with title IV, EPA has the administrative discretion to organize its consideration of the issues and decide some issues ahead of others. Consistent with its rulings on the initially decided issues, the Agency can approve or disapprove a compliance plan (which includes at a minimum the agreement that the designated representative will hold sufficient allowances) while reserving decision on all or a portion of particular proposed compliance options. The Agency maintains that, once the Agency has approved or disapproved a compliance plan, its consideration of the deferred issues on a compliance option is not subject to the six-month deadline.

The current § 72.62(a) allows for this type of flexibility in structuring and resolving issues concerning a proposed compliance plan. The regulation provides that the Administrator may issue a draft permit that "incorporates in whole or in part, or with changes or conditions, as appropriate, the permit application." 40 CFR 72.62(a). The Agency has exercised such authority in issuing the draft permits that, by including approved compliance plans and deferring action on some proposed compliance options for certain years, incorporate in part the permit applications. See, e.g., 58 FR 38370. As discussed above, the Agency maintains that the current regulations governing substitution and reduced utilization plans can be read to allow excess, new allowances to be created contrary to the purposes and requirements of title IV. In order to ensure that only compliance options for 1996–99 that are consistent with title IV will be approved, the Agency has issued draft permits that, inter alia, defer action on those compliance options for 1996–99 until completion of the instant rulemaking and the issuance of final rules addressing those compliance options in a manner consistent with title IV.

While deferral of action on compliance options is authorized under the current § 72.62(a), the Agency wishes to remove any possible doubt concerning such authority under the regulations. Therefore, the Agency proposes to add language making this authority more explicit, both with regard to the issuance of permits and the revision (whether through permit modification or fast-track modification) of previously issued permits.

VI. Administrative Requirements

A. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, the Administrator must judge whether a regulation is "major" and therefore subject to the requirements to conduct a Regulatory Impact Analysis. In the preamble of the January 11, 1993 regulations, the Agency determined that the regulations were "major" because their annual effect on the economy would be greater than $100 million. 58 FR 3648. A Regulatory Impact Analysis was therefore submitted, along with the regulations, to the Office of Management and Budget (OMB) for review. 58 FR 3649.

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In the preamble of the January 11, 1993 regulations, the Administrator certified that the regulations would not have such impact. *Id.*

This document proposes to modify a few sections of the January 11, 1993 regulations. These proposed modifications are not significant enough to change the regulatory or economic impacts addressed in the preamble of the January 11, 1993 regulations. Today's proposal was submitted to OMB for review prior to publication as required by E.O. 12291.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB

under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1584), and a copy may be obtained from Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street, SW., (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting and recordkeeping burden averaging 16 hours per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650. The regulation modifications contained in today's proposal will not significantly change the reporting burden that was previously estimated.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch of EPA at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Air pollution control, Compliance plans, Electric utilities, Permits, Reporting and recordkeeping requirements, and Sulfur dioxide.

Dated: November 4, 1993.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

2. Section 72.41 is amended by revising paragraphs (b)(1)(i), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(ii), (c)(4)(ii), (d)(2), and (e)(3)(iv) to read as follows:

§ 72.41 Phase I substitution plans.

* * * * *

(b)(1) * * *

(i) Any unit under paragraph (a)(2) of this section has a common owner or operator with the unit under paragraph (a)(1) of this section; and

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) The lesser of the unit's 1985 actual SO_2 emissions rate, 1985 allowable SO_2 emissions rate, 1990 actual SO_2 emissions rate, or, as of November 15, 1990, the most stringent federally enforceable or State enforceable emissions limitation for sulfur dioxide applicable to the unit for 1995–99. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lb/mmBtu in accordance with appendix B of this part. Where the most stringent emissions limitation is not the same for every year during 1995–99, the lesser of the emissions rates shall be determined, as provided in paragraph (c)(3)(i)(B) of this section, separately for each year during 1995–99 using the most stringent emissions limitation for that year. Where the federally enforceable or State enforceable emissions limitation governing the unit is not a unit-specific limitation, the Administrator will determine on a case-by-case basis the unit-specific, most stringent federally enforceable or State enforceable emissions limitation to be used in determining the lesser of the emissions rates under paragraph (c)(3)(i)(B) of this section.

(C) The product of the baseline in paragraph (c)(3)(i)(A) of this section and the emissions rate in paragraph (c)(3)(i)(B) of this section, divided by 2000 lbs/ton. Where the most stringent emissions limitation is not the same for every year during 1995–99, the product shall be calculated, as provided in the prior sentence, separately for each year during 1995–99 using the emissions rate determined for that year in paragraph (c)(3)(i)(B) of this section.

(ii)(A) The sum of the amounts in paragraph (c)(3)(i)(C) of this section for all substitution units to be governed by the plan. Except as provided in paragraph (c)(3)(ii)(B) of this section, this sum is the total number of allowances available each year under the substitution plan.

(B) Where the most stringent emission limitation is not the same for every year during 1995–99, the sum shall be calculated, as provided under paragraph (c)(3)(ii)(A) of this section, separately for each year during 1995–99 using the amounts calculated for that year in paragraph (c)(3)(i)(C) of this section. Each separate sum is the total number of allowances available for the respective year under the substitution plan.

(4) * * *

(ii) A list showing any annual distribution of the allowances in paragraph (c)(3)(ii) of this section from a substitution unit to the respective unit under paragraph (a)(1) of this section to be governed by the plan. The total number of such allowances allocated among such units each year may not exceed the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section.

* * * * *

(d) * * *

(2) In no event shall allowances be allocated, under paragraph (d)(1) of this section, for any year in excess of the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section, as adjusted by the Administrator in approving the plan.

* * * * *

(e) * * *

(3) * * *

(iv) *Change of owner or operator.* If there is a change in the owners or operators of any unit governed by an approved substitution plan and the requirement under paragraph (b)(1)(i) of this section is no longer met, then the designated representatives of the units governed by the plan shall terminate the plan as of January 1 of the calendar year during which the change was made. If the designated representatives fail to terminate the plan, the Administrator, on his own motion, shall terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

3. Section 72.43 is amended as follows:

§ 72.43 Phase I reduced utilization plans.

Option 1 for Paragraph (a)

[Unchanged]

Option 2 for Paragraphs (a) Introductory Text, (a)(1) Introductory Text [revised] and (a)(2) [Added]

(a) *Applicability.* This section shall apply to the designated representative of:

(1) Any Phase I unit, including:

* * * * *

(2) Any affected unit that:

(i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and

(ii) Meets the requirement that the unit's baseline multiplied by the lesser of the unit's 1985 actual SO_2 emissions rate or 1985 allowable SO_2 emissions rate, divided by 2000 lbs/ton, does not exceed the unit's baseline multiplied by the lesser of the unit's 1990 actual SO_2 emissions rate or, as of November 15, 1990, the most stringent federaly enforceable or State enforceable emissions limitation for sulfur dioxide for 1995–99, divided by 2000 lbs/ton.

Option 1 for Paragraph (b)(1)

[Unchanged]

Option 2 for Paragraphs (b)(1) Introductory Text, (b)(1)(ii)(A) and (b)(3)(i) [revised]

(b)(1) The designated representative of any unit under paragraph (a)(1) of this section shall include in the Acid Rain permit application for the unit a reduced utilization plan, meeting the requirements of this section, when the owners and operators of the unit plan to:

* * * * *

(ii) * * *

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

* * * * *

(3)(i) Improved unit efficiency measures shall be implemented in the unit after December 31, 1987. Such measures include supply-side measures listed in appendix A, section 2.1 of part 73 of this chapter.

* * * * *

Option 1 for Paragraphs (c)(4)(i) and (iv), (d), (f)(1)(i), (f)(4)(i), (f)(4)(ii)(B) and (f)(4)(iii) [Revised] and (c)(4)(v) [Added]

(c) * * *

(4) * * *

(i) Identification of each compensating unit or sulfur-free generator. All units in the same dispatch system that submit a plan designating one or more compensating units shall identify the same list of compensating units.

* * * * *

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization.

(v) For each compensating unit, the higher of the baseline or the highest actual annual utilization for any calendar year starting after 1987 and ending by the date that the plan is submitted.

* * * * *

(d) *Administrator's Action.* (1) In approving the reduced utilization plans (including conditional approval), the Administrator will provide that the plan will be in effect:

(i) With regard to any portion of the plan that relies on sulfur-free generation or energy conservation or improved unit efficiency measures, for the calendar years in Phase I that are specified in the plan or until the calendar year for which a termination of the plan takes effect; and

(ii) With regard to any portion of the plan that designates any compensating units, for those calendar years included under paragraph (d)(1)(i) of this section for which the Administrator determines that the requirements of §§ 72.91(c)(1)(ix) and (3)(v) are met and for compensating units for which the Administrator determines that the requirements of § 72.91(c)(5)(v) are met; except to the extent that the Administrator determines that designation of a compensating unit is inconsistent with the purposes of title IV of the Act.

(2) If the Administrator approves the reduced utilization plan, he or she will allocate allowances, as provided in the approved plan, to the Allowance Tracking System accounts for any designated compensating unit upon issuance of an Acid Rain permit containing the plan, except that, if the plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan. The designated representative of any compensating unit shall not transfer the allowances allocated for any year under paragraph (d)(2) of this section unless and until the Administrator determines under paragraph (d)(3) of this section that the plan is in effect for that unit and for that year.

(3) After the end of each calendar year for which allowances are allocated under paragraph (d)(2) of this section, the Administrator will determine whether, and for which compensating units, the reduced utilization plan is in effect in accordance with paragraph (d)(1) of this section. For each compensating unit, if the Administrator determines that no plan designating such unit as a compensating unit for any Phase I unit is in effect for the year, he or she will deduct from the compensating unit's Allowance Tracking System account the allowances allocated to the compensating unit for the year under paragraph (d)(2) of this section.

* * * * *

(f) * * *

(1) * * *

(i) Any compensating unit designated under an approved reduced utilization plan shall become a Phase I unit for each calendar year for which the plan is in effect in accordance with paragraph (d)(1) of this section, except that such unit shall not become subject to the Acid Rain emissions limitations for nitrogen oxides in Phase I under section 407 of the Act and the regulations implementing section 407 of the Act.

* * * * *

(4) *Termination.* (i) No reduced utilization plan that designates a compensating unit that serves as a control unit under a Phase I extension plan shall be terminated, and no such unit shall be de-designated as a compensating unit, before the end of Phase I.

