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December 21, 1993

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: January 13 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)

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Mutual Consent Cancellation

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: Federal Crop Insurance Corporation's (FCIC) procedures for mutual consent cancellation were published as a final rule on November 30, 1992. At the time of publication the latest sales closing date which was applicable to the disaster assistance situation was October 31, 1992. FCIC has since determined that this situation may also affect some subsequent crop years. The purpose of this amendment is to allow this mutual consent cancellation to be applicable to crops in those subsequent crop years.

EFFECTIVE DATE: December 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory Specialist, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12291, and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

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

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant action on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. The action, in fact, imparts a benefit to the insured by allowing the insured to apply for crop insurance so as to preserve the producers benefits and disaster assistance. This action does not require the reinsured company or sales and service contractor to take any additional action other than that which is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

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

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

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

To provide relief to those producers who agreed to obtain crop insurance under the mistaken belief that they were required to carry such insurance in order to participate in the Commodity Credit Corporation disaster assistance program, FCIC permits it agents and private sector crop insurance companies to enter into mutual consent cancellations for such insurance contracts. A rule carrying out this directive was promulgated on November 30, 1992. This rule contained and incorporated the applicable dates for implementation required at the time of publication. However, these dates have since changed.

Accordingly, pursuant to 5 U.S.C. 553, this rule allows a producer to participate in the USDA Disaster Assistance Program without having to weigh the benefits of that program against the costs of the crop insurance program when a question exists as to whether crop insurance is actually required. Therefore notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 7 CFR Part 400

General Administrative Regulations, Corp insurance, Mutual consent cancellation criteria.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) effective for the 1994 and subsequent crop years as follows:

PART 400—[AMENDED]

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

1. The authority citation for 7 CFR part 400, subpart C is added to read as follows:

Authority: 7 U.S.C. 1501 *et seq.*

2. Section 400.27 is revised to read as follows:

§ 400.27 Applicability.

Notwithstanding any provisions of the crop insurance policy to the contrary, the mutual consent provision contained herein shall be applicable to all new crop insurance policies issued by the Federal Crop Insurance Corporation (7 CFR part 401 *et seq.*), or by a company reinsured by the Federal Crop Insurance Corporation, effective for the applicable crop year only if those policies meet the requirements of § 400.28 of this subpart and if the crop insured is the same as the crop for which a disaster payment application (CCC 441) was filed for the previous crop year.

3. Section 400.28 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 400.28 Mutual consent criteria.

(a) An insured may request policy cancellation for the crop year for which the insured filed a CCC 441 for the applicable crop year if written documentation is provided, signed by an authorized Agricultural Stabilization and Conservation Service official, certifying the cancellation is based on one of the following conditions:

* * * * *

(c) Carryover policies are not available for mutual consent cancellation. Crop insurance applications dated before the disaster cancellation date (available in the insureds' service office) are not eligible for mutual consent cancellations.

Done in Washington, DC on October 20, 1993.

Dallas R. Smith,

Acting Under Secretary, International Affairs and Commodity Programs, Chairman, Federal Crop Insurance Corporation.

[FR Doc. 93-30729 Filed 12-20-93; 8:45 am]

BILLING CODE 3410-06-M

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV93-998-2FR]

Peanuts Produced Domestically; Finalize Revised Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Peanuts—1993 Crop

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that changed the outgoing quality regulation. One change allows the shipment, without positive lot identification, of lots which are reconstituted after initial inspection and certification by a handler at the request of a buyer. Another change strengthens the Peanut Administrative Committee's (Committee) control of out-of-grade lots of peanuts, and peanuts derived from the blanching and milling of such lots. Changes in the terms and conditions of indemnification clarify the deadline for submitting indemnification claims, identify documentation needed to process indemnification claims, and provide consistency with amended quality regulations.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: John Toth, Southeastern Marketing Field Office, P.O. Box 2276, Winter Haven, Florida, 33883-2276, telephone (813) 299-4770, FAX (813) 299-5169 or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-2170, FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act).

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. There are about 71 handlers of peanuts subject to regulation under the agreement, and there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

In 1992, the three major peanut production areas covered under the agreement produced approximately 4.28 billion pounds of peanuts, a 13 percent decrease from 1991. The 1992 crop value is $1.3 billion, down 8 percent from 1991.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), now handling approximately 95 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. A sheller who has complied with these requirements may be eligible for indemnification of losses if the peanuts test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee met on March 24 and 25, 1993, and unanimously recommended changes to § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification—1993 crop peanuts.*

An interim final rule was issued on June 23, 1993, and published in the **Federal Register** (58 FR 34865, June 30, 1993), with an effective date of June 30, 1993. That rule amended §§ 998.100, .200, and .300 and provided a 30-day comment period which ended July 30, 1993. One comment was filed by the Golden Peanut Company, DeLeon, Texas. The commenter indicated the rule was silent on one Committee recommendation, to clarify that no assessments are to be made on Segregation I peanuts purchased by handlers for crushing purposes. The recommendation was not adopted by

the Department because no authorization for such action was found in the agreement. Therefore, the commenter's assumption is correct that the Committee should continue to operate such assessment procedure as it did last season.

Upon implementation of the interim final rule, § 998.200 (d) *Identification*, of the outgoing quality regulations was amended to allow for shipment, without Positive Lot Identification (PLI), of inshell and shelled, edible quality peanuts which are reconstituted after processing and PLI by a handler, at the request of a buyer. The outgoing quality regulation previously required that peanut lots be PLI when shipped by the handler. Handlers have traditionally maintained PLI until the lot is received by a buyer or another, independent entity in the handling process such as second handlers and independent cold storage warehouses. The previous PLI requirement for handlers, at the time of shipment, put handlers at a competitive disadvantage with such second handlers or similar entities, as well as with blanchers and remillers. Such entities may provide additional processing or change containers of the lot, at the request of the buyer. However, because such lots are no longer under purview of the regulations (and the control of the handler), the entities do not have to maintain PLI, and thus, do not charge buyers the extra costs for obtaining a Federal or Federal-State Inspection Service (Inspection Service) transfer certificate or a second positive lot inspection.

The action also extended an action implemented last year (57 FR 34061, August 3, 1992) that allowed handlers to commingle PLI lots, at the request of buyers, and ship such lots without reinspection and recertification. The action permitted handlers to provide additional processing services after the initial processing, inspection and PLI, without incurring recertification costs.

To safeguard the indemnification program and normal inspection procedures, the action specified that lots which did not receive a new PLI or transfer certificate after reconstituting and/or commingling were not eligible for indemnification claims or for appeal inspection. Loss of the handler's right to indemnification claims and appeal inspections on reconstituted and/or commingled lots should not represent a significant concern to handlers as lots that pass quality inspection and aflatoxin testing are not eligible for indemnification and normally do not require an appeal inspection.

The action also required that handlers are responsible for maintaining records of the quantities of peanuts so reconstituted and making such records available to the Committee upon request.

The second change was designed to strengthen the control of the movement of handlers' out-of-grade lots sent for blanching and remilling under provisions specified in paragraphs (h)(2) (blanching) and (h)(4) (remilling) of the outgoing quality regulations. The action should assure the proper handling of peanut lots subject to the program's outgoing quality regulations.

Paragraph (h)(2) applies, in part, to handlers' out-of-grade lots which are sent to blanching for further processing. Residual peanuts resulting from the blanching process must be either returned to the handler, or, at the handler's instruction, disposed of by the blancher to crushing or inedible export outlets. The previous text of paragraph (h)(2) was amended to require that the handler receive authorization from the Committee prior to movement of such lots to a blancher and that the residual lots, when so disposed, shall be positive lot identified.

Because previous regulations did not reference all acceptable inedible outlets, the action stated that acceptable disposition outlets be specified in paragraph (h)(2). Such acceptable outlets are other handlers who are crushers or exporters, crushers who are not handlers but are approved by the Committee, and Committee approved blanchers.

Paragraph (h)(4) applies, in part, to handlers' residual lots resulting from remilling. The action amended the text of (h)(4) to read the same as that for paragraph (h)(2).

In addition to changes in paragraphs (h)(2) and (h)(4) of the outgoing quality regulation, the action, for consistency purposes, added a new subparagraph (p)(2) to § 998.300 *Terms and conditions for indemnification*. That addition identified paragraphs (h)(2) and (h)(4) as paragraphs in the outgoing quality regulation that handlers must comply with to be eligible to receive indemnification payments.

The action amended paragraph (l) of § 988.300 *Terms and conditions of indemnification* to provide for the more timely receipt of indemnification claim documents and to specify the documentation needed by the Committee to process such claims. The Committee had reported that incomplete indemnification claim requests are occasionally received on or just after the November 1 deadline (following the crop year). Such late, incomplete claims become an extra burden on Committee personnel and may result in the claim not being processed and paid by the December 31 deadline following the crop year. Thus, the amended regulations clarified that claim requests may be received by mail or facsimile up to the close of business on November 1 and, also specified the documents needed. The documents are: (1) PAC–5 Handlers's Request for Rejection (signed and executed); (2) the valid grade inspection certificate covering the lot; and (3) the lab certificate showing the aflatoxin assay results which caused the lot's rejection. This revision of paragraph (l) does not represent new reporting requirements. The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067. The revised paragraph should help assure that claim payments are made by the established deadline, thus benefiting handlers.

Paragraphs (z) (1) through (7) of § 998.300 specify claim procedures and payment schedules based on the number of indemnification claims received by the Committee. The action continues for the 1993 crop year, the same procedures and payment schedules in effect for the 1992 terms and conditions. It also continues for the 1993 crop year, the indemnification cap of $9,000,000, with $5,000,000 of insurance coverage that was in effect for the 1992 crop year.

Changes were also made to section headings of § 998.100 *Incoming quality regulation*, § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification* to make those regulations applicable to the 1993 crop year.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 34865, June 30, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

Accordingly, the interim rule amending 7 CFR part 998 which was published at 58 FR 34865 on June 30, 1993, is adopted as a final rule without change.

Dated: December 14, 1993.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 93-31030 Filed 12-20-93; 8:45 am]

BILLING CODE 3410-02-P

Rural Electrification Administration

7 CFR Part 1703

Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of extension of application filing deadline for Fiscal Year 1994 funding.

SUMMARY: The Rural Electrification Administration (REA) is hereby giving notice to interested parties that an extension has been given to applicants wishing to submit an application for the *Distance Learning and Medical Link* Grant Program (DLMLGP) for Fiscal Year (FY) 1994 funding.

DATES: Applications to be considered for FY 1994 funding must be postmarked no later than January 31, 1994.

ADDRESSES: Applications may be submitted to the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Ave., SW., Washington, DC 20250-1500. Applications should be marked "Attention: Assistant Administrator, Economic Development and Technical Services."

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bryant, Jr., Chief, Planning Branch, or Mark B. Wyatt, Chief, Financing Branch, Rural Development Assistance Staff, Rural Electrification Administration, telephone number (202) 720-1400.

SUPPLEMENTARY INFORMATION: The extended filing cut-off date of January 31, 1994, contained herein affects § 1703.113, Application filing dates and location, of 7 CFR part 1703, subpart D. All other terms remain as in 7 CFR part 1703, subpart D. The January 31 extension is necessary to allow applicants not selected for grant funding during FY 1993 additional time to resubmit applications as well as giving additional time to those first time applicants. Applications that were received during the July 14 and October 14, 1993, filing deadlines will be reviewed with the January 31, 1994, applications. Applications postmarked after January 31, 1994, will be processed for funding considerations during FY 1995.

Due to limited FY 1994 DLMLGP funding compared with the demand for DLMLGP grants, the maximum grant for any one project during the FY 1994 funding cycle will remain at $500,000.

All applications submitted during the July and October deadlines are listed in the Notice section of this issue. Organizations wishing to apply for the DLMLGP should call the Rural Development Assistance Staff to obtain the application information package on (202) 690-3594.

Dated: December 15, 1993.

Wally Beyer,

Administrator.

[FR Doc 93-31081 Filed 12-20-93; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-70-AD; Amdt. 39-8750; AD 93-24-01]

Airworthiness Directives; Corporate Jets Limited (formerly British Aerospace) Model BAe 125-1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Corporate Jets Model BAe 125-1000A series airplanes, that requires a visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain, and to ensure minimum clearance between the pipe and chain; and reposition or replacement of damaged parts. This amendment is prompted by reports of chafing between the nose wheel steering control chain and the adjacent oxygen pipe. The actions specified by this AD are intended to prevent chafing or other damage of the passenger oxygen pipe, which could result in a fire and/or loss of emergency oxygen for the passengers.

DATES: Effective January 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. 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 Corporate Jets Model BAe 125-1000A series airplanes was published in the **Federal Register** on August 2, 1993 (58 FR 41066). That action proposed to require a one-time visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain inside the left-hand cockpit console and to ensure that at least 0.25 inch minimum clearance exists between the pipe and the chain, and reposition or replacement of damaged parts.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment 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 12 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 $660, 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 "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:

93-24-01 Corporate Jets Limited (Formerly British Aerospace): Amendment 39-8750. Docket 93-NM-70-AD.

Applicability: Model BAe 125-1000A series airplanes, having serial numbers 258151, 258159, and 259003 through 259027 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing or other damage of the passenger oxygen pipe and a potential fire and/or loss of emergency oxygen for the passengers, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain within the left-hand cockpit console and to ensure that a minimum of 0.25 inch clearance exists between the oxygen pipe and the nose wheel steering control chain, in accordance with Corporate Jets Limited Service Bulletin S.B. 35-36, dated January 7, 1993.

(1) If clearance of 0.25 inch or greater exists, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) If no chafing or other damage is detected: No further action is required by this AD.

(ii) If any chafing or other damage is detected: Prior to further flight, replace the currently-installed oxygen pipe with a new oxygen pipe, ensure that a minimum clearance of 0.25 inch or greater exists, and repeat the visual inspection in accordance with the service bulletin.

(2) If clearance of less than 0.25 inch exists, accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) If no chafing or other damage is detected: Within 30 days after accomplishing the visual inspection, reposition the oxygen pipe to obtain minimum clearance of at least 0.25 inch and maximum ovality not to exceed 0.03 inch, in accordance with the service bulletin; and if a minimum clearance of 0.25 inch cannot be achieved utilizing the methods described in the service bulletin, reposition in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(ii) If any chafing or other damage is detected: Prior to further flight, replace the currently-installed oxygen pipe with a new oxygen pipe, ensure that minimum clearance of 0.25 inch or greater exists, and repeat the visual inspection in accordance with the service bulletin.

(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, repositioning, and replacement shall be done in accordance with Corporate Jets Limited Service Bulletin S.B. 35-36, dated January 7, 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 Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. 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 January 20, 1994.

Issued in Renton, Washington, on November 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-29377 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-ANE-50; Amdt. 39-8704; AD 93-16-14]

Airworthiness Directives; Hartzell Propeller Inc. HC-()3Y()-() Series Three-Bladed Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93-16-14 that was sent previously to all known U.S. owners and operators of Hartzell Propeller Inc. HC-()3Y()-() series three-bladed propellers by individual letters. This AD requires initial and repetitive visual inspections and eddy current inspections for cracks in the area of the grease fitting holes on the side of the propeller hub. This amendment is prompted by propeller hub failure on a propeller that had been visually inspected in accordance with priority letter AD 89-22-05. The actions specified by this AD are intended to prevent propeller hub failure and subsequent propeller blade separation and loss of the aircraft.

DATES: Effective January 5, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-16-14, issued on August 18, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 5, 1994.

Comments for inclusion in the Rules Docket must be received on or before February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-50, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2834; fax (513) 778-4391. This information may be examined at the FAA, New England Region, Office of the

Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (708) 294–7130, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: On October 20, 1989, the Federal Aviation Administration (FAA) issued priority letter AD 89–22–05, applicable to Hartzell Propeller Inc. HC-()3Y()-() series three-bladed propellers, which requires visual inspection of the propeller hub surface in the area of the grease fittings at intervals of 50 hours time in service (TIS). That action was prompted by reports of propeller hub failures caused by cracks initiating in the grease fitting holes on the side of the hub. These cracks typically originate in the threads of the hub grease fitting, then propagate around the blade arm of the hub, resulting in failure of one hub half. That condition, if not corrected, could result in propeller hub failure and subsequent propeller blade separation and loss of the aircraft.

Since the issuance of that AD, the FAA has received a report from the Civil Aviation Authority (CAA) of Great Britain of a propeller hub failure on a propeller that had been visually inspected in accordance with the current AD. The CAA's investigation revealed that the propeller hub crack had corrosion on the fracture surface that was present for a considerable time but the crack was undetectable by visual inspection. The FAA, in conjunction with the CAA and the manufacturer, has determined that the visual inspection procedure alone is inadequate to reliably find cracks in the propeller hub. On August 18, 1993, the FAA issued priority letter AD 93–16–14, which requires initial and repetitive visual inspections and eddy current inspections (ECI) for cracks in the area of the grease fitting holes on the side of the propeller hub.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) No. 165D, dated August 6, 1993, that describes procedures for visual inspections and ECI for cracks in the area of the grease fitting holes on the side of the propeller hub.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes priority letter AD 89–22–05, and requires initial and repetitive visual inspections and ECI for cracks in the area of the grease fitting holes on the side of the propeller hub. If a propeller hub is found cracked, the hub must be replaced prior to further flight with a post-1983 later style propeller hub, or with a serviceable 1983 or earlier hub that has been inspected in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993. Affected propeller installations that have experienced failures in service are required to have a repetitive visual inspection and ECI every 25 hours TIS. Other aircraft models utilizing the affected propellers which have not had a failure in service but have similar installation designs and operational characteristics are required to have a repetitive visual inspection and ECI every 50 hours TIS. The FAA has determined that those propeller hubs removed from service in accordance with this AD which are not cracked may not be reinstalled on any aircraft exempt from this AD. Cumulative fatigue damage may have occurred that is not yet detectable. The repetitive inspections required by this AD on affected aircraft installations provides for detecting fatigue damage that grows to a crack.

This AD is an interim action. The FAA may consider future rulemaking that requires installation of a post-1983, later style propeller hubs which have relocated the grease fitting holes near the hub parting line.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 18, 1993, to all known U.S. owners and operators of Hartzell Propeller Inc. HC-()3Y()-() series three-bladed propellers. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

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 should 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–ANE–50." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—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:

93-16-14 Hartzell Propeller Inc.: Amendment 39-8704. Docket 93-ANE-50.

Applicability: Hartzell Propeller Inc. HC-()3Y()-() series three-bladed propellers with model designations and serial number ranges listed as follows:

Propeller basic hub model	Propeller serial number range
PHC-C3YF-1R()	EE1 through EE1461.
PHC-J3YF-1R()	FP1 through FP37.
PHC-L3YF-1R()	FD1 through FD7.
HC-C3YF-1R()	EC1 through EC1020.
HC-C3YK-1R() or HC-C3YR-1R().	DY1 through DY1897.
HC-C3YK-1()	CT1 through CT101.
HC-C3YK-2() or HC-C3YR-2().	CK1 through CK3510.
HC-C3YK-4() or HC-C3YR-4().	EL1 through EL67.
HC-E3YK-1() or HC-E3YR-1().	FM1 through FM487.
HC-E3YK-2() or HC-E3YR-2().	DF1 through DF79.
HC-E3YK-2A() or HC-E3YR-2A().	DJ1 through DJ7787.
HC-F3YK-2() or HC-F3YR-2().	DA1 through DA1586.
HC-F3YK-1() or HC-F3YR-1().	DB1 through DB137.
HC-I3YK-2() OR HC-I3YR-2().	FS1 through FS32.

This AD applies to the above affected propellers when installed on any agricultural aircraft with any engine, or installed on any aircraft utilizing Textron Lycoming (L)TIO-540 series piston engines, or IO-540 series piston engines that have a turbocharger added by the airframe manufacturer or have been modified by a Supplemental Type Certificate (STC) to incorporate a turbocharger. The known affected propellers are installed on, but not limited to the following aircraft:

Agricultural Aircraft

Fletcher FU24-950
Cessna A188 Agwagon modified by STC SA895SO
Piper PA-36-300 Pawnee
PA-36 Pawnee modified by STC SA3952WE
Transavia Airtruk Models and PL-12/T-300 Skyfarmer

Aircraft With Textron Lycoming (L)TIO-540 and Turbocharged IO-540 Series Engines

Cessna 310 and 320 modified by Riley STC SA2082WE
Gulfstream 700 (formerly Rockwell 700, Fuji FA-300-12)
Helio H-700
Piper PA-23-250 and PA-E23-250 (with TIO-540 only)
Piper PA-31 Navajo (with TIO-540 only)
Piper PA-31-325 Navajo C/R
Piper PA-31-350 Navajo "Chieftain"
Piper PA-31P-350 Mohave
Piper T-1020 (same as PA-31-350)
Piper PA-32(R)-301T Turbo Saratoga
Piper PA-60-600, PA-60-601, and PA-60-602 Aerostar's all modified by Machen STC (turbocharged)
Piper PA-60-700P Aerostar 700P

Propellers with model designations and serial number ranges listed above and installed on non-agricultural aircraft, which do NOT utilize Textron Lycoming (L)TIO-540 or turbocharged IO-540 series engines are exempt from this AD.

Propellers with post-1983 hub configurations, i.e., which have the relocated grease fitting holes near the hub parting line as shown in Figure 1, page 8, of Hartzell Propeller, Inc., Service Bulletin (SB) No. 165D, dated August 6, 1993, even though the propeller model and serial number are listed above, are exempt from this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub failure due to cracks that originate in the grease fitting holes on the side of the hub, which could result in propeller blade separation and loss of the aircraft, accomplish the following:

(a) For propellers installed on Textron Lycoming (L)TIO-540 series piston engines or turbocharged IO-540 series piston engines which are installed on Piper PA-31-325 Navajo C/R, PA-31-350 Navajo "Chieftain," T-1020 (same as PA-31-350), PA-60-700P, Aerostar 700P aircraft, or propellers installed on any agricultural aircraft with any engine, accomplish the following:

(1) Within 25 hours time in service (TIS) after the effective date of this AD, and thereafter at intervals of 25 hours TIS, perform a visual inspection and eddy current inspection (ECI) for cracks in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993.

(2) If a crack is found in a propeller hub during the inspections required in paragraph (a)(1) of this AD, replace the hub prior to further flight with a post-1983 later style propeller hub, or with a serviceable 1983 or earlier hub that has been inspected in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993. Thereafter, perform a visual inspection and ECI for cracks in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993, at intervals not to exceed 25 hours TIS since the last inspection, unless a post-1983 later style propeller hub is installed, per paragraph (d) of this AD.

(b) For propellers installed on all other aircraft models, except for the four non-agricultural models listed in paragraph (a) of this AD, and that utilize Textron Lycoming (L)TIO-540 or turbocharged IO-540 series piston engines accomplish the following:

(1) Within 50 hours TIS after the effective date of this AD, and thereafter at intervals of 50 hours TIS, perform a visual inspection and ECI for cracks in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993.

(2) If a crack is found in a propeller hub during the inspections required in paragraph (b)(1) of this AD, replace the hub prior to further flight with a post-1983 later style propeller hub, or with a serviceable 1983 or earlier hub that has been inspected in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993. Thereafter, perform a visual inspection and ECI for cracks in accordance with Hartzell Propeller Inc. SB No. 165D, dated August 6, 1993, at intervals not to exceed 50 hours TIS since the last inspection, unless a post-1983 later style propeller hub is installed, per paragraph (d) of this AD.

(c) Propeller hubs that are 1983 or earlier, with the grease fitting holes located on the side of the hub, that have been removed from service cannot be returned to service on aircraft that are exempt from this AD.

(d) Installation of post-1983 later style propeller hubs that have relocated grease fitting holes near the hub parting line constitutes terminating action to the inspection requirements of this AD.

(e) 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, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

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

(g) The inspections, and replacement, if necessary, shall be done in accordance with the following Hartzell Propeller Inc. service bulletin:

Document No.	Pages	Date
165D ..... Total pages: 8..	1-8	August 6, 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 Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356-2834; fax (513) 778-

4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This action supersedes priority letter AD 89-22-05, issued October 20, 1989.

(i) This amendment becomes effective January 5, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-16-14, issued August 18, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 22, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-29374 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-101-AD; Amdt. 39-8754; AD 93-24-05]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that requires replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. This amendment is prompted by a fire resistance test of the hydraulic EDP, associated hoses, and couplings installed on the number 2 and number 3 engines, which revealed that the pump case drain line quick release couplings leaked hydraulic fluid. The actions specified by this AD are intended to prevent hydraulic fluid leaking from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

DATES: Effective January 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; 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 British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the **Federal Register** on August 9, 1993 (58 FR 42259). That action proposed to require replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment 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 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,590, or $165 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:

93-24-05 British Aerospace: Amendment 39-8754. Docket 93-NM-101-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; serial numbers E3001 through E3207 inclusive, E3209 through E3220 inclusive, and E3222; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leaking from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29-31-01339A, dated May 24, 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 replacement shall be done in accordance with British Aerospace Service Bulletin SB.29-31-01339A, dated May 24, 1993. (**Note:** The issue date of British Aerospace Service Bulletin SB.29-31-01339A is indicated only on "page 1 of 11"; no other page of this document is dated.) 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 British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. 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 January 20, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-29581 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-100-AD; Amdt. 39-8753; AD 93-24-04]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F28 Mark 0100 series airplanes, that requires installation of a doubler assembly on the forward partial pressure bulkhead. This amendment is prompted by fatigue testing in which cracking was found in the area of the avionics cooling outlet valve fitting. The actions specified by this AD are intended to prevent cracking and subsequent reduced structural capability of the partial pressure bulkhead, which could result in decompression of the airplane.

DATES: Effective January 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1994.

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: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; 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 Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on August 18, 1993 (58 FR 43303). That action proposed to require installation of a doubler assembly on the forward partial pressure bulkhead.

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

All commenters support the proposal.

Since issuance of the notice, the FAA has been advised that Fokker has issued Revision 1 to Service Bulletin SBF100-53-052, dated June 7, 1993. This revision was issued to correctly identify which installation procedures are applicable to the different configurations of affected airplanes. The FAA has revised the final rule to refer to this corrected version of the applicable service bulletin.

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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 17 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $46,155, or $2,715 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD action.

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:

93-24-04 Fokker: Amendment 39-8753. Docket 93-NM-100-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 to 11286 inclusive, 11289, 11291, 11292, 11293, 11295, 11297, 11300, 11303, 11306, and 11308; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and reduced structural capability of the forward partial pressure bulkhead and subsequent decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later, install a doubler assembly on the forward partial pressure bulkhead in accordance with Fokker 100 Service Bulletin SBF100-53-052, Revision 1, dated June 7, 1993.

Note: Operators who have accomplished the appropriate installation in accordance with the originally issued Fokker Service Bulletin SBF100-53-052, dated January 17, 1992, are considered to be in compliance with this paragraph.

(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. 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 installation shall be done in accordance with Fokker Service Bulletin SBF100-53-052, Revision 1, dated June 7, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-2, 8, 11-13.	1	June 7, 1993.
3-7, 9-10.	Original	Jan. 17, 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 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 January 20, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-29580 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-7035]

RIN 3235-AC65

Method of Determining Holding Period of Restricted Securities Under Rule 144; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final rules adopted in Release No. 33-6862 (April 23, 1990), which were published in the **Federal Register** on Monday, April 30, 1990 (55 FR 17933). The rules relate to the determination of the holding period prior to sale of restricted securities pursuant to Rule 144.

EFFECTIVE DATE: December 21, 1993.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance at (202) 272-2589.

SUPPLEMENTARY INFORMATION: In connection with the adoption of rules and amendments relating to the resale of restricted securities, on April 23, 1990, the Commission adopted amendments to Rule 144(d),[1] which defines the holding period for restricted securities.[2] Because of inaccuracy in the amendatory language within the adopting release, three paragraphs that were to be retained in the final rule inadvertently were removed and do not now appear in the Code of Federal Regulations. This correction restores paragraphs (2)(i), (2)(ii) and (2)(iii) to paragraph (d) of Rule 144, to read as originally intended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

[1] 17 CFR 230.144(d).

[2] See Release No. 33-6862.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Accordingly, 17 CFR part 230 is corrected by making the following correcting amendments:

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. In § 230.144, add paragraphs (2)(i), (2)(ii), and (2)(iii) following the colon in the introductory text of paragraph (d)(2), to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note

* * * * *

(d) * * *

(1) * * *

(2) *Promissory notes, other obligations or installment contracts.* * * *

(i) Provides for full recourse against the purchaser of the securities;

(ii) Is secured by collateral, other than the securities purchased, having a fair market value at least equal to the purchase price of the securities purchased; and

(iii) Shall have been discharged by payment in full prior to the sale of the securities.

* * * * *

Dated: December 15, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31016 Filed 12-20-93; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

RIN 1515-AB31

[T.D. 93-96]

Reporting Requirements for Vessels, Vehicles, and Individuals

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement certain provisions of the Customs Enforcement Act of 1986, a part of the Anti-Drug Abuse Act of 1986, designed to strengthen Federal efforts to improve the enforcement of Federal drug laws

and enhance the interdiction of illicit drug shipments. These regulatory changes pertain to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals, and inform the public regarding applicable penalty, seizure, and forfeiture provisions for violation of these requirements.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Joe O'Gorman, Office of Passenger Enforcement and Facilitation (202) 927-0530; (Legal matters) Larry L. Burton, Carrier Rulings Branch (202) 482-6940, or (Penalty matters) Jeremy Baskin, Penalties Branch (202) 482-6950.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (21 U.S.C. 801 note) to, among other things, strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments. Comprising part of this legislation was the Customs Enforcement Act of 1986 (19 U.S.C. 1654 note) (the Act), which amended certain provisions of the Tariff Act of 1930, codified in title 19 of the U.S. Code, relating to arrival, entry, and departure reporting requirements applicable to individuals, vessels, and vehicles, and the penalty, seizure and forfeiture provisions applicable for violation of these requirements.

Section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), relating to the reporting requirements applicable to conveyances, was amended to provide that masters of vessels, operators of vehicles, and pilots of aircraft must immediately report their arrival at a designated Customs facility and remain there until granted permission to depart from the arrival point. It was also amended regarding the discharge of passengers and/or merchandise (including baggage) and provides that these activities can only be accomplished in accordance with regulations prescribed by the Secretary of the Treasury. Further regarding conveyance reporting requirements, the Act amended section 401(k), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), to clarify that a vessel arriving in the U.S. after having visited a hovering vessel or receiving any merchandise from outside the territorial waters of the United States will be treated as if it is arriving from a foreign port or place, and added section 401(m) (19 U.S.C. 1401(m)), which provides, in general, that controlled substances imported into the United States are considered prohibited merchandise.

Section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), also relating to reporting requirements, was amended to provide that individuals arriving in the U.S. by whatever means must immediately report their arrival at a designated Customs facility and remain there until granted permission to depart from the arrival point. This change extends the reporting requirements applicable to individuals; formerly only persons importing or bringing merchandise into the country from a contiguous country were required to report to the port of entry or customhouse nearest the point where they crossed the border. It also places a reporting obligation on individuals arriving by conveyances in addition to the reporting obligation imposed on a ship's master, vehicle operator, or aircraft pilot.

Sections 436, 454, and 459, Tariff Act of 1930, as amended (19 U.S.C. 1436, 1454, and 1459), relating to the penalty provisions applicable for violations of the reporting requirements, were amended to provide for greater penalties.

The regulations implementing border-crossing reporting requirements and applicable penalty provisions are primarily found at part 4, Customs Regulations (19 CFR part 4), however, certain reporting requirements and penalty provisions are also contained in part 123, Customs Regulations (19 CFR part 123).

On November 3, 1988, Customs published a Proposed Rule in the **Federal Register** (53 FR 44459) that proposed certain amendments and revisions to sections in parts 4, 101, 123 and 148 of the Customs Regulations and solicited comments in this regard. To effect the regulatory amendments regarding the reporting requirements applicable to conveyances, it was proposed to amend or revise §§ 4.0, 4.2, 4.2a, 4.3, 4.6, 4.9, 4.30, 4.50, 4.81, 4.84, 4.85, 4.87, 4.91, and 4.94, Customs Regulations (19 CFR 4.0, 4.2, 4.2a, 4.3, 4.6, 4.9, 4.30, 4.50, 4.81, 4.84, 4.85, 4.87, 4.91, and 4.94) and to revise § 123.1 (19 CFR 123.1) to make clear the vessel master's obligation to report arrival immediately and to present such documentation to Customs officers as may be required to establish the obligation to report arrival and/or the fact of reported arrival into the United States of the vessel and any cargo, passengers, and/or crew from foreign ports and/or places.

To effect the regulatory amendments regarding reporting requirements applicable to individuals, it was proposed to add a new § 4.51 and to revise § 123.1 (19 CFR 123.1) to make clear an individual's separate obligation to report arrival immediately, no matter how the individual arrived in the United States.

To effect the regulatory amendments regarding the penalty provisions, it was proposed to amend or revise §§ 4.6 and 4.9 (19 CFR 4.6 and 4.9), to add new §§ 4.3a and 4.52, and to amend or revise §§ 123.1, 123.2, and 123.9 (19 CFR 123.1, 123.2, and 123.9) to reflect the greater penalty provisions for violations of these reporting requirements.

Fourteen comments were received. The comments received, and Customs responses to them, are set forth below.

Comment Analysis

The fourteen comments received raised four areas of concern: (1) Whether district directors would be provided with additional discretionary authority to establish border-crossing points at places other than designated Customs ports of entry or stations; (2) the severity of the imprisonment penalties for violation of reporting requirements; (3) the imposition of advance reporting requirements concerning aircraft on short flights; and (4) the time-frame embraced by the term "immediately" in reporting to designated border-crossing points. We address these concerns in turn.