(ii) * * *

(B) In the notification to terminate, the designated representative of any compensating unit governed by the plan shall state that he or she surrenders for deduction from the unit's Allowance Tracking System account the allowances allocated under paragraph (d)(2) of this section to each compensating unit for the calendar years for which the plan is to be terminated.

(iii) If the requirements of paragraph (f)(3)(ii) are met and upon revision of the permit to terminate the reduced utilization plan, the Administrator will deduct the allowances specified in paragraph (f)(3)(ii)(B) of this section. No reduced utilization plan shall be terminated, and no unit shall be de-designated as a Phase I unit under paragraph (f)(4)(ii) of this section, unless such deduction is made.

Option 2 for Paragraphs (c) (4)(i), (ii) and (iv) [Revised]

(c) * * *

(4) * * *

(i) Identification of each compensating unit or sulfur-free generator.

(ii) For each compensating unit.

(A) The compensating unit's baseline multiplied by the lesser of the compensating unit's 1985 actual SO_2 emissions rate or 1985 allowable SO_2 emissions rate, divided by 2000 lbs/ton.

(B) The compensating unit's baseline multiplied by the lesser of the compensating unit's 1990 actual SO_2 emissions rate or, as of November 15, 1990, the most stringent federally enforceable or State enforceable emissions limitation for sulfur dioxide for 1995–99, divided by 2000 lbs/ton.

(C) The allowance allocation calculated as the amount under paragraph (c)(4)(ii)(A) of this section. If the compensating unit is a new unit, it shall be deemed to have a baseline of zero and shall be allocated no allowances.

* * * * *

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization.

* * * * *

4. Section 72.62 is amended by revising paragraph (a) to read as follows:

§ 72.62 Draft permit.

(a) After the Administrator receives a complete Acid Rain permit application and any supplemental information, the Administrator will issue a draft permit that incorporates in whole, in part, or with changes or conditions as appropriate, the permit application or deny the source a draft permit. In issuing such a draft permit, the Administrator may defer ruling on any compliance option for any year.

* * * * *

5. Section 72.82 is amended by revising paragraph (d) to read as follows:

§ 72.82 Fast-track modifications.

* * * * *

(d) Within 30 days of the close of the public comment period, the permitting authority shall consider the fast-track modification and the comment received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. In addressing the fast-track modification, the permitting authority may defer ruling on any compliance option for any year. A fast-track modification shall be effective immediately upon issuance, in accordance with § 70.7(a)(1)(v) of this chapter as applied to significant permit modifications.

6. Section 72.91 is amended by revising the section heading and paragraphs (a)(3)(iii) introductory text (formula is unchanged), (a)(3)(iv), (a)(4), (a)(5), (a)(6), (b)(2), and adding paragraphs (a)(7) and (c) to read as follows:

Option 1 for Section Heading

§ 72.91 Phase I unit adjusted utilization and determination of compensating units.

Option 2 for Section Heading

§ 72.91 Phase I unit adjusted utilization. [Unchanged]

(a) * * *

(3) * * *

(iii) "Shifts to designated sulfur-free generators" is the reduction in utilization (in mmBtu), for the calendar year, that is accounted for by all sulfur-free generators designated under the reduced utilization plan. This term equals the sum, for all such generators, of the "shift to sulfur-free generator." "Shift to sulfur-free generator" shall equal the amount, to the extent documented under paragraph (a)(6) of this section, calculated for each generator using the following formula:

* * * * *

(iv) "Shifts to designated compensating units" is the reduction in utilization (in mmBtu) that is accounted for by increased generation at compensating units for which the reduced utilization plan is in effect for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of the unit reducing utilization multiplied by the sum, for all such compensating units, of the "shift to compensating unit" for each compensating unit. "Shift to compensating unit" shall equal the amount of compensating generation (in Kwh), to the extent documented under paragraph (a)(6) of this section, that the designated representatives of the unit reducing utilization and the compensating unit have certified (in their respective annual compliance certification reports) as the amount that will be converted to mmBtus and used, in accordance with paragraph (a)(4) of this section, in calculating the adjusted utilization for the compensating unit.

(4) "Compensating generation provided to other units" is the total amount of utilization (in mmBtu) necessary to provide the generation (if any) that was shifted to the unit as a designated compensating unit under any other reduced utilization plans that were in effect for the unit and for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of such unit multiplied by the sum of each "shift to compensating unit" that is attributed to the unit in the annual compliance certification reports submitted by the Phase I units under such other plans and that is certified under paragraph (a)(3)(iv) of this section.

(5) Notwithstanding paragraphs (a)(3)(i), (ii), and (iii) of this section, where two or more Phase I units include in "plan reductions", in their annual compliance certification reports for the calendar year, expected kilowatt hour savings or improvement in heat rate from the same specific conservation or improved unit efficiency measures or increased utilization of the same sulfur-free generator:

(i) The designated representatives of all such units shall submit with their annual reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings, improvement in heat rate, or increased utilization among such units.

(ii) Each designated representative shall include in the annual report only the respective unit's share of the total savings, improvement in heat rate, or increased utilization, in accordance with the certification under paragraph (a)(5)(i) of this section.

(6)(i) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section the increase in utilization of any sulfur-free generator, the designated representative of the unit shall submit, with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to sulfur-free generator" attributed to the sulfur-free generator in the annual report was actually acquired by the unit's dispatch system from the sulfur-free generator.

(ii) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section utilization of any compensating unit, the designated representative of the unit shall submit with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to compensating unit" attributed to the compensating unit in the annual report was actually acquired by the unit's dispatch system from the compensating unit.

(7) Notwithstanding paragraphs (a)(3)(i), (ii), (iii), and (iv), (a)(4), and (a)(5) of this section, (plan reductions—compensating generation provided to other units) shall not exceed (baseline—actual utilization).

(b) * * *

(2) Notwithstanding paragraph (b)(1)(i) of this section, where two or more Phase I units include in the confirmation report the verified kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures:

(i) The designated representatives of all such units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or reduction in heat rate among such units.

(ii) Each designated representative shall include in the confirmation report only the respective unit's share of the total savings or reduction in heat rate in accordance with the certification under paragraph (b)(2)(i) of this section.

* * * * *

Option 1 for Paragraph (c)

(c) Annual Compliance Certification Report: compensating units. The designated representative for each Phase I unit that designates any compensating units for the calendar year under an approved reduced utilization plan shall include the following elements in the annual compliance certification report for the calendar year; provided that the reporting requirement in this paragraph (c) shall not apply to the annual compliance certification report submitted for 1995 by the designated representative of a Phase I unit whose plan, as approved, is not governed by § 72.43(d)(1)(ii) for 1995.

(1) Potential reduced generation of the unit, calculated as follows:

potential reduced generation =
{[(baseline × (1 + percentage change in dispatch system sales))—actual utilization)] heat rate)—reduction from energy conservation—(reduction from improved unit efficiency ÷ heat rate)—shifts to designated sulfur-free generators + compensating generation provided to other units

where:

(i) "Baseline" is as defined in § 72.2.

(ii) "Percentage change in dispatch system sales" is as calculated under paragraph (a)(3)(iii)(C) of this section; provided that if the result of the formula is greater than or equal to zero, then the percentage change in dispatch system sales shall be treated as zero only for purposes of paragraph (c)(1) of this section.

(iii) "Actual utilization" is the figure calculated under paragraph (a)(2) of this section.

(iv) "Heat rate" is the actual annual average heat rate (Btu/Kwh × 10^{-6}) of the unit (determined in accordance with part 75 of this chapter) before the employment of any improved unit efficiency measures under an approved plan.

(v) "Reduction from energy conservation" is as calculated under paragraphs (a)(3)(i) and (5) of this section, without converting to mmBtus. This figure shall not be adjusted under paragraph (b) of this section.

(vi) "Reduction from improved unit efficiency" is as calculated under paragraphs (a)(3)(ii) and (5) of this section. This figure shall not be adjusted under paragraph (b) of this section.

(vii) "Shifts to designated sulfur-free generators" is as calculated under paragraphs (a)(3)(iii) and (5) of this section, without converting to mmBtus.

(viii) "Compensating generation provided to other units" is as calculated under paragraph (a)(4) of this section, without converting to mmBtus.

(ix) Where a reduced utilization plan designates any compensating units for a Phase I unit, the plan will be in effect for the calendar year only if the Phase I unit's potential reduced generation is greater than zero.

(2) A list of all sulfur-free generators from which the unit's dispatch system actually acquired electrical energy during the calendar year and that are not designated in a reduced utilization plan that is in effect for the calendar year for any unit under paragraph (c)(3)(i) of this section. The list shall include the "potential shift to sulfur-free generator" calculated for each sulfur-free generator as the lesser of:

(i) The amount of electrical energy actually acquired during the calendar year from the sulfur-free generator by the unit's dispatch system, which amount shall be supported by documentation submitted with the annual compliance certification report even if the amount under paragraph (c)(2)(ii) of this section is the lesser amount; or

(ii) Actual sulfur-free generation—[average 1985–87 sulfur-free generation × (1 + percentage change in dispatch system sales)]

where:

(A) "Actual sulfur-free generation" is the actual annual generation (in Kwh) of the sulfur-free generator for the calendar year.

(B) "Average 1985–87 sulfur-free generation" is the sum of annual generation (in Kwh) for 1985, 1986, and 1987 for the sulfur-free generator, divided by three.

(C) "Percentage change in dispatch system sales" is as calculated under paragraph (a)(3)(iii)(C) of this section; provided that if the result is less than or equal to zero, then percentage change in dispatch system sales shall be treated as zero only for purposes of paragraph (c)(2) of this section.

(D) If the result under paragraph (c)(2)(ii) of this section is less than or equal to zero, then that result shall be treated as zero.

(iii) Notwithstanding paragraph (c)(2)(ii) of this section, if two or more dispatch systems, with any Phase I units governed by paragraph (c) of this section, acquired electrical energy during the calendar year from the same sulfur-free generator, the designated representative of all such units may apportion the amount under paragraph (c)(2)(ii) of this section and use the respective dispatch system's share as the amount under paragraph (c)(2)(ii) of this section; provided that:

(A) The designated representatives shall submit with their annual reports a certification signed by such designated representatives. The certification shall apportion the amount under paragraph (c)(2)(ii) of this section among such dispatch systems.

(B) Each designated representative shall use, as the amount under paragraph (c)(2)(ii) of this section, only the respective dispatch system's share of the amount, in accordance with the certification.