Comment: Most of the comments concerned the changes to § 123.1, Customs Regulations (19 CFR 123.1), relating to the reporting requirements at designated border-crossing points on the Canadian and Mexican borders. These commenters suggested that, in order to avoid needless hardships in the form of adversely affecting the daily operations of remote border-crossing enterprises, discretionary authority should be given to district directors to designate authorized border-crossing points in addition to designated ports of entry and border stations. In this regard, some commenters referenced a 1949 fire control compact between several northeastern states and the Canadian province of Quebec that provides for firefighters from both countries to combat border fires, and they suggested that such mutually beneficial arrangements should be allowed to continue without regard to reporting requirements.

Customs Response: These comments appear to relate to the statutory and proposed regulatory use of the phrase "border-crossing points" and seem to be premised on the assumption that because the statute employed the phrase "border-crossing points" to describe where the reporting must occur, instead

of using the more familiar terms "ports of entry" and "customs stations", Congress must have intended to create a third category of customs facility or location, namely "border-crossing points," that are distinguishable from ports of entry and Customs stations.

Customs does not agree with this reading of the statutory language, but rather believes that, by employing the term "border-crossing points", Congress was merely referring to the types of designated Customs locations and facilities that already exist under part 101, Customs Regulations (19 CFR part 101); there is no evidence to suggest that the phrase is used to connote or imply that a new type of Customs facility was intended to be created. Moreover, as regards the underlying concern motivating these comments, § 101.4(d) of the Customs Regulations specifically authorizes designation of Customs stations for a temporary time to provide Customs facilities where needed, which allows Customs to establish such other border-crossing points as may be required. Accordingly, such temporary operations as are provided for under the referenced fire control compact will not be adversely affected by implementation of these reporting requirements, as local district directors presently have the authority to allow border crossings for such activities. As the concern expressed is adequately provided for in the Customs Regulations already, it appears unnecessary to cede additional discretionary authority to the district director.

Comment: A few comments expressed concern over the severity of the increased penalties provided for by the amendments. One commenter stated that the addition of § 4.3a to the Customs Regulations, relating to vessel entry violation penalties and providing for imprisonment—in addition to financial penalties—in cases where prohibited merchandise is discovered on board the ship, leaves masters without means of protection because modern cargo loading practices do not leave the master with total control over what is taken aboard his/her ship. Accordingly, it was recommended that the imprisonment penalty should not be imposed in cases where intent cannot be proved.

Customs Response: The proposed penalty provisions are those as set forth by Congress in the Act. Customs cannot change the fine amounts or imprisonment sanctions prescribed by Congress where enforcement is by criminal prosecution. Where enforcement is by civil penalty, however, situations warranting consideration of mitigating (or aggravating) circumstances will be handled on a case-by-case basis, pursuant to the provisions of 19 U.S.C. 1618 and 19 CFR part 171.

It should be noted that, notwithstanding the specific civil and criminal penalty provisions provided for by the Act, other civil and criminal penalty provisions may be applicable. Thus, to eliminate the need to amend the regulations should the statutory penalty amounts be increased or decreased, the regulatory text has been revised by replacing specific civil and criminal penalty amounts with references to the applicable underlying statutory provision.

Comment: One commenter expressed concern about the imposition of a "one-hour passenger rule" advance reporting requirement on aircraft engaged in short flights from remote places in Canada that do not have available reliable means for the giving of advance notice.

Customs Response: This comment addresses reporting requirements contained in the air commerce regulations, part 122 of the Customs Regulations, 19 CFR part 122, which are not the subject matter of this final rule.

Comment: Several commenters voiced concern over how the term "immediate" would be interpreted regarding the reporting obligations for vehicles, vessels and/or individuals. It was suggested that the word should not be interpreted to mean the instant a vessel came to rest, as an overly strict requirement would be untenable.

Customs Response: The Act requires that reports of arrival be made to Customs "immediately." Thus, bearing in mind the purpose of the Anti-Drug Abuse Act of 1986, a reasonable interpretation of the term "immediately", within the context of reporting arrival into the U.S., would mean that such reporting should be accomplished as soon as possible and without undue delay, especially in the case of individual reporting obligations. This interpretation is based, in part, on the provision in Section 433 pertaining to time extensions for vessel reporting: Although the Secretary of the Treasury may, by regulation, extend the time in which reports of arrival must be made for vessel reporting, no extension of time greater than 24 hours after arrival is authorized. No such time extension provisions are provided for vehicles or individuals. Thus, an as-soon-as-possible/without-undue-delay standard is deemed reasonable for purposes of interpreting this statutory requirement.

Conclusion

Accordingly, as no material issues were raised that are not adequately addressed by existing regulations or by reasonable interpretations of the proposed regulations, Customs has decided to finalize the amendments as proposed, with minor editorial changes, such as substituting the word "phrase" in this Final Rule for the word "term" where more than one word was referenced. Also certain superseded legal requirements have been deleted, such as references to vessels of less than 5 net tons. In part 4, the editorial changes include the removal of certain footnotes that merely set forth statutory text implemented by the regulation, and end-of-section references to statutory authority already denoted in the general authority table at the beginning of the part, e.g., the statutory authority reference at the end of § 4.94(e). Also in part 4, footnotes that merely cross reference other Customs Regulation provisions are deleted, but the text of the section is revised to include the cross reference, e.g., footnote 16b to § 4.7(d)(1)(ii) merely cross references § 4.14(a)(1), thus, the footnote is deleted and the text is revised to carry the cross reference. Lastly concerning part 4, we are taking this opportunity to revise certain authority citations, incorrectly citing to 46 U.S.C., and to add authority citations for new section provisions, i.e., §§ 4.3a, 4.51, and 4.52. In part 123, there is no longer an arrival reporting difference based upon whether vessels are less than or over 5 net tons or arrive otherwise than by sea. This is because 19 U.S.C. 1433 embodies the report of arrival requirements for all vessels and makes no distinction as to size. In regard to the proposed general authority citation changes to parts 101 and 148, they are no longer necessary, as they were accomplished in other published documents.

The Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble and because the main reporting imposition falls on individuals and vessels and vehicles operated by individuals, rather than on small entities as defined at 5 U.S.C. 601(6), pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant impact on a substantial number of small entities. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 604. Further, this document is not a "significant regulatory action," as defined in E.O. 12866.

Paperwork Reduction Act

The collection of information in this final regulation, as provided for under § 24.5(f), has been reviewed by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507, and approved, through November of 1996, under control number 1515-0203. The estimated annual burden per respondent/recordkeeper is 1 minute. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Harbors, Imports, Maritime carriers, Merchandise, Passenger Vessels, Reporting and recordkeeping requirements, Seamen, Vessels, Yachts.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, title 19, chapter I, parts 4 and 123 of the Customs Regulations (19 CFR parts 4 and 123) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 is amended by adding citations for §§ 4.3a, 4.51, and 4.52 and revising the other citations listed below as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

* * * * *

Section 4.2 also issued under 19 U.S.C. 1433, 1441, 1486;

Section 4.3 also issued under 19 U.S.C. 288, 289, 1434–1436, 1441; 46 U.S.C. App. 91a, 110–112;

Section 4.3a also issued under 19 U.S.C. 1433, 1436;

* * * * *

Section 4.6 also issued under 19 U.S.C. 1585;

Section 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583; 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.9 also issued under 19 U.S.C. 1434, 1435, 1438; 42 U.S.C. 269; 46 U.S.C. App. 677;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * *

Section 4.50 also issued under 19 U.S.C. 1431; 46 U.S.C. 3502;

Section 4.51 also issued under 19 U.S.C. 1433;

Section 4.52 also issued under 19 U.S.C. 1433;

* * * * *

Section 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. App. 251, 313, 314, 883;

* * * * *

Section 4.84 also issued under 19 U.S.C. 1433, 1435, 1437; 46 U.S.C. App. 91, 313, 314, 883–1;

Section 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;

* * * * *

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441; 46 U.S.C. App. 91, 104, 313, 314;

* * * * *

2. Part 4 is amended by removing and reserving footnotes 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 95, and 98.

3. Section 4.0 is amended by adding paragraph headings to paragraphs (a)–(e) and by adding paragraphs (f) and (g) to read as follows:

§ 4.0 General definitions.

(a) *Vessel.* * * *

(b) *Vessel of the United States.* * * *

(c) *Documented.* * * *

(d) *Noncontiguous territory of the United States.* * * *

(e) *Citizen.* * * *

(f) *Arrival of a vessel.* The phrase "arrival of a vessel" means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S.

(g) *Departure of a vessel.* The phrase "departure of a vessel" means that time when the vessel gets under way on its outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which it is going.

4. Section 4.2 is revised to read as follows:

§ 4.2 Reports of arrival of vessels.

(a) Upon arrival in any port or place within the U.S., including, for purposes of this section, the U.S. Virgin Islands, of any vessel from a foreign port or place, any foreign vessel from a port or place within the U.S., or any vessel of the U.S. carrying bonded merchandise or foreign merchandise for which entry has not been made, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the district director. The report of arrival, except as prescribed in § 4.2a of this part, or as supplemented in local instructions issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the district director or to a Customs officer assigned to board the vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew.

(b) For purposes of this part, "foreign port or place" includes a hovering vessel, as defined in 19 U.S.C. 1401(k), and any point in Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(c) In the case of certain vessels arriving either in distress or for the limited purpose of taking on certain supplies and departing within a 24-hour time period without having landed or taken on any passengers or other merchandise (see section 441(4), Tariff Act of 1930, as amended), the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(d) The report of baggage and merchandise required to be made by certain passenger vessels making three or more trips a week between U.S. and foreign ports and vessels used exclusively as ferryboats carrying passengers, baggage, or merchandise (see section 441(2), Tariff Act of 1930, as amended), is in addition to the required report of arrival, and shall be made within 24 hours of arrival.

5. Section 4.2a(b) is amended by removing paragraph (b)(1) and redesignating paragraphs (b) (2) and (3) as (b) (1) and (2) respectively.

6. Section 4.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 4.3 Vessels required to enter.

(a) Except as specified in section 441, Tariff Act of 1930, as amended, or as otherwise specified in this part, every American vessel arriving in the U.S. from a foreign port or place and every foreign vessel arriving at a port in the U.S. from another such port or from a foreign port or place shall make entry at the customhouse within 48 hours after arrival of a vessel, in accordance with § 4.9.

(b) For the purposes of the vessel entry requirement in this section and § 4.9, a "foreign port or place" includes a hovering vessel, as defined in 19 U.S.C. 1401(k), and any point in the Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise, or a vessel on the high seas when the vessel arriving in the U.S. is returning from that vessel on the high seas after having transported merchandise out of the U.S. to the vessel on the high seas and there transshipped the merchandise to that vessel.

* * * * *

7. Part 4 is amended by adding § 4.3a to read as follows:

§ 4.3a Penalties for violation of vessel reporting and entry requirements.

Violation of the arrival or entry reporting requirements provided for in this part may result in the master being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law. The penalties include civil monetary penalties for failure to report arrival or make entry, and any conveyance used in connection with any such violation is subject to seizure and forfeiture. Further, if any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is involved in the failure to report arrival or entry, additional penalties equal to the value of merchandise may be imposed, and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. The criminal penalties, applicable upon conviction, include fines and imprisonment if the master intentionally commits any violation of these reporting and entry requirements or if prohibited merchandise is involved in the failure to report arrival or make entry.

8. Section 4.6 is revised to read as follows:

§ 4.6 Departure or unlading before report or entry.

(a) No vessel which has arrived within the limits of any Customs district from a foreign port or place shall depart or attempt to depart, except from stress of weather or other necessity, without reporting and making entry as required in this part. These requirements shall not apply to vessels merely passing through waters within the limits of a Customs district in the ordinary course of a voyage.

(b) The "limits of any Customs district" as used herein are those defined in §§ 101.1(b) and 101.3(b) of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(c) Violation of this provision may result in the master being liable for certain civil penalties and the vessel to arrest and forfeiture, as provided under 19 U.S.C. 1585, in addition to other penalties applicable under other provisions of law.

9. Section 4.9 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place (see § 4.3(b) of this part) shall be in accordance with section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term "American vessel" means a vessel of the United States (see § 4.0(b)), as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c) of this part). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with section 435, Tariff Act of 1930 (19 U.S.C. 1435). The required oath on entry shall be executed on Customs Form 1300.

* * * * *

(f) Any master who fails to make entry as required by this section or who presents any document required by this section which is forged, altered, or false, may be liable for certain civil penalties, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law. Further, any vessel used in connection with any such violation is subject to seizure and forfeiture.

10. Section 4.30(a) is revised to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter, and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage, or other article shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part) if Customs supervision of such lading is required, until the district director shall have issued a permit or special license therefore on Customs Form 3171.

* * * * *

11. Section 4.50(a) is revised to read as follows:

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from a port or place outside the Customs territory (see § 4.6 of this part) and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters, shall submit passenger and crew lists, as required by § 4.7(a) of this part. If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passengers, the additional information respecting such passengers required by Customs and Immigration Form I–418 shall be included therein.

* * * * *

12. Part 4 is amended by adding § 4.51 under the heading "Passengers on Vessels" to read as follows:

§ 4.51 Reporting requirements for individuals arriving by vessel.

(a) *Arrival of vessel reported.* Individuals on vessels, which have reported their arrival to Customs in accordance with19 U.S.C. 1433 and § 4.2 of this part, shall remain on board until authorized by Customs to depart. Upon departing the vessel, such individuals shall immediately report to a designated Customs location together with all of their accompanying articles.

(b) *Arrival of vessel not reported.* Individuals on vessels, which have not reported their arrival to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall immediately notify Customs and report their arrival together with appropriate information

regarding the vessel, and shall present themselves and their accompanying articles at a designated Customs location.

(c) *Departure from designated Customs location.* Individuals required to report to designated Customs locations under this section shall not depart from such locations until authorized to do so by any appropriate Customs officer.

13. Part 4 is amended by adding § 4.52 under the heading "Passengers on Vessels" to read as follows:

§ 4.52 Penalties applicable to individuals.

Individuals violating any of the reporting requirements of § 4.51 of this part or who present any forged, altered, or false document or paper to Customs in connection with this section, may be liable for certain civil penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. Further, if the violation of these reporting requirements is intentional, upon conviction, additional criminal penalties may be applicable, as provided by under 18 U.S.C. 1459, in addition to other penalties applicable under other provisions of law.

§ 4.81 [Amended]

14. Section 4.81 is amended by removing the phrase "within 24 hours" wherever it appears in paragraphs (e), (g)(1), and (g)(2) and adding, in its place, the phrase "immediately upon arrival".

§ 4.84 [Amended]

15. Section 4.84 is amended by removing the phrase "report its arrival within 24 hours" wherever it appears in paragraphs (b) and (d) and adding, in its place, the phrase "immediately report its arrival".

§ 4.85 [Amended]

16. Section 4.85 is amended by removing the phrase "report arrival and make entry within 24 hours" wherever it appears in paragraph (c) and adding, in its place, the phrase "immediately report its arrival and make entry within 48 hours".

§ 4.87 [Amended]

17. Section 4.87 is amended by removing the phrase "shall report arrival within 24 hours" in paragraph (d) and adding, in its place, the phrase "shall immediately report arrival".

§ 4.91 [Amended]

18. Section 4.91 is amended by removing the phrase "report arrival within 24 hours" wherever it appears in paragraph (b) and adding, in its place, the phrase "immediately report arrival".

19.–20. Section 4.94(a) and the last sentence of § 4.94(c) are revised to read as follows:

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement, as well as any undocumented American pleasure vessel, shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. Such a vessel which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it has not visited a hovering vessel, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. Such a vessel shall immediately report arrival to Customs when arriving in any port or place within the U.S., including the U.S. Virgin Islands, from a foreign port or place.

* * * * *

(c) * * * Upon the vessel's arrival at any port or place within the U.S. or the U.S. Virgin Islands, the master shall comply with 19 U.S.C. 1433 by immediately reporting arrival at the nearest Customs facility or other place designated by the district director. Individuals shall remain on board until directed otherwise by the appropriate Customs officer, as provided in 19 U.S.C. 1459.

* * * * *

21. Section 4.94(d) is amended by removing the words "made within 24 hours, exclusive of any day on which the customhouse is not open for marine business," in the last sentence of the second paragraph of the cruising license form and substituting the words "immediately made."

22. The statutory citations in parenthesis following § 4.94(e) are removed.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 is amended, in part, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1433, 1624, unless otherwise noted.

2. Section 123.0 is amended by revising the last sentence to read as follows:

§ 123.0 Scope.

* * * The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter.