(3) Dispatch system potential reduced generation, calculated as follows:

$$\text{Dispatch system potential reduced generation} = \sum_{i=1}^{u} \text{potential reduced generation}_i - \sum_{i=1}^{s} \text{potential shift to sulfur-free generator}_i$$

where:

(i) u = all units in the dispatch system that:

(A) Are listed in Table 1 of § 73.10(a) of this chapter; or

(B) Are substitution units for the calendar year under approved substitution plans.

(ii) "Potential reduced generation$_i$" is as calculated under paragraph (c)(1) of this section separately for each unit under paragraph (c)(3)(i) of this section. The designated representative of each such unit shall certify the figure for potential reduced generation for the respective unit.

(iii) s=all sulfur-free generators listed under paragraph (c)(2) of this section.

(iv) "Potential shift to sulfur-free generator$_i$" is the figure calculated for each sulfur-free generator under paragraph (c)(2) of this section.

(v) If the result of the formula for "dispatch system potential reduced generation" is less than or equal to zero, then "dispatch system potential reduced generation" shall be deemed to be zero. Any reduced utilization plan that

designates any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only if dispatch system potential reduced generation is greater than zero.

(4) The list of all compensating units designated by any Phase I unit in the unit's dispatch system under a reduced utilization plan approved for the calendar year. The list shall include the potential compensating generation of each compensating unit, calculated for each compensating unit as follows:

Potential compensating generation=highest generation − actual generation + compensating generation provided to units in dispatch system

where:

(i) "Highest generation" is the figure under § 72.43(c)(4)(v) for the compensating unit, as adjusted by the Administrator in approving the reduced utilization plan.

(ii) "Actual generation" is the actual annual generation (in Kwh) for the calendar year for the compensating unit.

(iii) "Compensating generation provided to units in dispatch system" is the sum of each "shift to compensating unit", as calculated under paragraph (a)(3)(iv) of this section, that is attributed to the compensating unit in the annual compliance certification report submitted by the Phase I unit or any other unit in the Phase I unit's dispatch system.

(5) Specification of those compensating units on the list in paragraph (c)(4) of this section whose potential compensating generation is necessary to cover the dispatch system's potential reduced generation. A compensating unit's potential compensating generation shall be deemed necessary only if the following requirement is met:

$$(\text{Dispatch system potential reduced generation} - \sum_{i=1}^{r-1} \text{potential compensating generation}_i) > 0$$

where:

(i) r=the rank of the compensating unit that the designated representative is considering for specification under paragraph (c)(5) of this section.

(ii) i=the rank of a compensating unit on the list under paragraph (c)(4) of this section.

(iii) "Dispatch system potential reduced utilization" is the figure calculated under paragraph (c)(3) of this section.

(iv) "Potential compensating generation_i" is the figure calculated under paragraph (c)(4) of this section for a compensating unit with rank i.

(v) Any reduced utilization plan that designated any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only for compensating units whose potential compensating generation is deemed necessary under paragraph (c)(5) of this section and from which the acquisition of electrical energy is documented under paragraph (a)(6) of this section.

(6) If the unit is a designated compensating unit for any Phase I units under any other reduced utilization plans, the identification of such Phase I units whose plans are in effect for the unit and for the calendar year.

Option 2 No Paragraph (c) To Be Added

PART 73—[AMENDED]

7. The authority citation for part 73 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

8. Section 73.52 is amended by revising paragraph (a)(3) to read as follows:

§ 73.52 EPA recordation.

(a) * * *

Option 1 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.43(d)(2) or § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

Option 2 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

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Part VI

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls (PCBs); Reclassification of PCB and PCB Contaminated Transformers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS-66015; FRL-3948-8]

RIN 2070-AC39

Polychlorinated Biphenyls (PCBs); Reclassification of PCB and PCB-Contaminated Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirements that govern the reclassification of transformers from a PCB (≧500 ppm PCBs) or a PCB-Contaminated (≧50 – <500 ppm PCBs) status to a lower regulatory status as a PCB-Contaminated or a non-PCB (<50 ppm PCBs) Transformer. This proposed rule would change the methods used to reclassify transformers by: Eliminating the 50° Centigrade (C) requirement for all PCB and PCB-Contaminated Transformers; eliminating the "in-service use" requirement for all transformers with a PCB concentration of <1,000 ppm PCB; modifying the 90-day requirement for post-retrofill testing of PCB Transformers with a PCB concentration <1,000 ppm PCB; eliminating the post-retrofill testing requirement for PCB-Contaminated Transformers after retrofill; and specifying the procedures that must be followed during a retrofill for these units. This proposed rule would amend the procedure for reclassification of certain transformers and reduce the regulatory and economic burden on those in the regulated community who wish to take advantage of the reclassification procedure.

DATES: Written comments must be received on or before January 3, 1994. If persons request time for oral comment by December 3, 1993, EPA will hold an informal hearing in Washington, DC on or about January 18, 1994. If a hearing is requested, the exact time and location of the hearing will be published in the **Federal Register** at least 30 days before the hearing.

ADDRESSES: Three copies of comments identified with the docket number OPPTS-66015 must be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, FAX: (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. In the **Federal Register** of May 31, 1979 (44 FR 31514), EPA permitted routine servicing but prohibited rebuilding of PCB Transformers (40 CFR 761.31(a)). Routine servicing results in minimal exposures to PCBs and allows the use of most existing transformers to continue through their useful lifetimes. Rebuilding of PCB-Contaminated Transformers was allowed based on the lower concentration and corresponding lower risks to human health and the environment. Therefore, owners of PCB Transformers could only rebuild those units if they were reclassified to <500 ppm PCBs. The guidelines for reclassification of transformers are currently found at 40 CFR 761.30(a)(2)(v).

I. Background

EPA published a final rule in the **Federal Register** of May 31, 1979 (44 FR 31514) which, among other things, authorized the rebuilding of PCB-Contaminated Transformers with concentrations <500 ppm. Owners of PCB Transformers who wished to rebuild these units were required to reclassify them to PCB-Contaminated status prior to rebuilding (40 CFR 761.31(a)). Reclassification is the process by which a high PCB concentration in a transformer can be converted to a lower PCB concentration. To reclassify a PCB Transformer, it must be drained, refilled with non-PCB dielectric fluid, placed in service (i.e., operated) for at least 3 months, and finally, tested to determine if the PCB concentration has been reduced. If the transformer was tested and determined to be <500 ppm PCBs, it could then be rebuilt rather than replaced. In 40 CFR 761.30(a)(2)(v), as published in the **Federal Register** of August 25, 1982 (47 FR 37342), EPA established more specific requirements for the reclassification of PCB Transformers. The rule currently states:

> A PCB Transformer may be converted to PCB-Contaminated Electric Equipment or to a non-PCB Transformer and, a transformer that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Director, Exposure Evaluation Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

Also in this rule, EPA clarified the definition of "in-service use" for transformers by specifying that a minimum dielectric fluid temperature of 50° C must be reached. This temperature had been shown experimentally to be associated with a condition of light electrical loading, and to cause a release of PCBs from the internal components of the transformer into the dielectric fluid, i.e., leachback.

Alternate methods, as authorized at 40 CFR 761.30(a)(2)(v), involve simulating loaded conditions of in-service use. Based on the vast number of requests received for approval of alternate methods, it has been EPA's experience that these requests for an alternate method are typically necessary when a transformer has failed, is being serviced and is therefore not on line, or for some other reason cannot be operated under normal loaded conditions. Requests for reclassifying transformers using an alternate method have typically involved simulating in-service use or requesting that the temperature requirement of 50° C (interpreted by EPA to mean at whatever frequency the transformer normally reaches 50° C during operation, i.e., once per week, once per month, etc.) for the 90-day time period be waived.

Over the last few years, EPA has received information that questions the correlation between both the 90-day time period for testing after retrofill and the 50° C temperature requirements of reclassification, and the leachback of dielectric fluid from the internal components of a transformer. Additionally, information submitted to EPA indicates that many transformers, even under normal operating conditions, never reach 50° C because

the technical limitations of the equipment. Transformers may also fail to reach 50° C due to equipment failure, low ambient temperatures, or transformer loading restrictions (Refs. 3, 6, 7, 11, 12, 13, and 14).

EPA believes there are drawbacks associated with attempting to comply with the 50° C temperature requirement by simulating in-service use of the transformers. These include safety risks to maintenance personnel, fire hazards associated with energizing or insulating equipment which is not designed to withstand heavy loads or increased temperatures, and the economic and resource commitment that must be borne by the transformer owners (Ref. 4). EPA solicits comments on the validity and accuracy of these drawbacks and seeks data concerning whether to drop the 50° C temperature requirement.

The utility industry has also suggested that the 50° C requirement has no bearing on the degree of the leachback of PCBs from the internal components of a transformer. Further, EPA has been criticized for relying on a single study which correlates 50° C with "light electric loading," and thus failing to justify the selection of the 50° C temperature requirement as a criterion for reclassification (Ref. 1 and 2).

An industry-sponsored study was conducted to assess the various regulatory criteria for the reclassification of transformers. Data collected during the study were analyzed and summarized in a report (Ref. 3). The report indicates that there is no statistical correlation between the 50° C temperature or the 90–day time requirements in accelerating the leachback of PCBs from the internal components of a wide variety of PCB and PCB-Contaminated Transformers. EPA later conducted independent statistical analyses of this data and reached the same conclusions (Ref. 4). The variables addressed by this report included an assessment of the following characteristics:

1. Transformer manufacturer.
2. Transformer KVA rating.
3. Transformer age (in years).
4. Pre-retrofill PCB concentration.
5. Whether the transformer was flushed.
6. Whether the transformer was energized (i.e., whether voltage was applied to the primary side; minimally operational).
7. Whether the transformer was loaded (i.e., fully operational).
8. Whether the transformer was heated to 50° Centigrade.
9. Post-retrofill PCB concentration.
10. Number of days from "Pre" test to "Post" test. ("Pre-test" refers to the PCB concentration measured prior to the retrofill of the transformer. "Post-test" refers to the PCB concentration measured after the retrofilling procedure.)