3. Section 123.1 is revised to read as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Individuals arriving in the United States must report their arrival to Customs, and failure to report arrival may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. The specific reporting requirements are as follows:

(1) *Individuals not arriving by conveyance.* Persons arriving otherwise than by conveyance may enter the U.S. only at those locations specified by the appropriate district director, and shall then immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) *Persons arriving aboard a conveyance that reported its arrival.* Persons aboard a conveyance the arrival of which has been reported to Customs at locations specified by the appropriate district director in accordance with sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code App. (49 U.S.C. App. 1509), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) *Persons arriving aboard a conveyance that has not reported its arrival.* Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, at a location or locations specified by the appropriate district director and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see § 101.3 of this chapter) or Customs station if the district director of the district in which the station is located authorizes entry at that station (see § 101.4 of this chapter). The person in charge of any such vehicle shall, immediately upon arrival of the vehicle in the U.S., report the arrival to Customs. No vehicle shall, after arriving in the U.S., depart or discharge any

passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

(c) *Vessels.* For report of arrival requirements applicable to all vessels, regardless of tonnage, and arriving from any location, see §§ 4.2 and 4.2a of this chapter.

(d) *Method of reporting.* Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the appropriate district director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the district director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs district that supervises the location, and/or other appropriate means.

4. Section 123.2 is revised to read as follows:

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Persons.* Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in § 123.1(a) of this part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to such civil and criminal penalties as are prescribed under 19 U.S.C. 1459 and provided for in § 123.1 of this part.

(b) *Vessels.* The penalty provisions applicable to vessels for failure to report arrival or for proceeding without a permit are those as provided in § 4.3a.

(c) *Vehicles.* (1) *Civil penalties.* The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in § 123.1(b) of this part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to such civil penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. The person also may be subject to an additional civil penalty equal to the value of the merchandise on the conveyance which was not entered or reported as required by § 123.1(b) of this part, and that merchandise may be subject to seizure and forfeiture unless properly entered by the importer or consignee. If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(2) *Criminal penalties.* Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c)(1) of this section shall, in addition to the penalties described therein, be subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436).

5. Section 123.9 is amended by revising paragraph (a) and paragraph (d)(2) to read as follows:

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions applicable*—(1) *Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with § 123.5 of this part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), and any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages.* If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest.* The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for civil penalties as are provided by law, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for criminal penalties, as provided by statute, and if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited, additional penalties may apply.

* * * * *

(d) *Action on the discrepancy report.*

* * * * *

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

* * * * *

6. Section 123.9 is further amended by removing the reference to "19 U.S.C. 1460 or" in paragraphs (d)(3), (e) and (f).

Michael H. Lane,

Acting Commissioner of Customs.

Approved: May 27, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93-30908 Filed 12-20-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket Nos. 80N-0428 and 82N-0342]

Colorants for Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and petitions for reconsideration; denial of requests for a stay of regulation and for hearings.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and petitions for reconsideration, and is denying requests for a stay of the effective date and for hearings, on its final rule on colorants for polymers. The agency is also making certain amendments to its regulations in response to some of those objections

and is making editorial changes in the regulation to correct a misspelling in the listing for an additive, as well as to reflect the recent reorganization of the Center for Food Safety and Applied Nutrition (CFSAN).

DATES: The amendments to § 178.3297 are effective Decemember 21, 1993; written objections to the amendments made in this document and requests for a hearing on those amendments by January 20, 1994.

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

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

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 30, 1991 (56 FR 42927), FDA published a final rule amending its regulations on the use of food additives that may be used as colorants in food-contact polymers. The final rule responded to five food additive petitions for the use of colorants in polymers and transferred the listings for a number of colorants used in food-contact polymers to a single regulation on colorants for polymers in 21 CFR 178.3297 *Colorants for polymers*. In response to information provided in comments on a tentative final rule that published on April 6, 1988 (53 FR 11402), the final rule also permitted the use of D&C Red No. 7 and its lakes, the use of additional shades of phthalocyanine blue, and the expanded use of phthalocyanine green and quinacridone red as colorants in food-contact polymers.

The agency provided 30 days for the filing of objections to the final rule of August 30, 1991. It received six letters containing objections and a petition for reconsideration. The submissions were from the food-packaging industry and from trade associations representing the plastics industry, the color manufacturers' industry, and the paper industry. One of the objections requested a hearing, and the petition for reconsideration requested a stay of the regulation pending a hearing and reconsideration. In addition, the agency received a petition for stay and reconsideration of the preamble to the final rule from the plastics industry and a comment supporting this petition for reconsideration. The issues raised by these objections, requests for hearings, and the petitions for reconsideration, along with the agency's responses, are set forth below.

II. Requests for a Stay

A. Standards for Granting a Stay

Under section 409(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(e)), a request for a hearing on the issuance of a food additive regulation does not automatically stay or delay the effectiveness of that regulation. That section does, however, grant the Secretary of Health and Human Services (and, by delegation, FDA) the discretion to stay the effectiveness of the regulation.

Under § 10.35 (21 CFR 10.35), an interested person may petition the agency to stay an administrative action. Section 10.35(d) specifies that the filing of a petition for a stay of action, a petition for reconsideration, or objections to a final rule will not necessarily stay or otherwise delay any administrative action unless one of the following applies:

(1) The Commissioner determines that a stay or delay is in the public interest and stays the action.

(2) A statute requires that the matter be stayed.

(3) A court orders that the matter be stayed.

Section 10.35(e) states that the agency will grant a petition for a stay if all of the following apply:

(1) The petitioner will otherwise suffer irreparable injury.

(2) The petitioner's case is not frivolous and is being pursued in good faith.

(3) The petition for a stay is supported by sound public policy grounds.

(4) The delay resulting from the stay is not outweighed by public health or other public interests.

In summary, a petition for a stay of an administrative action must establish that the stay is warranted on the basis of both public and private interests, and that these interests are not outweighed by public health concerns.

B. Decision on Requests for Stay

FDA has received two petitions for a stay of the effective date of the final rule on colorants for polymers. One request seeks a stay pending the publication of a final rule amending §§ 178.3297 and 174.5(d)(3) (21 CFR 174.5(d)(3)) to provide for the use of color additive lakes that are provisionally listed for use in food as colorants for food-contact polymers and to provide for the use of color additives and food additives, listed for direct use in food, as indirect additives, respectively. The second request seeks a stay pending FDA's reconsideration of certain statements made in the preamble to the final rule.

The agency is denying the requests for a stay because neither request meets the conditions stated in § 10.35(d) or (e). FDA finds that there is no merit to the requested stays. The first request seeks a stay of the effect of § 178.3297 pending a decision on whether to add additional substances to this regulation. The petition provides no basis for why the regulation should not go into effect to permit the use of the substances that are listed in the regulation, nor is the agency aware of any public policy grounds that would justify staying the final rule on colorants for polymers. Therefore, the agency is denying this request.

As for the second request, the preamble to the final rule on § 178.3297 has no legal effect. It is simply an advisory opinion that sets forth the agency's views on the matter dealt with in the final rule. Therefore, this request is equally without merit.

III. Petitions for Reconsideration

Under § 10.33 (21 CFR 10.33), any interested person may petition for reconsideration of all or part of any decision of the agency on a petition submitted under § 10.25 (21 CFR 10.25). The agency received two petitions for reconsideration of the final rule on colorants for polymers. One petition requests amendments to §§ 178.3297 and 174.5(d)(3) to provide for the use of color additive lakes that are provisionally listed for use in food as colorants for food-contact polymers and to provide for the use of color additives and food additives listed for direct use in food as indirect additives, respectively. The second petition requests that the agency reconsider and modify statements made in the preamble to the final rule on colorants for polymers.

The agency concludes that the petition for reconsideration requesting amendment of §§ 178.3297 and 174.5(d)(3) is more appropriately dealt with under § 12.26 (21 CFR 12.26) than under the reconsideration provisions of its regulations. Under § 12.24(a)(1) (21 CFR 12.24(a)(1)), the first determination that FDA makes in response to an objection is whether regulations should be modified or revoked under § 12.26. Under § 12.26, the agency can modify or revoke a regulation or order. The agency will consider the issues raised in this petition for reconsideration under § 12.26. Therefore, this petition for reconsideration is moot.

One petition requested FDA to reconsider, pursuant to § 10.33, certain statements made in the preamble to the final rule. Three objections supported the petition for reconsideration of these statements, and one objection offered comments on the petition for reconsideration. This petition and the four objections requested that FDA acknowledge that individual companies as well as the agency have the right to determine that a colorant or other substance that does not migrate in more than insignificant amounts under the intended conditions of use is not a food additive. The petition also asserted that the agency did not adequately consider the statutory definition of a "food additive" in the preamble to the final rule on colorants for polymers. Specifically, the petition contended that not all colorants in polymers will migrate to food in significant amounts, and that, therefore, the position taken by the agency in the preamble to the final rule that all colorants used in polymers are food additives is in conflict with the definition of a "food additive" in section 201(s) of the act (21 U.S.C. 321(s)). This definition states that "the term 'food additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food." The petition further argued that, in the preamble, FDA did not adequately consider the U.S. Court of Appeals holding in *Monsanto Co.* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979), stating that a substance meets the definition of a food additive if FDA can determine "with a fair degree of confidence that [the] substance migrates into food in more than insignificant amounts."

The petition for reconsideration also stated that the agency incorrectly interpreted migration data in its files in concluding that all colorants in food-contact polymers migrate to food. Moreover, the petition contended that FDA has not adequately considered the *Monsanto* decision because the agency still relies on Fick's laws of diffusion to describe migration of colorants and other indirect additives from food packaging to food. In addition, the petition and the other objections asserted that FDA does not have the resources to efficiently deal with the submissions that industry will be forced to make to the agency as a result of the agency's statements in the preamble that colorants in polymers are reasonably expected to migrate to food. One objection stated that FDA also did not adequately consider the economic impact on industry of the agency's requirement that formal submissions must be made to FDA on all colorants for polymers.

The agency concludes that it has previously and adequately considered all information in the administrative record including the information cited by the petition and the four objections. FDA disagrees with the contention that it did not adequately consider the definition of a "food additive" in the act or the conclusions of the court in *Monsanto*. FDA concluded in the final rule that colorants and other additives used in food-contact polymers are reasonably expected to migrate in some amount to food and may therefore be regulated as food additives. This conclusion was based on all the scientific evidence before the agency, including Fick's laws, migration data contained in petitions, and other migration studies (see 56 FR 42927 at 42928 through 42929). The agency noted, however, that it has determined that under specific conditions of use, particular colorants would be expected to migrate at insignificant levels that do not raise any safety concerns. In these cases, the agency has not required that food additive petitions be submitted for the intended use of the substance, even though the substance, under these conditions of use, met the strict definition of a "food additive."

The agency notes that the petition and the four objections are substantially similar to comments received on the April 6, 1988, tentative final rule that FDA addressed in the August 30, 1991, final rule (56 FR 42927 at 42928). Therefore, FDA is denying the petition for reconsideration and the accompanying objections because they do not present any evidence that the agency has not previously and adequately considered in reaching its conclusions in the preamble to the final rule on colorants for polymers (§ 10.33(d)(1)).

Even though the agency is denying the petition for reconsideration of the preamble to the final rule on colorants for polymers, the agency believes that some clarification of the issues is necessary. The petition and four objections appear to be based on a misinterpretation of the agency's intent in the preamble to the final rule. In the preamble, the agency did not intend to imply that firms could not make their own determination as to whether a particular use of a specific substance does not meet the definition of a food additive. However, the agency wishes to point out that such determinations do not bind FDA, and that a firm relies on such a determination at its own risk. If the agency determines, based on its review of the available evidence, that the use of such a substance meets the definition of a food additive, the agency may take regulatory action against the substance as an unsafe food additive or against the firm that introduced it into interstate commerce.

Therefore, in cases where it is not clear whether the use of a food-contact article would meet the "food additive" definition, the agency recommends that firms seek written concurrence by FDA that the substance is not subject to regulation under the food additive provisions. The agency published a proposed rule in the **Federal Register** of October 12, 1993 (58 FR 52719), that, if adopted, will establish a "threshold of regulation" below which substances will not require a food additive regulation for use as an indirect food additive. In the October 12, 1993, proposed rule, the agency stated that it would consider exempting from regulation as a food additive those food-contact materials whose use will result in dietary concentrations of 0.5 parts per billion or less.

The assertion by the objectors that FDA lacks resources to process a projected influx of petitions, and the contention that the cost of analyzing products before introduction into the marketplace would be greater as a result of the August 30, 1991, final rule, are not germane to this rulemaking because FDA is not requiring additional food additive petitions. Moreover, the testing, that would need to be done to determine whether a colorant or other component of a food-contact material is a food additive would be the same, at least if a reliable determination is to be made, whether a firm would be making its own evaluation or submitting the results to the agency for its evaluation. Therefore, whether the data are evaluated by industry or by FDA, the cost of developing them would be the same.

IV. Requests for a Hearing

A. Standards for Granting a Hearing

Section 409(f) of the act (21 U.S.C. 348(f)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such an order may file objections, specifying with particularity the provisions of the order "deemed objectionable, stating reasonable grounds therefor," and may request a public hearing based upon such objections. Specific criteria for determining whether a request for a hearing has been justified are set forth in § 12.24(b) (21 CFR 12.24(b)). A

hearing will be granted if the material submitted by the requester shows that:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the agency concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the agency concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 314.300, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for a hearing are met.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) reh. den., 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott, & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute, and a party is entitled to judgment as a matter of law. See Rule 56, "Federal Rules of Civil Procedure." The same principle applies in administrative proceedings.

A hearing request must contain evidence that raises a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Association* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing. *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) cert. denied, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. (See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971)). In other words, a hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), cert. denied, 358 U.S. 872 (1958)).

Even if objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality are validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

> The underlying concept requires that a party have a fair chance to present its position. But overall interests of administration do not require or generally contemplate that more than a fair opportunity will be given. *Retail Clerks Union, Local 1401, R.C.I.A.* v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). (See *Costle* v. *Pacific Legal Foundation, supra* at 1106. See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968)).

In summary, a hearing request must present sufficient credible evidence to raise a material issue of fact, and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

B. Decision on Requests for a Hearing

1. Three objections requested that § 178.3297 *Colorants for polymers* be amended to provide for the use of color additive lakes that are provisionally listed for use in food as colorants for food-contact polymers. One objection stated that the proposal for the use of colorants for plastics, published in the **Federal Register** of June 6, 1972, provided for the use of all color additives that were listed for direct use in food as colorants for polymers, and that the intent of that proposal was to include both permanently and provisionally listed colors and their lakes. One objection further asserted that FD&C Red No. 4 is provisionally listed under § 82.304 (21 CFR 82.304) and, therefore, its lakes are also provisionally listed. Two objections requested a hearing on this issue.

In response to these objections FDA reviewed the June 6, 1972, proposal and found that it had proposed to list the use of "* * * colors listed for direct use in food under the provisions of the color additive regulations in Part 8 * * *" for use in food-contact plastics (37 FR 11255 at 11256). At the time of the June 6, 1972, proposal, part 8 (21 CFR part 8) included both permanently and provisionally listed color additives. Therefore, the agency agrees that the June 6, 1972, proposal was to permit the use of provisionally listed lakes of color additives that are listed for direct food use as colorants in polymers. However, § 82.304 restricts FD&C Red No. 4 to use only in externally applied drugs and cosmetics. Therefore, neither FD&C Red No. 4 nor its lakes are listed for direct addition to food, and even under the June 6, 1972, proposal, they could not be used as colorants in food-contact polymers.

The agency acknowledges that FD&C color additives, other than FD&C Red No. 4, are listed for direct use as color additives in food, and that their lakes are provisionally listed for this use. Therefore, in response to these objections, FDA is modifying § 178.3297(d) to include the FD&C lakes (except FD&C Red No. 4 lakes) that are provisionally listed, for use in food as colorants in food-contact polymers. This amendment makes the listing of tartrazine lake (certified FD&C Yellow No. 5 only) in the table of § 178.3297(e) redundant. Therefore, FDA is removing this listing from the table.

Because FDA is amending the final rule on colorants for polymers in this way in response to the objections, there is no issue of fact to consider at a

hearing and, thus, no basis for a hearing (§ 12.24(b)(1)).

2. Two objections requested that § 178.3297 *Colorants for polymers* be corrected to include the use of chromium oxide green as a colorant in repeat-use rubber articles complying with § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600). The objections pointed out that chromium oxide green was listed for use as a colorant under § 177.2600. However, when the agency transferred the colorants listed in § 177.2600 to § 178.3297, it omitted the use of chromium oxide green as a colorant in repeat-use rubber articles. One of the objections requested a hearing on the exclusion of chromium oxide green from use as a colorant for repeat-use rubber articles.

FDA agrees that it inadvertently omitted the use of chromium oxide green in repeat-use rubber articles complying with § 177.2600 when it transferred the colorants listed under § 177.2600 to § 178.3297. Therefore, the agency is modifying the final rule on colorants for polymers to include the use of chromium oxide green as a colorant in repeat-use rubber articles complying with § 177.2600.

The agency concludes that, because it is modifying the final rule on colorants for polymers in response to the objections, there is no issue of fact to consider at a hearing. The agency is, therefore, denying the request for a hearing on this issue (§ 12.24(b)(1)).

3. Three objections requested that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the use of color additives and their lakes that are permanently or provisionally listed for use in foods as colorants for paper and paperboard in contact with aqueous and fatty food. One party requested a hearing on this objection.