Study data were collected from more than 380 transformers that were retrofilled by several dozen utility companies. EPA's assessment of the data, however, focused only on the 263 transformers for which the submitted data were deemed complete. The data revealed that of the 175 retrofilled transformers with pre-retrofill PCB concentrations of <500 ppm and not energized to reach 50° C, 99.43 percent were reduced to <50 ppm PCBs. The concentrations were tested both immediately after and 90 days following the retrofill. Only one transformer (0.57 percent of the units) was found to have an asymptotic (leveling off) PCB concentration >50 ppm (that concentration was 53 ppm). Further examination of 88 retrofilled, unenergized transformers, with pre-retrofill PCB concentrations ≧500 ppm, but <1,000 ppm, show that only 8 (9.0 percent) had asymptotic post-retrofill concentrations >50 ppm. The mean asymptotic post-retrofill concentration for these eight transformers was 64.4 ppm. EPA's assessment of the relevant data from actual transformers indicates that there is no correlation or direct relationship between either elevated temperatures of dielectric fluid or a 90–day in-service time period prior to testing, and an increase in the leaching of PCBs from the inner core and coil of the transformer into the newly retrofilled fluid (Ref. 4).

The conclusion which these data strongly support is that retrofilled, unenergized transformers with pre-retrofill PCB concentrations <500 ppm very rarely have PCB concentrations >50 ppm after retrofill, therefore, EPA is proposing to eliminate the post-retrofill testing requirement for these units. In addition, EPA is proposing to eliminate the 50° C and modify the 90–day time requirements for testing PCB Transformers containing <1,000 ppm PCBs.

II. Proposed Changes to the Reclassification Provision

Based upon the statistical data which suggest there is no strong evidence to support a correlation between temperature and the leachback of PCBs in a transformer, EPA is requesting comments on its proposal to modify the current regulations. The primary changes are as follows:

1. Eliminate the 50° C temperature requirement for all transformers undergoing reclassification.
2. Eliminate the 90–day "in-service use" requirement for all transformers with a PCB concentration <1,000 ppm.
3. Allow PCB Transformers with a PCB concentration <1,000 ppm to be initially tested after a 21–day time period rather than after 90 days, if a properly conducted retrofill was conducted. Then, if the results of the post-retrofill test are <25 ppm PCB, the transformer may be reclassified to non-PCB status. If the results are ≧25 – <500 ppm PCB, it may be reclassified to PCB-Contaminated status.
4. Allow immediate reclassification rather than a 90–day post-retrofill test of PCB-Contaminated Transformers to non-PCB status, after a properly conducted retrofill. An owner or operator would be able to assume, for purposes of compliance with the proposed reclassification requirements, that a properly reclassified transformer is regulated in accordance with its reclassified status. However, because of the potential for the concentration to "creep" upward, or due to errors in the reclassification process, the transformer owner would remain responsible and liable for any violation incurred if the PCB concentration of a transformer, even after a properly conducted retrofill, is tested and found to exceed the designated PCB-Contaminated or non-PCB levels.

The owner would be required to keep records, as proposed at § 761.180(a)(3), to substantiate that quality controlled and assured laboratory analyses were employed for all of the PCB concentration measurements, and that the proper reclassification procedures were followed. EPA recognizes gas chromatography as an accurate method for determining the concentration and nature of PCBs in oil (ASTM D 923–86 and 923–89). Accurate records are necessary in the event of an EPA inspection and/or subsequent PCB violation.

Owners of mineral-oil transformers who wish to take advantage of the reclassification provisions in this proposed rule would be required to test their units to determine the actual PCB concentration prior to retrofill. They could not assume that prior to retrofill the concentration is between 50 and 499 ppm. Based on the actual pre-retrofill PCB concentration in the dielectric fluid, EPA proposes, that for the purpose of identifying the procedures to be used in reclassifying transformers, the transformers be categorized into three groups by PCB concentrations that are: (1) ≧50 ppm but <500 ppm, (2)

≧500 but <1,000 ppm, and (3) ≧1,000 ppm PCB. However, the standard PCB concentration categories (<50 ppm for non-PCB, 50 ppm to <500 ppm for PCB-Contaminated, and ≧500 ppm for PCB) would still apply for designating the PCB reclassification status and for complying with all of the PCB regulatory provisions. Deviations from the requirements of this proposed rule would still require a waiver from EPA before undertaking such activity.

The following chart of the proposed modifications to the regulatory requirements for reclassification is provided to assist the reader in understanding this rule. It is not a substitute for the rule itself.

RECLASSIFICATION RULE CHART

Original concentrations	Proposed modification
<500 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill No testing required.
500 – <1000 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill Test after 21 days. If <25 ppm, reclassify as non-PCB. If ≧25 – <500 ppm, reclassify as PCB-Contaminated. If ≧ 500 ppm, retest after a total of 90 days.
≧1000 PPM PCB.	Remove 50° C In-service loading is still required Drain, flush (optional) and fill Testing still required after 90 days to determine PCB status.

III. Rationale Of Proposed Modifications

A. 50° Centigrade Requirement

This rule proposes to eliminate the 50° C temperature requirement for all reclassification of PCB and PCB-Contaminated Transformers. The original intent of the 50° C requirement was to achieve a temperature that would allow the natural convection forces of the dielectric fluid to circulate within the transformer (47 FR 37354, August 25, 1982). It was believed that this oil movement promoted leaching of PCBs from the core and coil and other internal parts of the transformer into the dielectric fluid and, thus, accelerated the process of reaching PCB equilibrium. Based on an analysis of the data indicating that temperature has little bearing on the leachback of PCBs into the dielectric fluid, as discussed under Unit I. of this preamble, EPA is soliciting comments on whether to drop the 50° C temperature requirement for all PCB and PCB-Contaminated Transformers.

B. In-Service Use Requirement

Using the same rationale as for eliminating the 50° C requirement, EPA also proposes to eliminate the "in-service use" requirement for transformers contaminated with <1,000 ppm PCB. But, any transformer with a 1,000 ppm or greater PCB concentration, such as most substation power transformers, must undergo a minimum 90–day in-service use period and post-retrofill testing. The difference between small, distribution transformers and the large, substation power transformers is that distribution transformers are usually PCB-Contaminated, are more peripherally located throughout a region than the substation power systems, and are difficult and dangerous to sample after having been reconnected. Most pole-top transformers fall into this "distribution transformer" category, as do many other equivalent size power transformers such as pad-mounted transformers which are usually located on a concrete foundation. The larger power transformers contain greater volumes and higher concentrations of PCBs and, therefore, pose a potentially greater risk to the environment and human health. The in-service use requirement on the larger transformers poses less of a burden for those who operate them. Since they are essential for supplying major sources of power, most are in service on a regular basis. Furthermore, due to the design of the equipment and their locations, they can be conveniently and safely sampled while in active service.

Although there is some overlap between large, substation power transformers and typically smaller, distribution transformers, further support for distinguishing between the two categories is found in an American National Standards Institute (ANSI) publication C57 (Sections C57.12.20 through C57.12.26). ANSI indicates that distribution transformers with less than a 500 Kilovolt-ampere (KVA) rating are not required to have sampling valves. Power transformers, however, will almost always have sampling valves to allow for easy sampling of the transformer fluid (Ref. 5). Sampling valves are most typically found on transformers with a KVA rating of 500 or greater.

In a letter from Baltimore Gas and Electric (BG&E) to EPA (Ref. 12) BG&E states that distribution transformers with a KVA rating of 500 or less are not required to have sampling valves, and that sampling these units outside of the shop environment is precarious. BG&E argues that the 500 KVA benchmark for distribution transformers is a logical breakpoint for not requiring post retrofill testing, i.e., distribution transformers 500 KVA and below need not be tested and those greater than 500 KVA should be tested. EPA is soliciting comments on the appropriateness of factoring in the KVA rating of particular transformers insofar as it relates to the type of reclassification/sampling schedule a transformer owner may opt for, or whether the pre-retrofill concentration of the transformer, regardless of KVA rating, should be the only criteria. In addition, if KVA rating should be factored in, is there a corresponding PCB concentration that should be associated with that KVA rating, i.e., should testing be required of a transformer with ≧500 KVA and ≧1000 ppm PCB or should testing be required of only those transformers ≧500 KVA regardless of PCB concentration. EPA's analysis of the data that were submitted for review looked exclusively at the PCB concentration of the transformers and did not factor the KVA rating into the reclassification equation. EPA, therefore, solicits data to support the relevance of including KVA rating into the reclassification equation.

C. Post Retrofill 90–Day Testing Requirement

1. *Elimination of post-retrofill testing requirement for transformers <500 ppm PCBs.* This rule proposes to eliminate the 90–day, post-retrofill test requirement for transformers containing pre-retrofill concentrations of <500 ppm PCBs, thereby allowing for immediate reclassification of PCB-Contaminated Transformers to non-PCB status after a properly conducted retrofill. Based on the data and rationale provided in Unit III.C.1 of this preamble, routine testing of retrofilled PCB-Contaminated Transformers may not be necessary to verify that PCB levels are <50 ppm. EPA is soliciting comments on whether PCB-Contaminated Transformers with a PCB concentration of <500 ppm should be immediately reclassified to non-PCB status (i.e., <50 ppm) after a properly conducted retrofill procedure as proposed in § 761.30(a)(2)(v). A "properly conducted retrofill" would mean a procedure where: (a) The PCB dielectric fluid is drained from the transformer and stored and disposed of pursuant to the storage and disposal requirements of 40 CFR 761.65 and 761.60 and the manifest requirements at § 761.207 to § 761.209; (b) the transformer is flushed with no less than

10 percent of the transformer's volume (as reflected on the original nameplate) with a dielectric fluid that contains <2 ppm PCBs or with solvent in which the solubility of PCBs is 5 percent or more by weight (the flush material must be stored and disposed of in accordance with § 761.65 and § 761.60 and the manifest requirements of § 761.207 to § 761.209 must be adhered to); and (c) the transformer is refilled with <2 ppm PCB dielectric fluid. If no nameplate exists that provides volume information, the transformer height, width and depth would be measured to estimate the volume.

2. *Transformers with a PCB concentration ≧500 ppm but <1,000 ppm.* EPA is soliciting comment on its proposal to modify the 90–day requirement of § 761.30(a)(2)(v) for testing PCB Transformers with ≧500 ppm but <1,000 ppm PCBs. Transformers with PCB concentrations ≧1,000 ppm PCBs will continue to be subject to the requirement to test the fluid 90 days after the retrofill.

To take advantage of the shortened post-retrofill testing requirement, i.e., 21 days vs. 90 days, for transformers between ≧500 and >1,000 ppm, the transformer would be required to undergo a properly conducted retrofill.

A statistical review conducted by EPA of the data submitted for 380 transformers of varying concentrations indicates that a properly conducted retrofill process removes a very high percentage of the PCBs (Ref. 4). A comparison of PCB concentration levels, at various points of time after a retrofill, indicates that leachback occurs at the highest rate over the first few days and becomes statistically insignificant over time. Of all of the transformers tested, the vast majority which showed asymptotic (leveling off) PCB levels above 10 percent of the original PCB concentration had relatively low initial PCB concentrations (i.e., <200 ppm PCB). This means that a transformer with a pre-retrofill PCB concentration of 200 ppm may retain up to 25 percent of the original PCBs and still fall below the 50 ppm criterion for reclassification as a non-PCB Transformer. Over 80 percent of the transformers which were tested 90 days after such a retrofill, retained less than 8 percent of the original PCB concentration.

A post-retrofill measurement of the PCB level of the dielectric fluid would be required for reclassification to non-PCB status (i.e., <50 ppm) for all transformers with a PCB concentration ≧500 ppm. If the original PCB concentration of a transformer is ≧500 ppm but <1,000 ppm PCB, the post-retrofill measurement would be required to be taken at least 21 days after the last retrofill. If 21 days after retrofill the PCB concentration in the transformer is <25 ppm, the transformer would be immediately reclassified to non-PCB status. The existing transformer retrofill data indicate that the asymptotic PCB concentration in properly retrofilled transformers has a low statistical probability to ever increase as much as 200 percent over their tested post–21–day PCB concentration. Transformers that have a PCB concentration ≧25 ppm but <500 ppm after 21 days could be immediately reclassified to PCB-Contaminated status. If non-PCB status is still desired, retesting would be required 90 days after the initial retrofill. If the 90–day retest shows a PCB concentration of <50 ppm, the transformer would be immediately reclassified to non-PCB status. If the retest shows ≧50 – <500 ppm PCB it would be reclassified to PCB-Contaminated status.

EPA is proposing 25 ppm as the maximum concentration allowable for designation as non-PCB status after the 21–day test based on its analysis of existing industry test data. EPA solicits comment on whether this new limit is reasonable given the results of existing or new industry test data. Would setting the limit higher than 25 ppm be reasonable since there is a low statistical probability for the PCB concentration in a range above 25 ppm to exceed 50 ppm after 90 days? Alternatively, is a limit lower than 25 ppm justified? EPA also solicits comment on whether setting a limit of 25 ppm for non-PCB status would impose an unnecessary burden on retrofillers that desire non-PCB status due to the potential for test results to fall between 25 ppm and 50 ppm after the 21–day test and still be less than 50 ppm after 90 days.

If reclassification of transformers ≧500 ppm – <1000 ppm PCB is not achieved after one retrofill, EPA is proposing that 90 days elapse between each subsequent retrofill. The goal is to achieve a stable equilibrium between the PCBs within the internal components and the transformer core's dielectric fluid. Use of this approach is at the discretion of the transformer owner or operator. Notwithstanding a "properly conducted retrofill," the transformer owner or operator would remain responsible and liable for any subsequent violations associated with the reclassification of any transformer due to potential statistical deviations, laboratory calibration errors, variations in the design of the different models of transformers, etc.

3. *Transformers ≧1,000 ppm.* PCB Transformers with a PCB concentration ≧1,000 ppm must still be drained, refilled, and tested after a minimum of 90 days of in-service use, as currently specified at 40 CFR 761.30(a)(2)(v), in order to determine whether the transformer has been reclassified. However, under this proposal, the requirement to reach the 50° C temperature level would be eliminated. EPA lacks information on whether a properly conducted retrofill and/or the elimination of the post 90–day test after retrofill for transformers ≧1,000 ppm PCBs is warranted. EPA solicits comments and/or data on this issue.

The proposed modifications to the reclassification requirements of § 761.30(a)(2)(v) should eliminate the need for submission of individual waiver requests to EPA, especially for those transformers <1,000 ppm PCBs. If, however, the transformer owner wished to deviate in any way from the specifications of the modifications contained in this proposed rule (e.g., by not employing a "properly conducted retrofill" as defined in Unit III.C.1 of this preamble and as proposed at § 761.30(a)(2)(v), by failing to wait the designated amount of time prior to conducting the post-retrofill, or by failing to obtain a laboratory analysis of the post-retrofill PCB concentration, etc.), the transformer would not be reclassified and the owner could be subject to an enforcement action if the owner is not in compliance with all of the appropriate regulatory provisions.

4. *Electromagnets, switches, and voltage regulators ≧500 ppm PCBs.* Currently, the PCB regulations at § 761.30(h)(2)(v) allow for the reclassification to non-PCB or PCB-Contaminated status of those voltage regulators, switches and electromagnets that are ≧500 ppm PCBs. The regulation does not require these pieces of electrical equipment to reach 50° C but does require a minimum of 3 months of in-service use subsequent to the last servicing conducted for purposes of lowering the concentration of this equipment. In this proposed rule, EPA is soliciting comments and requesting supporting data on whether the proposed criteria in this rule for PCB and PCB-Contaminated Transformers are also appropriate or viable for these other pieces of electrical equipment. In § 761.30(h)(2)(v), as is already the case in § 761.30(a)(2)(v), EPA is proposing to change the approval authority for granting the use of alternate methods to simulate the loaded conditions of in-service use from the Assistant Administrator to the Director of the Chemical Management Division. EPA solicits comments on this proposed change in approval authority.

In addition, EPA is proposing recordkeeping requirements pursuant to § 761.180(a)(3) for this electrical equipment undergoing reclassification.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule would, in fact, mitigate the burden on industry to comply with requirements for reclassifying PCB and PCB-Contaminated Transformers. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA considers a small business to be one whose annual sales revenues are less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the **Federal Register** of November 16, 1984 (49 FR 45430).

In accordance with section 605(b) of the Act, the Administrator certifies that this proposed rule, if promulgated, would not have a significant adverse economic impact on a substantial number of small business entities. Rather, it would relieve the burden placed on business by modifying the current regulations. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. EPA has determined that the recordkeeping requirements of this proposed rule constitute a "collection of information" as defined at 44 U.S.C. 3502(c).

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act. An amended Information Collection Request document has been prepared by EPA (OMB Control numbers 2070–0112 and 2070–0061). The public recordkeeping burden for this collection of information is estimated to be 15 minutes per each reclassification project. These are records that are already generated by the respondent. This estimate is based on the need to maintain these documents on file at the facility.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM–223), Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements in this proposal.

V. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitute the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemakings are incorporated by reference as they exist in the TSCA Public Docket. A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection. The address for the TSCA Public Docket Office appears under the "ADDRESSES" section of this proposed rule.

A. Previous Rulemaking Records

(1) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." Final Rule. 44 FR 31514, (May 31, 1979).

(2) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." Final Rule. 47 FR 37342, (August 25, 1982). Docket #OPTS–62015C.

B. References

(1) "Equilibrium Study of PCBs Between Transformer Oil and Transformer Solid Materials," by Electric Power Research Institute (EPRI). (December 3, 1981).

(2) Letter from C. H. Manger of Baltimore Gas and Electric Company to Denise Keehner, USEPA/OPTS/EED, challenging the 50° C temperature criterion of reclassification. (July 27, 1987).

(3) Baltimore Gas and Electric Company. "PCB-Contaminated Distribution Transformer Reclassification Study." Baltimore Gas and Electric Company, Electric Test Department, Paul J. Frey, (August 1986).

(4) Memorandum from Dan Reinhart to Tony Baney, "Background Report on Empirical Basis for Proposed Changes to Reclassification Criteria for PCB and PCB-Contaminated Transformers", USEPA/OPPTS/OPPT/EED/DDB, undated.

(5) American National Standards Institute, Inc, The Institute of Electrical and Electronics Engineers, Inc., Distribution, Power, and Regulating Transformers. Standard numbers: (a) C57.12.20–1988, (b) C57.12.21–1980, (c) C57.12.22–1989, (d) C57.12.23–1986, (e) C57.12.24–1988, (f) C57.12.25–1981, and (g) C57.12.26–1987.

(6) Excerpt from PCB Seminar Notebook, San Diego, California, October 3–9, 1989, Sponsored by the Electrical Power Research Institute, "Reclassification: Simulating In-service Use", H. Carl Manger, Baltimore Gas and Electric.

(7) Letter from Richard E. Bell, Resource Planning Corporation to Carl Manger, Baltimore Gas and Electric. Results of analysis from transformer retrofill data. (April 24, 1989).

(8) Letter from Don Clay, Director, Office of Toxic Substances, EPA, to Tim Hardy, Kirkland and Ellis. What constitutes in-service use and simulation of in-service use for purposes of reclassifying electrical transformers containing PCBs. (June 13, 1984).

(9) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90-day testing

requirements for reclassification of 95,000 pole-top transformers. (November 29, 1990).

(10) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90–day testing requirements for reclassification of 95,000 pole-top transformers. (May 22, 1991).

(11) Memorandum from Dan Reinhart, EPA/OPTS/EED, to Joe Davia, EPA/OPTS/EED, "Examination of the Relationship Between PCB Leaching and Load Level in Transmission Transformers by Baltimore Gas and Electric Company." (May 20, 1988).

(12) Letter from H. C. Manger, Baltimore Gas and Electric Company to Jan Canterbury, EPA/OPTS/EED. Possible changes to the regulations regarding reclassification of oil-filled transformers containing PCBs. (July 24, 1991).

(13) Letter from Gil Addis, Electric Power Research Institute to Jan Canterbury, EPA/OPTS/EED. Reclassification of Mineral Oil transformers contaminated with PCB, and Askarel transformers. (November 6, 1990).

(14) Letter from Dana S. Myers, S.D. Myers Transformer Consultants to Jan Canterbury, EPA/OPTS/EED. Average operating temperature of an askarel transformer. (August 16, 1991).

(15) PCB Residues in Transformer Carcasses. EPRI EL–6237, Project 2028–19, Final Report, August 1989. Prepared by the General Electric Company, Pittsfield, Massachusetts.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, it is proposed to amend 40 CFR Chapter I, as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.30 by revising paragraphs (a)(1)(iii)(C)(*2*)(*iii*), (a)(2)(v), and (h)(2)(v), to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) * * *

(*2*) * * *

(*iii*) Once a retrofilled transformer has been installed for reclassification purposes, it must follow the procedures specified in paragraph (a)(2)(v) of this section.