This objection raises an issue that is beyond the scope of the August 30, 1991, final rule. The agency's final rule on colorants for polymers did not address the use of colorants in paper and paperboard food-contact materials. The final rule merely amended § 176.170 to transfer to that regulation the list of colorants for paper and paperboard that had been listed in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300). Therefore, the amendment to § 176.170 in the August 30, 1991, final rule was only a technical correction and was not an action on any new uses of colorants in paper and paperboard in contact with food. None of the five petitions that FDA responded to in this rulemaking involved colorants in paper and paperboard. Consequently, FDA is denying these requests to amend § 176.170. Because the requests for a hearing are to address an issue that is outside the scope of this rulemaking, there is no basis to hold a hearing on this issue (§ 12.24(b)(4)).

Although FDA is denying these objections, the agency acknowledges that it issued on September 18, 1979, a formal advisory opinion that stated that:

"* * * We would have no objection to the use, in paper and paperboard intended for food contact, of those color additives regulated for direct addition to food generally and that do not have specific restrictions on the levels or kinds of use. These color additives, which are restricted only by good manufacturing practice, would be among the color additives exempt from certification, which are listed in 21 CFR Part 73, Subpart A; those subject to certification, which are listed in 21 CFR Part 74, Subpart A; and those provisionally listed in 21 CFR 81.1(a) for food use. The color additives in paper and paperboard should not impart a noticeable color to the food by migration."

FDA also wishes to make clear that, in denying these objections, it is not changing this opinion. However, the agency is constrained from incorporating these listings in § 176.170, as requested by these objections, without appropriate rulemaking. If interested persons would like to see § 176.170 amended in the manner suggested by the objections, they should petition the agency to do so in accordance with part 171 (21 CFR part 171).

4. One objection requested that § 174.5(d)(3) be amended to state that color additives and food additives listed for direct use in food have been subject to prior approval and may therefore be used as indirect additives. The objection requested a hearing on the proposed amendment of § 174.5(d)(3). A related objection also contended that food additives listed for direct addition to food are generally recognized as safe (GRAS) for use in polymers that contact food under § 174.5(d)(1).

These objections raise issues that are beyond the scope of the August 30, 1991, final rule. The agency's final rule on colorants for polymers did not consider the amendment of § 174.5. None of the five petitions that FDA responded to in this rulemaking involved such an amendment. Consequently, FDA is denying these requests to amend § 174.5. Because the requests for a hearing are to address an issue that is outside the scope of this rulemaking, there is no basis to hold a hearing on this issue (§ 12.24(b)(4)).

Although the agency is denying these objections, FDA believes that clarification of this issue is necessary. The agency disagrees with the objection that contends that food additives and color additives that are permitted for direct use in food are GRAS for indirect food additive use and may therefore be used under § 174.5(d)(1) as colorants in food-contact polymers. The agency also disagrees that substances regulated for use as direct food additives should be permitted as indirect food additives. Both of these suggestions could significantly increase the exposure to many direct food additives that are present in the human diet only at extremely low levels (e.g., synthetic flavors).

Nonetheless, the agency has published a proposed rule in the **Federal Register** of October 12, 1993 (58 FR 52719), that, if adopted, will establish a level below which substances regulated for direct addition to food would not require regulation for use as an indirect food additive. In the October 12, 1993, proposed rule, the agency stated that it would consider exempting from the requirements of a food additive regulation uses of direct additives in food-contact material that result in an exposure that is less than 1 percent of the acceptable daily intake for the direct additive.

V. Other Objections

One objection requested that § 178.3297 be amended to remove the limitations on the use of zinc oxide and to permit its use as a colorant for repeat-use rubber articles complying with § 177.2600. The objection stated that zinc oxide is necessary as an activator in the vulcanization process for rubber, and that the limitations in § 178.3297 on the use of zinc oxide make it appear that this additive cannot be used in repeat-use rubber articles.

This objection misinterprets several aspects of the agency's food additive regulations. The listing of zinc oxide as a colorant for polymers in § 178.3297 cannot be interpreted to permit the use of this additive as a vulcanizing agent in repeat-use rubber articles. Additives that may be used in the production of repeat-use rubber articles are included in § 177.2600. Although § 177.2600 does not specifically list zinc oxide as a vulcanizing material in paragraph (c)(4)(ii), this substance can be used for this technical effect because it is listed as GRAS in §§ 182.8991 and 182.5991 (21 CFR 182.8991 and 182.5991) (see 21 CFR 177.2600(c)(1).)

VI. Other Actions

A. Technical Correction

The agency is correcting a misspelling in the August 30, 1991, final rule that was incorporated in § 178.3297. Specifically, the agency is correcting the listing for 4,4'-Bis(4-anilino-6-methylethanolamine-α-triazin-2-ylamino)-2,2'-stilbene disulfonic acid, disordium salt, to 4,4'-Bis(4-anilino-6-methylethanolamine-α-triazin-2-ylamino)-2,2'-stilbene disulfonic acid, disodium salt.

B. CFSAN Reorganization

Since the publication of the August 30, 1991, final rule, CFSAN has undergone an administrative reorganization. As a result of the reorganization, the Division of Food and Color Additives no longer exists. Therefore, the agency is correcting paragraph (c) of § 178.3297 by replacing the address for the former Division of Food and Color Additives with the current address for the Division of Petition Control, which is now responsible for responding to requests for extraction testing guidelines.

C. Scope of Final Rule

Amendments to § 178.3297 only include specific changes listed in this final rule because the amendments contained in the August 30, 1991, final rule have already been codified.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Economic Impact

FDA has examined the impacts of this final rule amendment under the Regulatory Flexibility Act. The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses. In compliance with the Regulatory Flexibility Act, the agency certifies that this final rule amendment will not have a significant impact on a substantial number of small businesses. This final rule amendment is exempt from Executive Order 12866, which directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

IX. Objections

Any person who will be adversely affected by the amendments to § 178.3297 to permit the use of provisionally listed color additive lakes listed for direct use in food as colorants in food-contact polymers and to permit the use of chromium oxide green as a colorant in repeat-use rubber articles complying with § 177.2600 may at any time on or before January 20, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

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

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

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

2. Section 178.3297 is amended by revising the third sentence in paragraph (c), revising paragraph (d), and amending the table in paragraph (e) by removing the entry for "Tartrazine lake" and by revising the entries for "4,4'-Bis(4-anilino-6-methylanolamine-α-triazin-2-ylamino)-2,2'-stilbene disulfonic acid, disordium salt" and "Chromium oxide green" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(c) * * * Extraction testing guidelines to conduct studies for additional uses of colorants under this section are available from the Food and Drug Administration free of charge from the Center for Food Safety and Applied Nutrition, Division of Petition Control (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(d) Color additives and their lakes listed for direct use in foods, under the provisions of the color additive regulations in parts 73, 74, 81, and 82 of this chapter, may also be used as colorants for food-contact polymers.

* * * * *

(e) * * *

Substances	Limitations
4,4'-Bis(4-anilino-6-methylethanolamine-α-triazin-2-ylamino)-2,2'-stilbene disulfonic acid, disodium salt.	Do.
* * * * * * *	
Chromium oxide green, Cr_2O_3 (C.I. pigment green 17, C.I. No. 77288).	For use only:

Substances	Limitations
	1. In olefin polymers complying with § 177.1520 of this chapter. 2. In repeat-use rubber articles complying with § 177.2600 of this chapter; total use is not to exceed 10 percent by weight of rubber articles.
* * *	* * * * *

Dated: December 10, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-30994 Filed 12-20-93; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT10-1-6529; FRL-4664-8]

Clean Air Act Approval and Promulgation of the Quality Assurance Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to Montana's State Implementation Plan (SIP) submitted by the Governor on April 2, 1992. These revisions consisted of amendments to the Administrative Rules of Montana (ARM) 16.8.807 (Ambient Air Monitoring) and 16.8.809 (Methods and Data) and the repeal of 16.810 (Procedures for Reviewing and Revising the Montana Quality Assurance Manual). ARM 16.8.810 previously specified procedures for revising the Montana Quality Assurance (QA) Manual.

EFFECTIVE DATE: This action will become effective on February 22, 1994, unless notice is received by January 20, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405. (303) 293-1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time-to-time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which are a part of the SIP.

I. Background

The Montana Board of Health and Environmental Sciences (hereafter called the Board) adopted regulations, on November 14, 1986, establishing the Montana Quality Assurance Manual (hereafter referred to as the Manual). More specifically, regulation ARM 16.8.807 was created which specified the Manual as the procedures to be used for ambient air quality monitoring in Montana. The Manual was identified as one of several documents to be used as a standard for all ambient air quality monitoring conducted in Montana for the purpose of demonstrating compliance with Montana and National Ambient Air Quality Standards (NAAQS). These standards applied to any person, organization, industry or agency which is required to conduct ambient air monitoring as a condition of a permit, as part of a permit application, as a condition of the Montana Department, Board, or court order, or to demonstrate compliance with an ambient air quality standard.

The State subsequently developed the Manual and sent a copy to EPA for its review and comment. There were numerous deficiencies in the quality assurance procedures portion of the Manual which EPA identified to the State. EPA worked to resolve these issues with the State over the course of the next two years.

1. 1989 SIP Revision Submittal

In a letter dated December 29, 1989, the Governor submitted revisions to the Montana SIP. The revisions were specific to ARM 16.8.807 (involving a date change from September, 1986 to March, 1989) and 16.8.809 (involving a date change from September, 1986 to March, 1989) which reference the updated 1989 Montana Quality Assurance Manual. The Board adopted the revisions on November 17, 1989. The Manual was updated from the 1986 version in March of 1989. The update from the 1986 version to the 1989 version of the Manual involved: (a) Adoption of operating, maintenance, and calibration procedures for PM-10 samplers and the Campbell Scientific Dataloggers; (b) Incorporation of emergency episode monitoring procedures; (c) Changes in the method of calculating precision for total suspended particulate, PM-10 and lead; (d) Relaxation of certain control limits for certain meteorological and air quality monitors; (e) Tightening of recertification requirements for hydrogen sulfide and sulfur dioxide permeation tubes; (f) Modification of auditing procedures for dichotomous samplers; and (g) Other miscellaneous requirements, procedures, and guidelines for collection, analysis, and reporting of air quality data.

2. 1992 SIP Revision Submittal

In a letter dated April 2, 1992, the Governor submitted revisions to the Montana SIP. The submittal was reviewed by EPA and the Governor was advised, by a letter dated May 21, 1992, that the submittal was determined to be administratively and technically complete. The revisions were specific to ARM 16.8.807 (involving a date change from March, 1989 to July, 1991), 16.8.809 (involving a date change from March, 1989 to July, 1991), and ARM 16.8.810 (which was repealed in its entirety) which reference the updated 1991 Montana Quality Assurance Manual. The Board adopted the revisions on November 15, 1991. The Manual was updated from the 1989 version in July of 1991. ARM 16.8.807, ARM 16.8.809 and the repeal of ARM 16.8.810 incorporate this latest edition of the Manual, dated July, 1991.

This action approves the repeal of ARM 16.8.810 solely to eliminate a cumbersome process for revising the Manual. Any revisions to the Manual will still go through the public hearing process. The revisions will not, however, have to go through the submittal in draft to all interested parties and the public for comments as was previously required before the public hearing could take place. These revisions were deemed necessary by the State to avoid a potentially time consuming process as annual updates to the Manual are required by the State—EPA Agreement (SEA). This action was requested by the State of Montana.The

revisions to the above-mentioned regulations are highlighted below:

A. ARM 16.8.807 and ARM 16.8.809—the amendments to these rules would require any person, industry, organization, or agency performing air quality monitoring for the purposes of a condition of a permit, as part of a permit application, as a condition of the Montana Department of Health (the Department), the Montana Board of Health and Environmental Sciences (the Board), a court order, or to demonstrate compliance with an ambient air quality standard, to follow the requirements of the July, 1991 edition of the Manual. The 1991 edition of the QA Manual includes numerous changes from the 1989 edition, which involved modifications to sections, deletion of sections, and addition of new sections. Examples of sections that were modified involved: Organization, Quality Assurance Personnel Designations, Siting Criteria, Reference and Equivalent Methods, along with operation, calibration, and maintenance of analyzers. Examples of sections that were deleted included: PM–10 Calibration Procedures, SLAMS Report, Certification of Ozone Monitor as a Transfer Standard, Indoor Carpet Sampling, and operation, calibration, and maintenance of certain ozone and SO_2 analyzers. Examples of new sections to the Manual included: numerous changes to operation, calibration, and operation of PM–10 analyzers, operation and maintenance of Carbon Monoxide and SO_2 analyzers, and Protocol for Street Sampling Procedure.

B. ARM 16.8.810—the repeal of this rule will eliminate a cumbersome process and streamline the procedure for revising the Montana QA Manual. Under the existing regulation the Department of Health is required to review the Manual every two years and, if changes are necessary, prepare a draft revision. The Department is then required to notify interested parties of the draft revision, make it available for review, and accept public comments for 60 days. After consideration of the comments the Department would then propose to the Board approval of any resulting changes to the Manual.

The repeal of this rule would eliminate the need to solicit public comments prior to the official hearing process before the Board. However, since the Board would still have to approve each revision of the Manual, the public would still be provided the opportunity to comment by providing written or oral testimony to the Board as part of the hearing process. The repeal of this rule was deemed necessary by the State to avoid a potentially time-consuming process as annual updates to the Manual are required in the State-EPA Agreement (SEA).

EPA has noted that the Montana Quality Assurance Manual is included in other parts of the Montana SIP. For consistency throughout the whole Montana SIP, the State should review that portion(s) of the SIP which reference obsolete QA procedures.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective February 22, 1994, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 22, 1994.

Final Action

EPA is acknowledging the Governor's submittal of December 29, 1989, and is approving revisions to Montana's SIP submitted by the Governor April 2, 1992, which amended the Montana Air Quality Regulations ARM 16.8.807 (Ambient Air Monitoring), ARM 16.8.809 (Methods and Data), and repealed ARM 16.8.810 (Procedures for Reviewing and Revising the Montana Quality Assurance Manual). These revisions will streamline the procedure for revising the Montana Quality Assurance Manual and incorporate the latest edition of the Manual, dated July, 1991. This action was requested by the State of Montana.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 2, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register December 15, 1993.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(26) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(26) On April 2, 1992, the Governor of Montana submitted revisions to the plan. The revisions included amendments to the Montana Air Quality Rules incorporating the July 1, 1991, version of the Montana Quality Assurance Manual and streamlining of the procedure for updating the Quality Assurance Manual.

(i) Incorporation by reference.

(A) Revisions, as adopted March 31, 1992, to the Montana Air Quality Rules: 16.8.807 Ambient Air Monitoring, 16.8.809 Methods and Data, and the repeal of 16.8.810 Procedures for Reviewing and Revising the Montana Quality Assurance Manual.

[FR Doc. 93–30989 Filed 12–20–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NM–1–1–5970; FRL–4814–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Regulation 32 for Nonattainment Area Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Albuquerque/Bernalillo County, State of New Mexico State Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 32, entitled Construction Permits—Nonattainment Areas; the April 14, 1993, Supplement to the New Mexico SIP to Control Air Pollution in Areas of Bernalillo County Designated Nonattainment (superseding the Supplement dated July 12, 1989); and a July 18, 1989, letter regarding a stack height commitment and a New Source Performance Standards (NSPS)/National Emission Standards for Hazardous Air Pollutants (NESHAP) performance testing commitment. This approval action was proposed in the **Federal Register** (FR) on September 22, 1992, and no comments were received on the proposal. This SIP revision approves an important portion of Bernalillo County's permitting program, under which new and modified major stationary sources may be constructed in areas of Bernalillo County (outside the boundaries of Indian lands) where a National Ambient Air Quality Standard (NAAQS) is being exceeded, without interfering with the continuing progress toward attainment of that standard.

EFFECTIVE DATE: This action will become effective on January 20, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

Mr. Jerry Kurtzweg (6101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Dr. John Crocker, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION:

1. New Source Review Nonattainment Program

The Clean Air Act (CAA) requires States to implement a preconstruction permit program for new or modified major stationary sources that wish to locate in a nonattainment area. See sections 172(c)(5) and 173 of the CAA. In accordance with section 74–2–4 of the State of New Mexico Air Quality Control Act, Bernalillo County is authorized to provide for the local administration and enforcement of the preconstruction permitting program requirements of the CAA as well as the State Act. Bernalillo County and the City of Albuquerque, through a joint Air Quality Control Board (Board), have the sole authority to issue new and modified source permits within the geographical limits of Bernalillo County, outside the boundaries of Indian lands. The Albuquerque Environmental Health Department implements the Board's requirements. The submitted new source review (NSR) regulation, AQCR 32, will allow the Albuquerque Environmental Health Department to issue permits to major stationary sources in Bernalillo County (outside the boundaries of Indian lands) to construct or modify facilities in areas where a NAAQS is being exceeded, without interfering with the continuing progress toward attaining the standard.

The EPA has adopted regulations specifying the State NSR provisions that must be adopted by a state to satisfy the requirements of sections 172 and 173 of the CAA. These regulations are found in 40 CFR part 51, subpart I, Review of New Sources and Modifications. A SIP satisfying sections 172(b)(6) and 173 of the CAA is required to meet the conditions as set forth in 40 CFR 51.165.

At this time, 40 CFR 51.165 does not reflect the new major source size, offset ratios, and other nonattainment NSR provisions added by the Clean Air Act Amendments (CAAA) of 1990. Nonetheless, these new provisions add additional requirements for state NSR programs which must be reflected in the applicable SIPs. State SIP revisions incorporating the changes mandated by the CAAA of 1990 are subject to pollutant specific deadlines. For instance, SIP revisions incorporating the changes mandated for carbon monoxide (CO) and ozone nonattainment areas were due by November 15, 1992. The EPA is currently in the process of revising its regulations in accordance with the CAAA of 1990 and expects to propose an amended 40 CFR 51.165 in the near future. Since the SIP revisions proposed for Bernalillo County represent a substantial strengthening of the County's nonattainment preconstruction permitting program, the EPA is approving the revisions. However, this action does not excuse the County from making any additional changes required by the CAAA of 1990 in the future. Indeed, even with the

promulgation of the County rules under review in this proceeding, the EPA may use its powers under section 113(a)(5) of the CAA to challenge any permits issued by the County which are not in substantial compliance with the additional permitting requirements imposed by the CAAA of 1990. See 57 FR 13498 and 13555 (April 16, 1992).

The sources to which AQCR 32 apply are new and modified sources that: (1) Are in a nonattainment area and would emit the nonattainment pollutant in a specific amount (100 tons per year), or (2) are located within an attainment area, but their emissions would have a significant impact on a neighboring nonattainment area. By operation of law under the CAAA of 1990, Bernalillo County has been designated nonattainment for only one NAAQS pollutant, CO (moderate category with a design value of 11.1 parts per million). The nonattainment CO boundaries for Bernalillo County are the Albuquerque Metropolitan Statistical Area.

The EPA has reviewed AQCR 32 for compliance with the requirements of 40 CFR part 51, and for compliance with part D of Title I of the CAA. Pertinent details of the EPA's review are found in the document entitled "Evaluation Report for Albuquerque/Bernalillo County Regulation 32—Construction Permits in Nonattainment Areas," revised July 1993. This report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. The highlights of the report are given below.

The baseline in AQCR 32 for calculating emission reduction credit for offsets is the most stringent emission limitation applicable to the source, whether Federal or State, including a Federally enforceable permit which is applicable and in effect at the time the application to construct is filed. Where there is no emission limitation for the particular source of offsets in either a City/County AQCR or Federally enforceable permit, actual emissions from which offset credit is obtained will form the baseline. Where the allowable emissions from the offsetting source are greater than its potential to emit, the potential to emit forms the baseline. Shutdown credits for offsetting are also allowed by AQCR 32 with the same restrictions currently found at 40 CFR 51.165(a)(3)(ii)(C). AQCR 32 requires, as a general rule, an emission reduction (offset) that is at least 20 percent greater than the proposed new allowable emissions, allowing the requirement of EPA regulations for a net air quality benefit to be achieved. Provisions are made for the excess to be either greater or less than 20 percent, but greater than one-for-one, if in certain limited circumstances another amount is more appropriate. Also, once a source becomes subject to AQCR 32, the source must meet all applicable requirements (i.e., a source could not use required emissions reductions in order to "net out" from further requirements.).

It is important to note that the CAA, in section 173(c), now requires all offset emission reductions to be in actual emissions. Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillo County has revised Regulation 32 to address this new requirement (in section D.3.a). Unlike the pollutant-specific NSR changes (such as the drop in source size in ozone nonattainment areas), the changes Congress made to the general nonattainment permitting provisions in section 173 of the CAA were not tied to any specific SIP-submission deadlines. For this reason, the EPA views the changes to section 173 as being immediately applicable to this and all SIP amendments the EPA reviews.

Major new sources and major modifications are required by AQCR 32 to meet and maintain the Lowest Achievable Emission Rate. Additionally, all major stationary sources owned or operated in the County must be in compliance with, or on a compliance schedule for, all applicable emission limitations.

Section H of AQCR 32 contains a provision for banking of emission reductions that will be used as offset credits. The regulation contains requirements to ensure the reductions are surplus, permanent, enforceable, and quantifiable.

The State of New Mexico contains only one area, Bernalillo County, which was granted an extension until December 31, 1987, for attainment of the NAAQS for CO. Former section 172(b)(11)(A) of the CAA required preconstruction permitting regulations for extension areas to contain a provision requiring proposed new major stationary sources or major modifications to perform alternate siting analysis. Section 173(a)(5) of the CAA provides that as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, "an analysis of alternative sites, sizes, production processes, and environmental control techniques [must be conducted] for such proposed source [which] demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification." Albuquerque/Bernalillo County has revised Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with the new requirements of the CAAA of 1990 (see section D.5 of AQCR 32).

The definitions in AQCR 32 all either exactly or substantially correlate with the Federal definitions found in the CFR and the CAA. The Evaluation Report reviews all definitions in AQCR 32.

2. Visibility New Source Review

AQCR 32 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in a nonattainment area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The national visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See CAA section 169A(a)(1) and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier Wilderness Area (40 kilometers) and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 32 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See 40 CFR 51.307(c).

On October 23, 1984 (49 FR 42670), the EPA proposed Federal regulations for visibility NSR and monitoring and proposed to disapprove the SIPs for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, the EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility NSR regulations in compliance with the provisions of 40

CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). The EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those states (including New Mexico) which did not timely adopt necessary SIP revisions by the deadline. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to the EPA on April 14, 1989, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—Prevention of Significant Deterioration, applicable to attainment and unclassified areas, and Regulation 32—Construction Permits Nonattainment Areas, applicable to nonattainment areas. The EPA has reviewed the County's submittal and developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan in Mandatory Class I Federal Areas," revised July 1993. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 32 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for nonattainment areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 29, concerning attainment and unclassified areas, will be addressed in a separate FR notice.

In addition to the provisions described previously, AQCR 32 contains provisions requiring written notification of the affected Federal land managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 32's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 32 pertain to nonattainment area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is approving the Albuquerque/Bernalillo County Regulation 32 as meeting the "nonattainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program, and is replacing the Federal visibility NSR regulations for nonattainment areas promulgated by the EPA for Albuquerque/ Bernalillo County on February 13, 1986 (51 FR 5505). Thus, this final action supplants or displaces the Federal visibility rules issued for the State of New Mexico, but only to the extent that this action implements visibility NSR requirements applicable to nonattainment areas in Bernalillo County, outside the boundaries of Indian lands.

3. Stack Height Regulations

It is necessary that Regulation 32 be in compliance with the Federal Stack Height and Dispersion Technique Regulations. The Governor of New Mexico submitted to the EPA, concurrent with Regulation 32, a SIP revision for Stack Height and Dispersion Technique Regulations (Regulation 33). Regulation 33 was approved by the EPA on March 5, 1991. See 56 FR 9173.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

Under this program, the Albuquerque Environmental Health Department will be issuing permits and establishing emission limitations that may be affected by the court ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA requires that the Albuquerque Environmental Health Department include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

In approving this permit, the Albuquerque Environmental Health Department has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the DC Circuit in *NRDC* v. *Thomas*, 838 F. 2d 1224 (DC Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

The Albuquerque Environmental Health Department made an enforceable commitment to include this caveat in all affected permits in a letter from the Director, Environmental Health Department, to the EPA Region 6 Regional Administrator dated July 18, 1989. This letter will be approved as part of the SIP.

4. Required Amendments to AQCR 32

In the September 22, 1992, FR action proposing the approval of AQCR 32, the EPA required that Albuquerque/ Bernalillo County amend AQCR 32 to address four issues before final approval action. The required amendments are described below:

(A) AQCR 32 had provisions for offset exemptions in section I (Exemptions to D.4 and D.5). The exemptions for resource recovery facilities, for temporary emission sources, and for sources which must switch fuels, had to be deleted from the regulation. Neither 40 CFR 51.165 nor the CAA allow offset exemptions for these or any other types of sources. Albuquerque/Bernalillo County deleted the exemptions in the February 26, 1993, version of AQCR 32.

(B) AQCR 32 also had to have section A (Applicability) revised for clarification purposes. Specifically, section A.3 was deleted, and sections A.1 and A.5(a) (now A.4(a)) were revised to read as follows:

A. Applicability

1. Any person constructing any new major stationary source or major modification shall obtain a permit from the Department in accordance with the requirements of this regulation prior to the start of construction or modification if either of the following conditions apply:

a. The major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment; or

b. The major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Table 1 at any location that does not meet any national ambient air quality standard for the same pollutant. See Section A.4.

4a. A new major stationary source or major modification which meets the criteria of Section A.1.(b) shall demonstrate that the source or modification will not cause or contribute to a violation of any National Ambient Air Quality Standard by meeting the following requirements and no others of this regulation:

(i) Section D.3(b) regarding emission offsets;

(ii) Section D.4 regarding a net air quality benefit;

(iii) Section F—Emission Offset Baseline;

(iv) Section G—Emission Offset; and

(v) Section I—Air Quality Benefit.

(C) Albuquerque/Bernalillo County was also required to revise Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with section 173(a)(5) of the CAA. Specifically, section D.5 was revised to require the owner or operator of proposed major stationary sources or major modifications to conduct an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed sources which demonstrate that benefits of the proposed sources significantly outweigh the environmental and social costs imposed as a result of their location, construction, or modification.

(D) As noted earlier, the CAA, in section 173(c), now requires all offset emission reductions to be in actual emissions.

Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillo County has revised Regulation 32 to adequately address this new requirement by revising section D.3.a.

In addition to making the above revisions, Albuquerque/ Bernalillo County made further small and noncontroversial revisions to AQCR 32 which clarified, renumbered, and updated certain sections of AQCR 32. These minor changes are presented as an attachment to the Evaluation Report.

Final Action

The EPA is approving this Albuquerque/Bernalillo County Nonattainment Area permit SIP revision. Specifically, the EPA is approving: Albuquerque/Bernalillo County AQCR 32, entitled Construction Permits—Nonattainment Areas, as filed with the State Records and Archives Center on March 16, 1989, and all of the revisions to AQCR 32 filed on February 26, 1993; the April 14, 1993, Supplement to the New Mexico SIP to Control Air Pollution in Areas of Bernalillo County Designated Nonattainment (supersedes the Supplement dated July 12, 1989); and a July 18, 1989, letter regarding a stack height commitment and an NSPS/ NESHAP performance testing commitment. The EPA is also approving this SIP revision submittal as meeting the "nonattainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

Based on the above evaluation, the EPA is approving this SIP revision which will result in a strengthening of the Albuquerque/Bernalillo County SIP. As discussed, future revisions to this plan regarding Nonattainment Area Permitting must be made in accordance with the requirements of the CAAA of 1990.

This action makes final the action proposed at 57 FR 43653 (September 22, 1992). As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from table one to table two under the processing procedures established at 54 FR 2214, January 19, 1989.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

Executive Order

This action has been classified as a table two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 6, 1993.

Allyn M. Davis,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(51) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(51) A revision to the New Mexico SIP addressing the nonattainment new source review program for Albuquerque/Bernalillo County, outside the boundaries of Indian lands, was submitted by the Governor of New Mexico on April 14, 1989, August 7, 1989, and May 17, 1993. The revision

included visibility protection new source review and stack height provisions.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation 32—Construction Permits—Nonattainment Areas, Section A, "Applicability," Subsection A(2); Section B, "Source Obligation," Subsections B(1), B(2), B(4); Section C, "Source Information," Subsection C(3); Section G, "Emission Offsets," Subsections G(first paragraph), G(1), G(2), G(4), G(6), G(7), G(8), G(9)(first paragraph), G(9)(a), G(9)(b), G(10); Section J, "Public Participation and Notification," Subsections J(1), J(2)(a), J(2)(d), J(2)(f), J(2)(g), J(2)(h); Section K, "Definitions," Subsections K(first paragraph), K(1), K(2), K(4), K(5), K(6), K(8), K(9), K(10), K(11), K(12), K(13), K(15), K(16)(first paragraph), K(16)(b), K(16)(c)(first paragraph), K(16)(c)(i), K(16)(c)(ii), K(16)(c)(iii), K(16)(c)(iv), K(16)(c)(v)(first paragraph), K(16)(c)(v)(a), K(16)(c)(vi), K(16)(c)(vii), K(16)(d), K(16)(e), K(17)(first paragraph), K(17)(a), K(17)(b), K(17)(c), K(18), K(19), K(20), K(21)(first paragraph), K(21)(a), K(21)(b)(first paragraph), K(21)(b)(i), K(21)(c), K(21)(d), K(21)(e), K(21)(f), K(23), K(26), K(28), K(29), K(31), K(32); and Table 1, "Significant Ambient Concentrations," as filed with the State Records and Archives Center on March 16, 1989; and further revisions to AQCR 32, Section i, "Purpose;" Section A, "Applicability," Subsections A(1), A(3), A(4); Section B, "Source Obligation," Subsections B(3), B(5), B(6); Section C, "Source Information," Subsections C(first paragraph), C(1), C(2); Section D, "Source Requirements;" Section E, "Additional Requirements for Sources;" Section F, "Emissions Offset Baseline;" Section G, "Emission Offsets," Subsections G(3), G(5), G(9)(c); Section H, "Banking of Emission Reduction;" Section I, "Air Quality Benefit;" Section J, "Public Participation and Notification," Subsections J(2)(first paragraph), J(2)(b), J(2)(c), J(2)(e); Section K, "Definitions," Subsections K(3), K(7), K(14), K(16)(a), K(16)(c)(v)(b), K(17)(d), K(17)(e), K(21)(b)(ii), K(22), K(24), K(25), K(27), K(30); and Table 2, "Fugitive Emissions Source Categories," as filed with the State Records and Archives Center on February 26, 1993.

(ii) Additional material.

(A) The Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Areas of Bernalillo County Designated Nonattainment, as approved by the Albuquerque/Bernalillo County Air Quality Control Board on April 14, 1993. This supplement superseded the supplement dated July 12, 1989.

(B) A letter dated July 18, 1989, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department, to Mr. Robert E. Layton Jr., Regional Administrator, EPA Region 6, regarding a stack height commitment and an NSPS/NESHAP performance testing commitment.

[FR Doc. 93-31037 Filed 12-20-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 52

[NM-3-1-5971; FRL-4814-6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Albuquerque/Bernalillo County, State of New Mexico State Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 29, entitled Prevention of Significant Deterioration (PSD); the April 11, 1990, PSD Supplement (supersedes the Supplement dated July 12, 1989); and revisions to AQCR 2, entitled Definitions. This approval action was proposed in the **Federal Register** (FR) on September 22, 1992, and no comments were received on the proposal. This SIP revision approves an important portion of Bernalillo County's permitting program, under which major stationary sources or major modifications can be constructed in attainment areas and unclassified areas (outside the boundaries of Indian lands), without causing significant deterioration of the air quality in those areas. In addition, this action also approves revisions to AQCR 29 to include nitrogen dioxide (NO_2) increment provisions, and approves a continuous emission monitoring (CEM) negative declaration (in the Supplement).

EFFECTIVE DATE: This action will become effective on January 20, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

Mr. Jerry Kurtzweg (6101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Dr. John Crocker, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 655-7214.

SUPPLEMENTARY INFORMATION:

1. Prevention of Significant Deterioration (PSD) Program

The Clean Air Act (CAA) sets forth plan requirements for attainment and unclassified areas in part C. The EPA is required to develop regulations to fulfill the requirements of the CAA. The regulations that fulfill this requirement regarding PSD are found in 40 CFR 51.166. The Albuquerque/Bernalillo County PSD program has been reviewed against the requirements found in 40 CFR 51.166 and in the Clean Air Act Amendments (CAAA) of 1990. With the approval of the PSD program for Albuquerque/Bernalillo County, the City/County will be authorized to issue permits to allow major sources to construct or modify processes in attainment or unclassified areas in Bernalillo County, outside the boundaries of Indian lands. The Governor of New Mexico submitted the proposed PSD SIP revision for Albuquerque/Bernalillo County to the EPA on April 14, 1989, August 7, 1989, May 1, 1990, and on May 17, 1993. The SIP revision contained AQCR 29, AQCR 2, and the Supplement to AQCR 29. AQCR 29, AQCR 2, and the Supplement apply to all of Bernalillo County (outside the boundaries of Indian lands), which, in accordance with section 74-2-4 of the State of New Mexico Air Quality Control Act, is authorized to provide for the local administration and enforcement of the CAA. This PSD SIP revision meets the Federal requirements including those for best available control technology (BACT) and modeling. The details of the EPA's evaluation, and the determination that the PSD program in Albuquerque/Bernalillo County meets the Federal requirements, are addressed in the Technical Support Document (as revised July 1993).

The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the BACT in construction of new major stationary sources or modification of existing major stationary sources. AQCR 29 and the Supplement meet the Federal requirements concerning BACT in sections E and P.10 of AQCR 29 ("Control Technology Requirements"), and in section 8.b of the Supplement.