* * * * *

(2) * * *

(v) A PCB Transformer that has been tested and determined to have a concentration between ≧500 and <1,000 ppm PCBs may be reclassified to a PCB-Contaminated Transformer or a non-PCB Transformer, and a PCB-Contaminated Transformer may be reclassified to a non-PCB Transformer by first performing a properly conducted retrofill. A properly conducted retrofill means the PCB dielectric fluid is drained from the transformer and stored and disposed of in accordance with § § 761.60 and 761.65 and the manifest requirements of § § 761.207 to 761.209 must be adhered to. Then the transformer must be flushed with dielectric fluid below 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the original nameplate volume. If no nameplate exists that provides volume information, the transformer must be flushed with PCB dielectric fluid containing less than 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the estimated volume of the transformer. The flushed dielectric fluid must be stored and disposed of in accordance with the requirements of § § 761.60 and 761.65 and the manifest requirements of § § 761.207 and 761.209 must be adhered to. The transformer must be refilled with dielectric fluid below 2 ppm PCB.

(A) After properly retrofilling the transformer in accordance with the requirements in paragraph (a)(2)(v) of this section, the reclassification must be conducted as follows:

(*1*) A PCB Transformer that has been tested and determined to have PCB concentrations between ≧500 and <1,000 ppm must be tested by a laboratory using an EPA-approved test method at least 21 days after the retrofill. The PCB Transformer may be reclassified to a non-PCB status if testing shows that the post-retrofill PCB concentration is <25 ppm. If the post-retrofill PCB concentration is ≧25 ppm but <500 ppm, the transformer may be reclassified to PCB-Contaminated status. If non-PCB status is still desired, the PCB Transformer must be re-tested 90 days after the initial retrofill to determine if it may be reclassified to a PCB-Contaminated status if the test shows a post retrofill concentration of ≧50 but <500 ppm, or non-PCB status, if the post retrofill concentration is <50 ppm.

(*2*) A transformer that has been tested and determined to be PCB-Contaminated (50 to <500 ppm) may be reclassified immediately to a non-PCB Transformer (<50 ppm).

(B) A PCB Transformer that has been tested and determined to be ≧1,000 ppm PCBs must be operated electrically under loaded conditions for 90 days after retrofill. After 90 days, the transformer must be analyzed for PCB concentration by a laboratory using EPA-approved testing methods. If the test shows a PCB concentration of 50–499 ppm, the transformer may be reclassified to PCB-Contaminated status. If the test shows a PCB concentration of <50 ppm, the transformer may be reclassified to non-PCB status. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of electrical operation.

(C) If the owner still wishes to reclassify the transformer but the test indicates failure to achieve the desired lower PCB status, the entire process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated.

(D) Transformer owners that are reclassifying or have reclassified their transformers must keep records pursuant to § 761.180(a)(3).

(E) If, after reclassification, the transformer is tested and found to contain a higher PCB concentration, (i.e., ≧50 ppm if non-PCB status was desired or ≧500 ppm PCB if PCB-Contaminated status was desired) the reclassification is void, and the transformer is classified based on its actual concentration. The process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated if reclassification is still desired. The transformer owner remains liable for any subsequent violation incurred if the PCB concentration of the transformer is found to exceed the designated PCB-Contaminated or non-PCB level after reclassification.

* * * * *

(h) * * *

(2) * * *

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to non-PCB status and PCB-Contaminated Electrical Equipment may be reclassified to non-PCB status by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or

less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means that the transformer is used electrically under loaded conditions. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60. In addition, records must be kept pursuant to § 761.180(a)(3).

* * * * *

3. In § 761.180 by adding paragraph (a)(3), to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(3) Transformer owners and owners of electromagnets, switches, and voltage regulators that are reclassifying or have reclassified such equipment must keep the following documentation for at least 3 years after the equipment has been disposed of:

(i) The pre-retrofill concentration of the equipment.

(ii) The retrofill and reclassification schedule and procedure.

(iii) A copy of the analysis indicating the equipment's reclassified status (i.e., final PCB concentration).

* * * * *

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Thursday
November 18, 1993

Part VII

Corporation for National and Community Service

45 CFR Part 2550

Requirements and General Provision for State Commissions and Alternative Administrative or Transitional Entities; Interim Final Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2550

Requirements and General Provision for State Commissions and Alternative Administrative or Transitional Entities

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this interim final rule concerning requirements and funding for State Commissions on National and Community Service (as well as for alternative or transitional entities which may be approved by the Corporation to perform the same functions) as authorized by the National and Community Service Act of 1990, as amended (the Act). These requirements and funding provisions are intended to help States meet unmet human, educational, and public safety needs by providing assistance to States in building service infrastructure and carrying out the statutory mandates necessary to receive funding from the Corporation. This rulemaking governs the awarding of administrative grants to States. The Corporation will soon be issuing a proposed rule for public comment on its national and community service grant programs.

DATES: The interim rule is effective November 18, 1993.

Comments must be received on or before January 3, 1994.

ADDRESSES: Comments may be mailed to the Office of General Counsel, The Corporation for National and Community Service, Room 9200, 1100 Vermont Avenue, NW., Washington, DC, 20525. Comments received may also be inspected at room 9200 between 9:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry Russell (Acting General Counsel), (202) 606–5000.

SUPPLEMENTARY INFORMATION: The Corporation's mission is to engage Americans of all ages and backgrounds in service at the community level. This service will address the Nation's human, educational, environmental, and public safety needs to achieve direct results. States will play a major role in achieving these goals. They will develop comprehensive national service plans, assemble applications for funds, and administer service programs. States will conduct these activities through nonpartisan or bipartisan State Commissions or Alternative Administrative Entities (AAEs).

$11 million will be available for fiscal year 1994 to make grants to States for the purpose of establishing and operating State Commissions on National and Community Service. These State Commissions (or AAEs approved by the Corporation, as explained in the rule below) should become functional prior to a State's applying for and receiving program funds during fiscal year 1994. Accordingly, the Corporation is publishing this rule in interim final form so as to be able to make these grants to the States as soon as possible.

This interim final rule explains the structure and duties of the State Commissions and alternative or transitional entities, and explains the conditions States must meet in order to receive administrative grants for the purpose of establishing or operating such commissions or entities. The National and Community Service Act of 1990, as amended (the Act) (42 U.S.C. 12501 et seq.), is fairly detailed on many of these issues. All provisions of the Act on these issues have been included in this interim final rule. There are a number of instances, however, where the Act is less detailed, requiring the Corporation to make certain policy decisions. Those policy decisions, along with alternative options and the rationale behind the decisions, are listed below.

Administrative Grants to States

Section 501 of the Act states that the Corporation must set aside not less than 40 percent of any administrative appropriation for the purpose of making grants to the State Commissions. For fiscal year 1994, the Corporation was appropriated $25 million for administrative costs; of this money, Congress earmarked $11 million (or 44 percent) to be set aside for grants to State Commissions.

The Act provides little guidance and few restrictions on how the Corporation can or should distribute this $11 million among the States, specifying only that any grants the Corporation makes to States for the purpose of establishing or operating State Commissions or alternative or transitional entities must be between $125,000 and $750,000, inclusive. The Act does not specify whether a State may receive more than one grant, who qualifies as a State, or how the size of any grants should be determined.

(1) *Who qualifies as a State?* The rule provides that the 50 States, the District of Columbia, and Puerto Rico are eligible as "States" to receive grants to establish and operate State Commissions. Requiring the establishment of State Commissions for Indian tribes and territories other than Puerto Rico would impose an onerous regulatory burden on them.

(2) *By what date must a State notify the Corporation of its intent to apply for an administrative grant?* States can submit requests for administrative funds at any time. However, States that have not requested authorization for a State Commission, AAE, or Transitional Entity by February 1, 1994, will not be eligible to apply under subtitles B or C of the Act for fiscal year 1994 program funds.

(3) *Can a State receive more than one administrative grant in a given year?* The rule provides that no State eligible to receive more than one administrative grant. If Congress had intended the Corporation to be able to offer more than one grant to a given State, it clearly would not have set a maximum for the amount of a single grant.

(4) *How will the administrative grant money be distributed among the eligible States?* The Corporation considered several different options for allocating funds among the States, including geographical size, population, existing service infrastructure, program development and others. The $125,000 minimum level of the grants reflects the fact there are certain fixed costs, e.g., minimum personnel costs, that every State must bear regardless of size, population, or existing infrastructure. Similarly, the $750,000 maximum ensures that no one State will receive a disproportionately large grant and encourages States to keep bureaucracy to a minimum.

After weighing the positive and negative aspects of a number of different options, the Corporation decided to distribute the grants according to a population-based formula.

There are clearly shortcomings in distributing the grants solely according to State population. A State's population is not necessarily the most accurate determinant of a State's reasonably expected costs for the State Commission; all of the additional factors mentioned above will play a role as well. Indeed, in future years, the Corporation may base the size of its administrative grants to States on some or all of these more subjective factors. In fiscal year 1994, however, it is necessary to make these grants as soon as possible, and it is impossible to do a comprehensive assessment of the precise expected costs of each State's State Commission. The Corporation therefore deemed it prudent, in the interest of expediency and equity, to adopt an objective calculus for the

distribution of these grants. State population was the only truly objective and readily available criterion with a strong, if imperfect, correlation to expected State Commission costs.

Once the decision was made to base the size of a State grant on a State's relative population, a number of further sub-options were considered. Preliminarily, the ratio of each State's population to the national population (including Puerto Rico) was multiplied by $11 million, yielding a raw distribution of grants which arranged from roughly $20,000 to $1.3 million. When the statutorily mandated maximum and minimun levels were imposed on this raw distribution, 24 States received the minimum and 3 States received the maximum amounts. The Corporation felt this was inequitable because it left States with widely different populations receiving the same size grants. For instance, Oregon and Wyoming would have received the same minimal $125,000 grant despite the fact that Oregon's population is over six times that of Wyoming. To compensate for this, the Corporation designed a series of models that used multipliers of between .4 and 1.0 to bring the raw distribution grant of each State closer to the average grant.

The multiplier of .5 was selected because it produced a population distribution which very nearly fit within the parameters of the $125,000 minimum and $750,000 maximum. Under this model, the raw grant for each State is exactly half-way between the district population distribution and the average overall grant ($11,000,000/52). Specifically the raw material for each State is determined by the following calculus:

(([$11mm * (State population/total State population)]-($11mm/.52)□*.5)+($11mm/52)

Any State that falls below the minimum or above the maximum receives the minimum or maximum grant, respectively. Because the aggregate amount that some States are below the minimum is greater than the aggregate amount that other States are above the maximum, the actual grant (as opposed to the raw grant) available to each State will be slightly less (not more than $1,100 less, however) than the above formula would indicate.