As found in 40 CFR 51.166(l) of the Federal PSD regulations, applicants must use the EPA approved models for all PSD permitting purposes. AQCR 29 and the Supplement meet the Federal requirements concerning ambient air quality modeling in section H of AQCR 29 and in section 5 of the Supplement by requiring the use of EPA approved models.

2. Nitrogen Dioxide Increment Provisions

To prevent significant deterioration of air quality due to emissions of nitrogen oxides, NO_2 increment provisions have been incorporated into AQCR 29. The provisions follow the requirements set forth in 40 CFR 51.166 and the final rule pertaining to the Prevention of Significant Deterioration for Nitrogen Oxides (53 FR 40656). The NO_2 increment provisions establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration as defined in section P.8 of AQCR 29.

3. Continuous Emission Monitoring Negative Declaration

The April 11, 1990, revisions to the Supplement added a negative declaration regarding continuous emissions monitoring (CEM). This revision specifically addresses 40 CFR part 51, appendix P, section 1.1 (Minimum Emission Monitoring Requirements—Applicability). There is an allowance recognized by the EPA for negative declarations regarding Federal CEM requirements if there are no existing sources that are required by 40 CFR 51.214 and 40 CFR part 51, appendix P, to have continuous emission monitoring. The Supplement narrative explains that as of April 11, 1990, there were no existing sources in Bernalillo County required by 40 CFR part 51, appendix P, to have continuous emissions monitoring.

4. Visibility New Source Review

AQCR 29 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in an attainment or unclassified area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The national visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See section 169A(a)(1) of the CAA and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier Wilderness Area (40 kilometers) and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 29 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See section 169A(g)(1) of the CAA.

The CAAA of 1990 revised sections 162(a) and 164(a) of the CAA to specify that the boundaries of areas designated as Class I must conform to all boundary changes at such parks and wilderness areas made since August 7, 1977, and any changes that may occur in the future. The EPA interprets the current regulations at 40 CFR 52.21 as being able to accommodate these statutory changes, and no regulatory revisions are necessary at this time in order to implement these changes. For a discussion of the EPA's policy regarding the implementation of the boundary change, please consult the memorandum entitled "New Source Review Program Transitional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, March 11, 1991. See 57 FR 18075 (April 28, 1992). In addition, by letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the PSD regulations in a manner consistent with the changes in sections 162(a) and 164(a) of the CAA as interpreted by the EPA.

On October 23, 1984 (49 FR 42670), the EPA proposed Federal regulations for visibility new source review and monitoring and proposed to disapprove the State Implementation Plans (SIPs) for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, the EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). The EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those States (including New Mexico) which did not timely adopt necessary SIP revisions by the deadline. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to the EPA on April 14, 1989, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—Prevention of Significant Deterioration, applicable to attainment and unclassified areas, and Regulation 32—Construction Permits—Nonattainment Areas, applicable to nonattainment areas. The EPA has reviewed the County's submittal and has developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan in Mandatory Class I Federal Areas," revised July 1993. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 29 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for attainment or unclassified areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 32, concerning nonattainment areas, will be addressed in a separate FR notice.

In addition to the provisions described previously, AQCR 29 contains provisions requiring written notification of the affected Federal land managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 29's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 29 pertain to attainment and unclassified area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is approving the Albuquerque/Bernalillo County Regulation 29 as

meeting the "attainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program. Thus, this final action supplants or displaces the Federal visibility rules issued February 13, 1986, for the State of New Mexico, but only to the extent that this action implements visibility new source review requirements applicable to attainment and unclassifiable areas in Bernalillo County, outside the boundaries of Indian lands.

5. Concluding Remarks and Administrative Details

The EPA reviewed AQCR 29, AQCR 2, and the Supplement for compliance with the requirements of 40 CFR 51.166 pertaining to PSD requirements, including NO_2 increment provisions, 40 CFR part 51, appendix P, pertaining to CEM requirements, and part C of title I of the CAA, as amended. This review is available at the EPA Region 6 address listed above.

In the September 22, 1992, FR action proposing the approval of AQCR 29, the EPA required that Albuquerque/Bernalillo County make four administrative corrections. The corrections to AQCR 29 are detailed below:

A. In section P.7, Table 2, Table 4, and Table 6, "mgm/m^3" was changed to "ugm/m^3."

B. In the Regulation section E.3, the phrase, ". . . appropriate at the *latest* reasonable time . . ." was amended to read, "appropriate at the *least* reasonable time . . .", in accordance with 40 CFR 51.166(j)(4).

C. Under definitions, section P.11, "Building, structure, facility, or installation," the U.S. Government stock number was incorrectly listed as 041–001–00066–6. It now reads 4101–0066 in accordance with 40 CFR 51.166(b)(6).

D. The Clean Air Act Amendments of 1990 amended section 169(1) to expand the list of major emitting facilities subject to PSD requirements to include municipal incinerators (municipal waste combustors) capable of charging more than 50 tons of refuse per day with a potential to emit more than 100 tons per year of any regulated pollutant. Under prior law, only municipal incinerators capable of charging more than 250 tons of refuse per day were subject to the 100 tons per year major source threshold for PSD applicability. The EPA interprets this statutory change as being immediately effective. The City of Albuquerque has formally added this new class of PSD major sources to AQCR 29 in Table 1. In addition to making the above revision, Albuquerque/Bernalillo County made further small and noncontroversial revisions to AQCR 29 which clarified and updated certain sections of AQCR 29. These minor changes are presented as an attachment to the Technical Support Document.

The CAAA added a new section 302(z) defining the term "stationary source" as generally any source of an air pollutant, except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. The EPA's initial view is that the definition of stationary source in the PSD regulations is flexible enough to accommodate new section 302(z) without requiring regulatory revisions. By a letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the regulations in a manner consistent with this statutory addition.

The CAAA also revised section 169(3) to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels, or any other means, to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 CAAA. The EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under the CAA, under which clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT-level controls. Accordingly, the EPA believes that no regulatory revisions are necessary in order to implement these statutory changes. By letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the revised language in section 169(3) in a manner consistent with the EPA's interpretation.

The Albuquerque/Bernalillo County PSD SIP revision does not apply to sources located or wanting to locate on Indian lands. This PSD SIP revision will be approved under the statutory requirements of sections 110 and 160–169A of the CAA, 42 U.S.C. 7410 and 7470–7491.

Final Action

The EPA is approving the Albuquerque/Bernalillo County PSD SIP revision. Specifically, the EPA is approving: Albuquerque/Bernalillo County AQCR 29, entitled Prevention of Significant Deterioration (PSD), as filed with the State Records and Archives Center on March 16, 1989, and all of the revisions to AQCR 29 filed on April 24, 1990, and on February 26, 1993; the April 11, 1990, PSD Supplement (supersedes the Supplement dated July 12, 1989); and sections 2.31–2.52 of AQCR 2, entitled Definitions, as filed with the State Records and Archives Center on March 16, 1989. The EPA is also approving this SIP revision submittal as meeting the "attainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

The EPA has reviewed and evaluated the Albuquerque/Bernalillo County PSD program, including NO_2 increment provisions and a continuous emission monitoring negative declaration. The EPA's determination is that the Albuquerque/Bernalillo County PSD program is adequate for authorizing the Albuquerque Environmental Health Department to issue and enforce the PSD permits in most areas of Bernalillo County. The EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands in Bernalillo County, in accordance with 40 CFR 52.21 and other applicable regulatory provisions.

With respect to all of the statutory changes discussed in this action, the EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, the EPA will call upon States with approved PSD programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA approves the Albuquerque/Bernalillo County PSD program as strengthening the New Mexico SIP.

This action makes final the action proposed at 57 FR 43657. As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from table one to table two under the processing procedures established at 54 FR 2214, January 19, 1989.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, parts C and D of the CAA do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

Executive Order

This action has been classified as a table two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 6, 1993.

Allyn M. Davis,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(53) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(53) A revision to the New Mexico SIP addressing the prevention of significant deterioration program for Albuquerque/Bernalillo County, outside the boundaries of Indian lands, was submitted by the Governor of New Mexico on April 14, 1989, August 7, 1989, May 1, 1990, and May 17, 1993. The revision included NO_2 increment provisions and visibility protection NSR.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 29—Prevention of Significant Deterioration, Section A, "Applicability;" Section B, "Exemptions;" Section C, "Source Obligation;" Section D, "Source Information;" Section E, "Control Technology Requirements," Subsections E(1), E(2), E(4)(a), E(4)(b), E(4)(c), E(4)(d), E(4)(e), E(5), E(6), E(7), E(8); Section F, "Ambient Impact Requirements," Subsections F(1), F(2); Section G, "Additional Impact Requirements;" Section H, "Ambient Air Quality Modeling;" Section I, "Monitoring Requirements," Subsections I(1), I(2), I(3), I(4), I(5), I(7), I(8), I(9); Section J, "Stack Height Credit;" Section K, "Temporary Source Exemptions;" Section L, "Public Participation and Notification;" Section M, "Restrictions on Area Classifications;" Section N, "Exclusions from Increment Consumption;" Section O, "Additional Requirements for Sources Impacting Federal Class I Areas," Subsections O(1), O(2), O(3), O(5), O(6), O(7); Section P, "Definitions," Subsections P(first paragraph), P(1), P(2), P(3), P(4), P(5), P(6), P(26)(first paragraph), P(26)(a), P(26)(c), P(26)(d), P(27); and Table 3, "Significant Monitoring Concentrations," as filed with the State Records and Archives Center on March 16, 1989; and further revisions to AQCR 29, Section O, "Additional Requirements for Sources Impacting Federal Class I Areas," Subsection O(4); Section P, "Definitions," Subsections P(8), P(9), P(10), P(12), P(13)(first paragraph), P(13)(a), P(14), P(15), P(16), P(17), P(18), P(19), P(20), P(21), P(22), P(23), P(24), P(25), P(26)(e), P(28), P(29), P(30), P(31), P(32), P(33), P(34), P(35), P(36), P(37), P(38), P(39), P(40), P(41); and Table 5, "Maximum Allowable Increases for Class I Waivers," as filed with the State Records and Archives Center on April 24, 1990; and further revisions to AQCR 29, Section E, "Control Technology Requirements," Subsections E(3), E(4)(first paragraph); Section F, "Ambient Impact Requirements," Subsection F(3); Section I, "Monitoring Requirements," Subsection I(6); Section P, "Definitions," Subsections P(7), P(11), P(13)(b), P(26)(b); Table 1, "PSD Source Categories;" Table 2, "Significant Emission Rates;" Table 4, "Allowable PSD Increments;" and Table 6, "Maximum Allowable Increase for Sulfur Dioxide Waiver by Governor," as filed with the State Records and Archives Center on February 26, 1993.

(B) Albuquerque/Bernalillo County Air Quality Control Board Regulation 2—Definitions, Sections 2.31, 2.32, 2.33, 2.34, 2.35, 2.36, 2.37, 2.38, 2.39, 2.40, 2.41, 2.42, 2.43, 2.44, 2.45, 2.46, 2.47, 2.48, 2.49, 2.50, 2.51, and 2.52, as filed with the State Records and Archives Center on March 16, 1989.

(ii) Additional material.

(A) The Supplement to the New Mexico State Implementation Plan for Prevention of Significant Deterioration in Albuquerque/Bernalillo County, as approved by the Albuquerque/Bernalillo County Air Quality Control Board on April 11, 1990. This supplement superseded the supplement dated July 12, 1989.

(B) A letter dated April 20, 1992, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department, to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, regarding a commitment to incorporate Clean Air Act Amendment revisions into the Albuquerque/Bernalillo County PSD program.

3. Section 52.1634 is revised to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the

NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEID on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of section 160 through 165 of the Clean Air Act are not met for Federally designated Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

(c) The plan submitted by the Governor in paragraph (a) of this section for Prevention of Significant Deterioration is not applicable to Bernalillo County. Therefore, the following plan described below is applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque). This plan, submitted by the Governor of New Mexico on April 14, 1989, August 7, 1989, May 1, 1990, and May 17, 1993, and respectively adopted on March 8, 1989, July 12, 1989, April 11, 1990, and February 10, 1993, by the Albuquerque/Bernalillo County Air Quality Control Board, containing Regulation 29—Prevention of Significant Deterioration and its April 11, 1990, Supplemental document, is approved as meeting the requirements of part C of the Clean Air Act for the prevention of significant deterioration of air quality.

4. Section 52.1636 is revised to read as follows:

§ 52.1636 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met for the State of New Mexico, outside the boundaries of Bernalillo County, because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.21, 52.27, and 52.28 are hereby incorporated and made part of the applicable plan for the State of New Mexico, outside the boundaries of Bernalillo County.

(c) Long-term strategy. The provisions of § 52.29 are hereby incorporated and made part of the applicable plan for the State of New Mexico, outside the boundaries of Bernalillo County.

[FR Doc. 93-31038 Filed 12-20-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[FRL-4686-4]

Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act (Act), EPA is taking final action to redesignate areas (or portions thereof) as nonattainment for the PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). The EPA is taking action to redesignate these areas as nonattainment due to violations of the NAAQS for these pollutants. The Act requires that the States containing such nonattainment areas develop plans to expeditiously bring the areas into attainment with the NAAQS for both pollutants.

EFFECTIVE DATE: January 20, 1994.

ADDRESSES: Information supporting today's action can be found in Public Docket No. A-92-22. The docket is located at the U.S. EPA Air Docket, Room M-1500, Waterside Mall, LE-131, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays, except for legal holidays. A reasonable fee may be charged for copying. In addition, the public may inspect information pertaining to a particular area at the respective EPA Regional Office which serves the State where the affected area is located.

FOR FURTHER INFORMATION CONTACT: Larry Wallace (PM-10), SO_2/Particulate Matter Programs Branch, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-0906.

SUPPLEMENTARY INFORMATION: The contacts and addresses of the Regional Offices are:

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I. General

The EPA is authorized to redesignate areas (or portions thereof) as nonattainment for PM-10 and SO_2 pursuant to section 107(d)(3) of the Act,[1] on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), in January and February of 1991, EPA notified the Governors of the affected States that EPA believed certain areas should be redesignated as nonattainment for PM-10 and SO_2. The EPA identified those areas in a **Federal Register** notice published on April 22, 1991 (56 FR 16274). Under section 107(d)(3)(B) of the Act, the Governors of each of the affected States were required to submit to EPA the designations that he or she considered appropriate for each area in question no later than 120 days after notification. However, for reasons of administrative efficiency, the EPA requested the States to submit the designations by March 15, 1991, (the date the lists of designations for all ozone and carbon monoxide areas were due from the Governor of each State pursuant to section 107(d)(4)(A) of the Act). Under section 107(d)(3)(C) of the

[1] References herein are to the Clean Air Act, as amended (1990 Amendments). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

Act, EPA promulgates the redesignation submitted by the State, making such modifications as EPA may deem necessary. The EPA proceeded to propose redesignation to nonattainment for many PM–10 and SO_2 areas where such action was not inconsistent with the recommendations of the affected State (see 57 FR 43846, September 22, 1992). The EPA is taking final action as proposed, except for the changes described below which were made in response to public comments.

Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant[2] (see section 107(d)(1)(A)(i)). Thus, in determining the appropriate boundaries for the nonattainment areas addressed in today's final rule, EPA has considered not only areas where violations of the relevant NAAQS have been monitored and/or modeled, but also nearby areas which significantly contribute to such violations.

II. Today's Action

A. PM–10

On July 1, 1987, EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM–10 that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to ensure attainment and maintenance of the PM–10 NAAQS (see 52 FR 24672). The EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM–10 NAAQS, and requiring substantial SIP adjustment, were placed in Group I; (2) areas which may have been attaining the PM–10 NAAQS, and whose existing SIP's most likely needed less adjustment, were placed in Group II; (3) areas with a strong likelihood of attaining the PM–10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network, were placed in Group III (52 FR 24672, 24679–24682).

Pursuant to sections 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I (55 FR 45799, October 31, 1990) and other areas which had monitored violations of the PM–10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Clean Air Act Amendments (Pub. L. No. 101–549, 104 Stat. 2399), designated nonattainment and classified as moderate for PM–10. Formal codification in 40 CFR part 81 of those areas was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694) (see also 57 FR 56762, November 30, 1992). All other areas of the country were designated unclassifiable for PM–10 by operation of law upon enactment of the 1990 Amendments (see section 107(d)(4)(B)(iii) of the Act).

In January and February of 1991, EPA notified the Governors of those States which recorded violations of the PM–10 standard after January 1, 1989 that EPA believed that those areas should be redesignated as nonattainment for PM–10. In a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those PM–10 areas for which EPA had notified the Governors of affected States that the area's PM–10 designation should be revised to nonattainment. After notification, the Governor of each affected State was required to submit to EPA the redesignation he or she considered appropriate for each area. The EPA proceeded to propose redesignation to nonattainment 13 areas for PM–10 in the September 22, 1992 **Federal Register** notice.