The population figures used to determine the distribution were the most recent estimates available from the United States Bureau of the Census (July 1992). The precise amount for which each State is eligible to apply are listed in the table below:

State	Allocation
Alabama	$193,438
Alaska	125,000
Arkansas	156,599
Arizona	186,995
California	750,000
Colorado	179,321
Connecticut	175,315
Delaware	125,000
District of Columbia	125,000
Florida	391,669
Georgia	248,867
Hawaii	130,357
Idaho	128,386
Illinois	352,307
Indiana	225,784
Iowa	165,374
Kansas	159,248
Kentucky	185,362
Louisiana	196,639
Maine	131,947
Maryland	209,802
Massachusetts	232,631
Michigan	284,605
Minnesota	200,730
Mississippi	161,177
Missouri	215,843
Montana	125,000
Nebraska	139,811
Nevada	133,897
New Hampshire	129,319
New Jersey	270,869
New Mexico	139,281
New York	489,830
North Carolina	250,817
North Dakota	125,000
Ohio	339,271
Oklahoma	173,853
Oregon	168,871
Pennsylvania	360,319
Puerto Rico	185,205
Rhode Island	127,072
South Carolina	182,141
South Dakota	125,000
Tennessee	212,261
Texas	480,016
Utah	144,199
Vermont	125,000
Virginia	240,940
Washington	214,635
West Virginia	144,177
Wisconsin	210,820
Wyoming	125,000

None of the above should in any way be construed as implying that a State is entitled to an administrative grant. This interim final rule lays out very specific conditions which States must meet in order to receive a grant.

State Commissions

The Corporation made a number of policy decisions with regard to State Commissions specifically and with regard to any entity to be approved by the Corporation to perform the duties of a State Commission. Except where otherwise indicated, all policy issues listed under this State Commission subsection also apply to AAEs and Transitional Entities. (Collectively, these three entities are referred to in this rule as "State entities.")

(5) *May the head of the State educational agency designate another individual from the agency to serve on the State Commission or AAE in his or her place?* Yes. The Act provides that the head of the State education agency sits on the State Commission or Alternative Administrative Entity. The rule provides that the head of each State educational agency is a voting, ex officio member of the State Commission or AAE, and he or she may designate another individual from the agency to serve in his or her place on the State Commission or AAE. The Corporation made this decision to give the States greater flexibility.

(6) *Can individuals other than those listed in the legislation be appointed as voting members of the State Commissions or AAEs?* Yes. The legislation provides a list of types of individuals who must be and may be appointed to State Commissions or AAEs. By this rulemaking, the Corporation has determined that the list is non-exhaustive, and that types of individuals other than those listed may be appointed. This policy decision is intended to remove any categorical constraints that would unnecessarily restrict a State's capacity to appoint the highest quality individuals as members of the State Commission or AAE.

(7) *Should State Commissions allow the Corporation representative to vote?* No. State Corporation representatives are not technically restricted by Federal law from voting on the State Commissions; however, the Corporation strongly believes that State decisions should remain autonomous. Accordingly, we recommended that Corporation representatives serve only in an advisory capacity.

(8) *Are State Commissions required to notify the Corporation if individuals who would otherwise have been ineligible to vote on a given issue (because of a potential conflict-of-interest) were allowed to vote in order to achieve a quorum?* Yes. The Act provides that any voting member of a State Commission or AAE who, in the one-year period before the submission of a program's application, was or still is an officer, director, trustee, full-time volunteer, or employee of that program or entity applying for assistance, must recuse him-or herself from the administration of the grant program under which the application was submitted. Such individuals also are prohibited from being involved in the development or preparation of a grant application, or any discussion or decision regarding the provision of assistance (including approved national service positions) within the grant

program to which such a program applies, including selection, oversight, evaluation, continuation, suspension, or termination. If, however, as a result of members being disqualified from voting on applications by this rule, the number of voting members of the State Commission or AAE is insufficient to establish a quorum for the purpose of making decisions regarding the provision of assistance or approved national positions to programs or organizations, then voting members otherwise excluded from participation may participate in the administration of the grant program. In the event this occurs, the State Commission must document the event and report to the Corporation within 30 days of the vote. This requirement was put in place to ensure accountability, to avoid conflict of interest, and to provide documentation in the event of a grievance procedure.

(9) *Are State Commissions required to select which programs they would like to provide funding to prior to applying to the Corporation for funding?* Yes. The Act implies that Congress intended for State Commissions to select programs (including subtitle C programs and community-based service learning programs authorized under subtitle B of the Act) they would like to fund through a competitive process prior to applying to the Corporation for funds. This rule transforms Congressional intent into Corporation policy.

Alternative Administrative Entities (AAEs)

The Act gives the Corporation wide latitude in determining the qualification criteria for AAEs. There are two opposing considerations which the Corporation took into account in establishing these criteria. On the one hand, the Corporation had to set up enough safeguards to guarantee the establishment of an informed and politically non-partisan or bipartisan body committed to the cause of service—such safeguards as those employed by the Act in the State Commission model. On the other hand, the Corporation did not want to establish overly rigorous regulatory criteria for AAEs which would restrict or prohibit the participation of States that had in good faith set out to establish an entity devoted to furthering national and community service.

(10) *Should AAEs be subject to the same qualification criteria as State Commissions?* With few exceptions, yes. In order to ensure that any approved AAEs are likely to be able to work effectively with the Corporation, the Corporation has determined that AAEs should, except for those items listed below, be required to meet the same qualification criteria as State Commissions. The following exceptions are in place to give States the flexibility to establish State entities which are designed with a similar purpose and mission as the State Commissions, but which are unable to meet one or more of the State Commission requirements:

—In certain instances, the Corporation may choose not to require an AAE to numerically demonstrate nonpartisan or bipartisan political composition. This exception allows for the participation of those States in which it is illegal to request political party affiliation information from prospective members. Nonetheless, the Corporation expects the selection process to be politically neutral.

—The Corporation may allow an AAE, given compelling circumstances, to have more than 25 voting members. This provision accommodates States with existing bodies containing more than 25 voting members as well as for certain other compelling cases.

—The Corporation may allow members of an AAE, who would otherwise be appointed by the chief executive officer of a State, to instead be appointed in another reasonable manner.

Transitional Entities

The Corporation recognizes that in certain instances States will be unable, despite their best efforts, to establish a State Commission or AAE in a timely manner. In many States, legislation is necessary to establish such an entity, and there may be other legitimate impediments to the immediate establishment of a State Commission or AAE. Absent a provision allowing for Transitional Entities, some States would be unable to participate in the first year of the national service programs In order to involve all States that wish to participate, the Transitional Entity provision was created.

Under certain circumstances, the provision allows the Corporation, for States that can demonstrate the need, to approve a State agency to function as the State Commission for a finite period of time. (Transitional Entities may under no circumstance, however, be approved subsequent to the expiration of the 27 month transitional period.) Because the Act provides little detail with regard to Transitional Entities, most of the provisions in this rule involved Corporation policy decisions, which are as follows:

(11) *Under what circumstances will the Corporation approve a Transitional Entity to be used in lieu of the State Commission or AAE?* Because of the inclusive nature of State Commissions and AAEs, the Corporation views such entities as significantly preferable to a Transitional Entity. Consequently the Corporation will only approve a Transitional Entity if a State is legitimately and demonstrably unable to establish a State Commission or AAE in time to be eligible to perform its duties. In addition, a State must a) provide the Corporation with assurances that substantive steps are being taken toward the establishment of a State Commission or AAE; and b) explain how it will perform an open and inclusive planning process in a bipartisan or nonpartisan manner.

(12) *For what period of time will the Corporation approve Transitional Entities?* Up to 12 months. The precise period of time will be determined on a case-by-case basis for each State. At the end of the first period of approval, a State may reapply to have a Transitional Entity continue to perform the duties of the State Commission or AAE; however, in order to receive an extension of any sort, the State must demonstrate, in addition to the initial requirements, that substantial progress has been made toward the establishment of a State Commission or AAE. These limitations are included to encourage the prompt establishment of a State Commission or AAE.

(13) *What funds are Transitional Entities eligible to receive?* An approved Transitional Entity may apply for and receive both administrative and program funds from the Corporation. As stated earlier, the Corporation will only grant approval of a Transitional Entity if a State cannot establish a State Commission or AAE. However, because the Corporation wishes to fully include such States despite administrative or legal barriers that may exist, approved Transitional Entities have precisely the same duties and responsibilities, and access to Corporation funding, as do State Commissions and AAEs.

Miscellaneous Requirements:

States should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), State entities will be required to comply with

the aforementioned provisions of Federal law.

States will be expected to expend corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. States must keep records according to Corporation guidelines, including records which fully disclose the amount and disposition by the State of the proceeds of a Corporation grant. The inspector general of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of the State which may be related or pertinent to the Corporation grant.

States should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published prior to awarding administrative grants to States.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

The Corporation has separately submitted, under the terms of the Paperwork Reduction Act, an application package to be used by States when applying for Administrative grants from the Corporation for the purpose of establishing and/or operating a State Commission or alternative entity. To request a copy of this application, please contact the Corporation for National and Community Service at the address listed above.

As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act do not apply as this action will not create any new record-keeping or reporting burdens or substantially increase costs to the Government and the public.

List of Subjects in 45 CFR Part 2550

Grant programs—Social programs.

For the reasons set forth in this preamble, the Corporation for National and Community Service is hereby amending chapter XXV in title 45 of the Code of Federal Regulations as follows:

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

1. The heading for chapter XXV is revised as set forth above.

2. Part 2550 is added to read as follows:

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

Sec.
2550.10 What is the purpose of this part?
2550.20 Definitions.
2550.30 How does a State decide which of the three entities to establish?
2550.40 How does a State get Corporation authorization and approval for the entity it has chosen?
2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commission?
2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?
2550.70 What are the composition or other requirements for Transitional Entities?
2550.80 What are the duties of the State entities?
2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?
2550.100 Do State entities or their members incur any risk of liability?
2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

(b) The Corporation will distribute nearly $200 million in grants under subtitle C of the Act (hereinafter, "subtitle C") to help establish, operate and expand national service programs. At least two-thirds of these funds will go to the States, which will then subgrant to State agencies or local programs. However, in order to be eligible to apply for program funding and/or approved national service positions with an educational award, each State is required to establish a State Commission on National and Community Service to administer the State program grantmaking process and to develop a State plan. The Corporation may, in some instances approve Alternative Administrative Entities (AAEs) or allow a State agency to perform the duties of the State Commission. (For the purposes of this part, a State agency which has been authorized by the Corporation to perform State Commission duties is called a "Transitional Entity".)

(c) The Corporation recognizes that establishing and operating State Commissions involves significant effort and cost. Therefore, grants of between $125,000 and $750,000 will be distributed to the States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities. (For the purposes of this part, notwithstanding the definition of "State" that appears in the National and Community Service Act of 1990, as amended (the Act), "State" means the 50 States, the District of Columbia, and Puerto Rico.) In order to receive any Corporation grant, however, a State must commit to establishing a State Commission or AAE as soon as possible.

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the three State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information regarding State Commissions, AAEs, and approved Transitional Entities.

§ 2550.20 Definitions.

(a) *AAE.* Alternative Administrative Entity.

(b) *Administrative costs.* As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.

(c) *Alternative Administrative Entity (AAE).* A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of

members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position.* A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation.* As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative.* Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe.* (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act"; 48 Stat. 984, chapter 576; 25 U.S.C. 461 et seq.); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult.* An individual 55 years of age or older.

(i) *Service-learning.* A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or participants to reflect on the service experience.

(j) *Service learning programs.* The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State.* As used in this part, the term *State* refers to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(l) *State Commission.* A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

(m) *State Educational Agency.* The same meaning given to such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(n) *State entity.* A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

(o) *Transitional Entity.* An existing State agency which has been authorized by the Corporation to perform the duties of a State Commission; the Corporation will not authorize the use of a Transitional Entity unless a State is demonstrably unable to establish a State Commission or AAE.

§ 2550.30 How does a State decide which of the three entities to establish?

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the Corporation, should seek to establish an AAE.

(c) Over the long term, States that wish to participate in the Corporation's grant programs must have either a State Commission or an AAE approved by the Corporation. Some States, due to legal or other procedural requirements, may be unable to establish one of these two entities in time to participate in fiscal years 1994 or 1995. Therefore, during the 27-month period beginning on September 21, 1993 and ending on December 21, 1995, a State may apply to the Corporation for authorization to use a Transitional Entity.

(d) A State should consider applying to have a Transitional Entity approved only if it can demonstrate that it is impossible, for legal or procedural reasons, to establish a State Commission or AAE in time to participate in the national service programs.

(e) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to estalbish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more

of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of resubmission.

(c) To receive approval to use an existing State agency as a Transitional Entity, a State must, first, satisfactorily demonstrate why it is unable to establish a State Commission or AAE, and, second, explain how it will carry out the duties of the State Commission and conduct a broad-based, open and inclusive planning process in a non-political manner. In addition, in order to receive any administrative funds from the Corporation, a State must commit to establish a State Commission or AAE as soon as possible, and prior to the expiration of the 27-month transition period ending on December 21, 1995. Administrative grants will only be given for up to 12-month periods. If a Transitional Entity wishes to receive an additional administrative grant subsequent to the expiration of an initial 12-month administrative grant, that State entity must demonstrate satisfactory progress toward establishment of a State Commission or AAE.

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent none, one, or more than one category, but each of the following categories must be represented:

(1) A representative of a community-based agency or organization in the State;

(2) The head of the State education agency or his or her designee;

(3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth; and

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 et seq.).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent possible, the chief executive officer of a State shall ensure that the membership of the State Commission is balanced with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50% plus one of the members of a State Commission may be from the same political party. In addition, the number of voting members of a State Commission who are officers or employees of the State may not exceed 25% of the total membership of that State Commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio member on the State Commission, and may be designated as a voting member by the chief executive officer of a State. However, because the Corporation wishes to encourage State autonomy in the design and development of the State plan and in State national service programs, States are discouraged from allowing the Corporation representative to vote. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its

commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

§ 2550.70 What are the composition or other requirements for Transitional Entities?

Because a Transitional Entity is by definition contained within a State agency, there are no membership or composition requirements. If a State takes the necessary steps to obtain approval for a Transitional Entity (listed in § 2550.40(c)), it meets the requirements of a Transitional Entity.

§ 2250.80 What are the duties of the State entities?

The duties of each of the three eligible State entities—States Commissions, AAEs and Transitional Entities—are precisely the same. The duties listed in this section apply to all three, and they are jointly referred to as "State entities." Functions described in paragraphs (a) through (d) of this section require policymaking and may not be delegated to another State agency or nonprofit organization. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service that is consistent with the Corporation's broad goals of meeting human, educational, environmental and public safety needs and that meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for maximum participation and input from national service programs within the State, and from other interested members of the public.

(2) The outreach process must, to the maximum extent practicable, include input from representatives of established State service programs, representatives of diverse, broad-based community organizations that serve underserved populations, and other interested individuals, including young people; the State entity should do so by creating State networks and registries or by utilizing existing ones.

(3) The plan may contain such other information as the State Commission considers appropriate and must contain such other information as the Corporation may require.

(b) *Pre-selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Administer a competitive process to select national service programs to be included in any application to the Corporation for funding; and

(2) Prepare an application to the Corporation to receive funding and/or educational awards for the programs selected pursuant to paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

(j) *Activity ineligible for assistance.* A State Commission or AAE may not directly operate or run any national service program receiving financial assistance, in any form, from the Corporation.

(k) *Make recommendations to the Corporation* with respect to priorities within the State for programs receiving assistance under DVSA.

(l) *Coordination.* (1) Coordination with other State agencies.—A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs.—In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (l) (1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers, directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances, participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

§ 2550.100 Do State entities or their members incur any risk of liability?

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

§ 2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Range of grants.* The Corporation may make administrative grants to States of between $125,000 and $750,000 (inclusive) for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Notywithstanding the amounts specified in this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 85 percent of the total cost to establish or operate the State Commission or AAE for the first year for which the State Commission or AAE receives an administrative grant under this section.[1] In subsequent years, the Corporation will establish larger matching requirements for States so that by the fifth and subsequent years of assistance, the Federal share does not exceed 50 percent.

Terry Russell,

Acting General Counsel.

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[1] See OMB Circulars A–102 and A–122. Copies of the circulars may be obtained from the Office of Administration, EOP Publications, 725 17th Street, NW., Room 2200, New EOB, Washington, DC 20503.

federal register

Thursday
November 18, 1993

Part VIII

The President

Executive Order 12880—National Drug Control Program

Federal Register
Vol. 58, No. 221
Thursday, November 18, 1993

Presidential Documents

Title 3—

The President

Executive Order 12880 of November 16, 1993

National Drug Control Program

The Office of National Drug Control Policy has the lead responsibility within the Executive Office of the President to establish policies, priorities, and objectives for the Nation's drug control program, with the goal of reducing the production, availability, and use of illegal drugs. All lawful and reasonable means must be used to ensure that the United States has a comprehensive and effective National Drug Control Strategy.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Narcotics Leadership Act of 1988, as amended (21 U.S.C. 1501 *et seq.*), and in order to provide for the effective management of the drug abuse policies of the United States, it is hereby ordered as follows:

Section 1. GENERAL PROVISIONS. (a) Because the United States considers the operations of international criminal narcotics syndicates as a national security threat requiring an extraordinary and coordinated response by civilian and military agencies involved in national security, the Director of the Office of National Drug Control Policy (Director), in his role as the principal adviser to the National Security Council on national drug control policy (50 U.S.C. 402(f)), shall provide drug policy guidance and direction in the development of related national security programs.

(b) The Director shall provide oversight and direction for all international counternarcotics policy development and implementation, in coordination with other concerned Cabinet members, as appropriate.

(c) An Interagency Working Group (IWG) on international counternarcotics policy, chaired by the Department of State, shall develop and ensure coordinated implementation of an international counternarcotics policy. The IWG shall report its activities and differences of views among agencies to the Director for review, mediation, and resolution with concerned Cabinet members, and if necessary, by the President.

(d) A coordinator for drug interdiction shall be designated by the Director to ensure that assets dedicated by Federal drug program agencies for interdiction are sufficient and that their use is properly integrated and optimized. The coordinator shall ensure that interdiction efforts and priorities are consistent with overall U.S. international counternarcotics policy.

(e) The Director shall examine the number and structure of command/control and drug intelligence centers operated by drug control program agencies involved in international counter-narcotics and suggest improvements to the current structure for consideration by the President and concerned members of the Cabinet.

(f) The Director, utilizing the services of the Drugs and Crime Data Center and Department of Justice Clearinghouse, shall assist in coordinating and enhancing the dissemination of statistics and studies relating to anti-drug abuse policy.

(g) The Director shall provide advice to agencies regarding ways to achieve efficiencies in spending and improvements to interagency cooperation that could enhance the delivery of drug control treatment and prevention services to the public. The Director may request agencies to provide studies, information, and analyses in support of this order.

Sec. 2. GOALS, DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL DRUG CONTROL PROGRAM. (a) *Budget Matters.* (1) In addition to the budgetary authorities and responsibilities provided to the Director by statute, 21 U.S.C. 1502, for those agency budget requests that are not certified as adequate to implement the objectives of the National Drug Control Strategy, the Director shall include in such certifications initiatives or funding levels that would make such requests adequate.

(2) The Director shall provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program. The recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy.

(b) MEASUREMENT OF NATIONAL DRUG CONTROL STRATEGY OUTCOMES. (1) The National Drug Control Strategy shall include long-range goals for reducing drug use and the consequences of drug use in the United States, including burdens on hospital emergency rooms, drug use among arrestees, the extent of drug-related crime, high school dropout rates, the number of infants exposed annually to illicit drugs in utero, national drug abuse treatment capacity, and the annual national health care costs of drug use.

(2) The National Drug Control Strategy shall also include an assessment of the quality of techniques and instruments to measure current drug use and supply and demand reduction activities, and the adequacy of the coverage of existing national drug use instruments and techniques to measure the total illicit drug user population and groups at-risk for drug use.

(3) The Director shall coordinate an effort among the relevant drug control program agencies to assess the quality, access, management, effectiveness, and standards of accountability of drug abuse treatment, prevention, education, and other demand reduction activities.

(c) *Provision of Reports.* To the extent permitted by law, heads of departments and agencies with responsibilities under the National Drug Control Program shall make available to the Office of National Drug Control Policy, appropriate statistics, studies, and reports, pertaining to Federal drug abuse control.

William J. Clinton

THE WHITE HOUSE,
November 16, 1993.

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