Today, EPA is taking final action to redesignate as nonattainment for PM–10 10 of the areas previously proposed for redesignation in the September 22, 1992 **Federal Register** notice. The EPA is deferring action on two of the remaining areas and is no longer taking action to redesignate Bernalillo, New Mexico, to nonattainment for PM–10. The two areas that EPA is deferring action on are the following: (1) Kootenai County, Idaho (part); and (2) Benton, Franklin, and Walla Walla/Tri Counties, Washington, excluding the initial PM–10 nonattainment area of the city of Walla Walla, Washington. The EPA received comments on these areas during the 60-day public comment period provided in the September 22, 1992 **Federal Register** notice and, as a result of these comments, has decided to defer action on the areas at this time. A more detailed explanation for why EPA is deferring action on these areas is provided in the "Response to Comments" section below.

The 10 areas that EPA is taking final action on in today's notice are the following: (1) Payson, Arizona; (2) Bullhead City, Arizona; (3) Sacramento County, California; (4) San Bernadino County, California; (5) the Steamboat Springs Area Airshed, Colorado; (6) Shoshone County, Idaho (part); (7) Thompson Falls, Montana; (8) New York County, New York;[3] (9) Oakridge, Oregon; and (10) the city of Weirton, West Virginia. These 10 areas are classified as moderate PM–10 nonattainment areas by operation of law at the time of their nonattainment redesignation (see section 188(a) of the Act). Note also that the complete descriptions of the nonattainment boundaries for these 10 areas are set out in the regulatory language at the end of today's notice.

The EPA received comments concerning the redesignation of some of these areas during the public comment period provided in the September 22, 1992 **Federal Register** notice and has provided a detailed response to these comments in the "Response to comments" section below.

B. SO_2

Following the Clean Air Act Amendments of 1977, EPA published a list of areas identified by the States as nonattainment, attainment, or unclassifiable for SO_2. The 1990 Amendments provided for designations of areas based on their status immediately before enactment of the 1990 Amendments. For example, any area previously designated as not attaining the primary or secondary SO_2 NAAQS as of the date of enactment of the 1990 Amendments was designated nonattainment for SO_2 by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act. In addition, any area designated as attainment or unclassifiable (or "cannot be classified") immediately before the enactment of the 1990 Amendments was also designated as such upon the enactment of the Amendments pursuant to sections 107(d)(1)(C) (ii) and (iii) of the Act. For the current status of SO_2 areas, readers should refer to the codification tables currently set forth in 40 CFR part 81 (1991) and to any

[2] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes that it is reasonable to conclude that something greater than a molecular impact is required.

[3] After EPA proposed its PM–10 nonattainment redesignation for New York County, the Natural Resources Defense Council filed a petition requesting that EPA promptly proceed to final action. Today's final action disposes of that request.

subsequent modifications to those SO_2 tables that have been published in the **Federal Register** (see also 56 FR 56706, November 6, 1991).

As described above, EPA is authorized to initiate the redesignation of additional areas (or portions thereof) as nonattainment for SO_2, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator may deem appropriate. The EPA believes that monitoring and/or modeling information may be used in determining the attainment status of an area and in establishing SO_2 nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act.[4] As indicated previously, a nonattainment area is any area which does not meet the relevant NAAQS or which significantly contributes to a violation of the relevant NAAQS in a nearby area.

In January and February of 1991, EPA notified the Governors of the affected States that EPA believed that certain areas should be redesignated as nonattainment for SO_2 due to violations of the primary and secondary standards. In a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those SO_2 areas for which EPA had notified the Governors of affected States that an area's SO_2 designation should be revised to nonattainment. After notification, the Governor of each affected State was required to submit to EPA the redesignation he or she considered appropriate for each area. In the September 22, 1992 **Federal Register** notice, the EPA proceeded to propose redesignation of seven areas to nonattainment for SO_2.

Today, EPA is taking final action to redesignate, as nonattainment for SO_2, two of the areas previously proposed for redesignation in September 22, 1992 **Federal Register** notice. The EPA is deferring action on the remaining five areas. The five areas that EPA is deferring action on are the following: (1) Allegheny County, Pennsylvania (part); (2) the District of Columbia (General Service Administration's Central Heating Plant); (3) the District of Columbia (General Service Administration's West Heating Plant); (4) Madison County, Illinois (part); and (5) St. Clair County, Illinois (part). The EPA received comments on these areas during the 60-day public comment period provided in the September 22, 1992 **Federal Register** notice, and as a result of these comments has decided to defer action on the areas at this time. A more detailed explanation for why EPA is deferring action on these areas is provided in the comment section below.

The two areas that EPA is taking final action on in today's notice are the city of Weirton, West Virginia and Warren County, Pennsylvania (part). The EPA did not receive any adverse comments concerning the redesignation of these areas during the public comment period following the September 22, 1992 **Federal Register** notice. Therefore, EPA is taking final action as planned to redesignate these areas to nonattainment.

III. Response to Comments

In the September 22, 1992 proposal, EPA provided a 60-day comment period ending on November 23, 1992 in order to solicit public comments on all aspects of the proposal. For those areas that EPA is redesignating in today's action, EPA has responded to the public comments received and, as appropriate, made modifications in light of such comments. In certain instances, EPA is deferring redesignation of areas. Where EPA is deferring redesignation of an area, EPA will publish its final determination on the area in a separate notice and will respond to relevant public comments at that time.

A. PM-10: Arizona—Portion of Gila County

Comments were received contending that the PM-10 violations recorded in Payson were due to sources in the vicinity of the monitoring equipment. Comments were received requesting that industry in the Payson area be further evaluated to determine if compliance with the PM-10 NAAQS can be achieved through the current State permitting programs. One commenter requested that EPA delay the designation of the area as nonattainment until sufficient information became available to evaluate the extent of the problem in the area. One commenter further contended that areawide violations were not recorded which would justify a nonattainment designation for the area. This particular commenter further contended that the proposed boundaries of the nonattainment area are unwarranted and would constitute an extreme and unnecessary hardship upon the area.

The EPA notes that particulate matter sampling has been conducted in Payson since 1974. A monitor measuring total suspended particulates (TSP)[5] began operation in downtown Payson in 1974. Significant violations of the TSP NAAQS were recorded annually until 1977 when the monitoring site was relocated to the Tonto National Forest Ranger Station, 2 miles north of the original site. In 1980, the monitor was again relocated to the original site and again recorded significant annual violations of the TSP NAAQS through 1986. In 1987, PM-10 monitoring was begun and violations of both the 24 hour PM-10 NAAQS and the annual were recorded in 1989 and 1990. These violations thus provided an ample basis for proceeding with a nonattainment designation for Payson (see section 107 (d)(1)(A)(i), (d)(3) of the Act and 40 CFR 50.6).

That commenters contended that some monitors in the area have not recorded violations, and that Payson may only have a localized problem, does not change the fact that Payson has violated the PM-10 NAAQS and should therefore be designated nonattainment. Rather, these comments are relevant to the scope and nature of the PM-10 nonattainment problem. These issues are precisely what the SIP development process which follows from nonattainment designation is intended to assess and to address. This is also the case with the comments suggesting that EPA impose source specific control measures or rely on the State permitting process instead of designating the area nonattainment. The Act calls for States containing areas designated nonattainment to submit to EPA for approval a plan that will expeditiously bring the area back into attainment. During the SIP development process, comprehensive emissions inventory data will be collected and monitors and modeling will be employed to assess the scope and nature of the problem and reasonable measures will be implemented to address the problem (see, e.g., sections 189(a), 172(c), and 110(a)(2) of the Act). The Act provides for EPA review of the SIP to assess its sufficiency and to make it federally enforceable (see, e.g., sections 110(k), 302(q), and 113 of the Act).

The Arizona Department of Environmental Quality (ADEQ) conducted a special monitoring study in 1990 to, among other objectives, identify the sources (both point and area) that

[4] The EPA believes that those tools which are reasonably reliable can be used in determining, under section 107(d)(1)(A)(i) of the Act, whether an area "does not meet" or "contributes to ambient air quality in a nearby area that does not meet" the relevant NAAQS (see also 57 FR 13545, April 16, 1992).

[5] Total suspended particulates (TSP) was the original air quality indicator for the NAAQS for particulate matter. The TSP was a measurement of all particulate matter in the ambient air, regardless of size. In July 1987, EPA revised the NAAQS for particulate matter to include only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10).

contribute to the high PM–10 concentrations in Payson. The results of that study indicate that the highest PM–10 concentrations occur in the winter months and that residential wood combustion, an areawide PM–10 air quality problem, is the most significant contributor to PM–10 concentrations during this time. These results conflict with the commenters claim that the elevated PM–10 concentrations are the result of particular point sources.

Further, in January 1991, EPA provided the State of Arizona with notification that Payson should be redesignated to nonattainment and requested the State to submit the appropriate boundary description for the Payson area. The State responded in May of 1991 by designating the nonattainment boundaries EPA proposed for the Payson area in the September 22, 1992 **Federal Register** notice. The EPA has not been informed by the State that the nonattainment redesignation for the area should be changed. In redesignating an area to nonattainment, EPA accords significant deference to the State's judgment unless further information is received which indicates that modifications to the State's submittal are necessary (see, e.g., section 107(d)(3) of the Act).

Furthermore, EPA has the authority under section 110(k)(6) of the Act to correct the boundaries of a nonattainment area where, for example, SIP equivalent information submitted to EPA reveals that the previous boundaries were in error (see 56 FR 37656, notes 6–7 (August 8, 1991), and 57 FR 56762–63 (November 30, 1992)). For example, EPA would consider exercising its authority under section 110(k)(6) if the SIP development process reveals that the boundaries issued today are clearly inappropriate and other information persuasively supports a change.

Portion of Mohave County

In its proposal to redesignate a portion of Mohave County, Arizona, as nonattainment for PM–10, EPA requested information addressing whether and to what extent the Mohave Power Plant (MPP) in Laughlin, Nevada, contributes to the PM–10 nonattainment problem and the appropriateness of the proposed nonattainment boundaries for Mohave County in light of any such information (57 FR 43848). The Nevada Bureau of Air Quality (NBAQ) and the Southern California Edison Company (SCE), operators and co-owners of the Mohave Power Plant, responded to this request.

The SCE claimed that a study conducted by Desert Research Institute (DRI) indicated that MPP has a less than 1 percent impact on annual average ambient PM–10 levels in Mohave Valley and that fugitive dust emissions from construction activities contribute up to 75 percent. Similarly, NBAQ indicated that the study showed that less than 1 percent of the PM–10 measured at Bullhead City from September 1988 through 1989 was from MPP stack operations and that 75 percent was from local soil. However, NBAQ also indicated that the calculations cannot distinguish local soil dust from MPP operations from other sources of soil dust, but that MPP operations cover only a small fraction of the local area and water is applied to minimize fugitive dust.

In today's action, EPA is finalizing the Mohave County PM–10 nonattainment boundaries as proposed. However, as stated previously, EPA would consider exercising its authority under section 110(k)(6) of the Act to correct the boundaries of this nonattainment area if, for example, information obtained in the SIP development process reveals that the boundaries issued today are in error.

The EPA also received comments from SCE and NBAQ contending that the violations monitored in Mohave County were due to exceptional events and that EPA should not proceed with a designation for this area on the basis of such data.

On July 26, 1990, ADEQ informed EPA that an exceedance of the 24-hour PM–10 NAAQS was recorded in Bullhead City in 1989. The data were from a monitoring site operated by DRI for SCE. Sampling is conducted once every 6 days (see, e.g., section 3.1 of 40 CFR part 50, appendix K). Additionally, ADEQ reported that the annual PM–10 NAAQS was violated in 1989. In its letter to EPA, ADEQ stated that although it had no input into the selection of the monitoring site, based on its observations, the site appeared to be representative of the central Bullhead City area. Further, ADEQ reviewed a summary of DRI's quality assurance program and found it to be satisfactory.

The NBAQ claimed that there were elevated wind speeds on 2 days when the 24-hour NAAQS exceedances occurred, as well as construction sources that contributed to elevated values. The SCE contended that the annual PM–10 exceedance in 1989 was an exceptional event caused by increased construction activities and that strong winds that created dust storms contributed to the 24-hour NAAQS exceedance in 1991.

Section 2.4 of 20 CFR part 50, appendix K, has been partially superseded by the changes made to the Act in the 1990 Amendments (see section 193 of the Act). Section 2.4 defines an exceptional event as an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location.

The 1990 Amendments added section 188(f) to the Act which authorizes the waiver of certain PM–10 requirements based on the nonanthropogenic contribution to the PM–10 problem in the area (see draft guidance announced in 57 FR 31477, July 16, 1992). The premise of section 188(f) is that areas having a nonanthropogenic contribution to the PM–10 problem will be designated nonattainment. In fact, this provision would be meaningless if EPA did not designate areas on this basis.[6] Thus, recurrence alone, and not the source of the exceedance, remains relevant in determining whether an exceedance qualifies as an "exceptional event" under section 2.4.

The commenters did not provide supporting information or data showing that the high winds and construction activities did, in fact, have a direct causal nexus to the PM–10 NAAQS exceedances or, if so, the magnitude of the contribution from these sources [see *Citizens for Clean Air* v. *EPA*, 959 F.2d 839, 846–48 (9th Cir. 1992) (upholding EPA's rejection of public comments that were not accompanied with specific supporting information)]. Further, the comments simply asserted that these activities were exceptional. The comments did not address the likelihood of the recurrence of these activities. The commenters did not demonstrate that elevated winds alleged to have contributed to the exceedances are unlikely to recur. In fact, the SIP development process is intended to prevent exceedances from anthropogenic activities such as construction by providing for planning by the State and local community to help ensure such activities adequately mitigate their contribution to PM–10 air quality problems. Accordingly, EPA believes that the available air quality data provide an ample basis to proceed with a nonattainment designation for the Bullhead City area. Further, the

[6] See *U.S.* v. *Nordic Village, Inc.*, 112 S.Ct. 1011, 1015 (1992) (rejecting a statutory interpretation that "violates the settled rule that a statute must, if possible, be construed in a fashion that every word has some operative effect") (citation omitted); *Boisie Cascade Corp.* v. *EPA*, 942 F.2d 1427, 1432 (9th Cir. 1992) ("[u]nder accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous") (citation omitted).

State of Arizona has recommended that EPA redesignate this area as nonattainment for PM–10 (see section 107(d)(3)(C) of the Act).

California—Sacramento County

The EPA received a comment contending that the PM–10 concentrations of 155 μg/m³ measured at the Stockton Boulevard monitoring site in 1989, and a measured exceedance of 153 μg/m³ at the Citrus Heights site in 1990, were both marginal exceedances of the NAAQS for PM–10, and should not be used as a basis for redesignating Sacramento County to nonattainment.

Pursuant to 40 CFR, part 50, appendix K, an exceedance is defined as a value which is measured above the level of the 24-hour standard after rounding to the nearest 10 μg/m³ (i.e., values ending in 5 or greater are rounded up). Therefore, the PM–10 concentration of 153 μg/m³ measured at the Citrus Heights site would not be considered as an exceedance of the PM–10 NAAQS. However, the PM–10 concentration of 155 μg/m³ is considered to be an exceedance of the PM–10 NAAQS. The exceedance was measured according to an EPA reference method and therefore should be considered valid.

Further, the contention that the measured exceedance is marginal is without validity. The PM–10 NAAQS specify a level of air quality, the attainment and maintenance of which, based on air quality criteria reflecting the latest scientific knowledge and allowing for an adequate margin of safety, is requisite to the protection of the public health (see sections 108 and 109 of the Act). The NAAQS is a designated level, not a designated range, of PM–10 above which the air quality is considered unhealthy.

The commenter also contended that the PM–10 exceedance of 187 μg/m³ measured at the Del Paso Manor monitoring site in 1990 occurred due to extremely cold temperatures which led to an unusual number of fireplaces being in operation at the same time. The commenter therefore contends that due to this unusual and isolated chain of events, the measured exceedances should not be considered as a basis for redesignation of the Sacramento County area to nonattainment.

The commenter, in this instance, has conceded that, residential wood combustion contributed to the measured exceedances of the NAAQS for PM–10. The commenter also concedes that the exceedances were due to the operation of a large number of residential wood stoves in a highly populated area which poses a significant public health risk. The purpose of the SIP process is basically to identify and control such sources of PM–10 that contribute to violations of the health based standards. Further, the commenter did not offer supporting evidence showing that the unique events identified, such as cold weather and high residential wood combustion are unlikely to recur (see *Citizens for Clean Air* at 846–48). Therefore, the comments serve to validate EPA's decision to redesignate the area and initiate the SIP development process.

The commenter further contends that PM–10 concentration levels which exceeded the PM–10 NAAQS in the Sacramento County area during the past 3 years occurred in a specific portion of Sacramento County and were not county-wide exceedances. The commenter therefore contends that if redesignation of the area is necessary, only the portion of Sacramento County where the exceedances were measured should be redesignated.

The EPA provided the State of California with notification that Sacramento County should be redesignated to nonattainment in January of 1991 (see section 107(d)(3)(A) of the Act). In that notification, EPA requested the State to submit the appropriate boundary description for the Sacramento County area. In a response dated March 15, 1991 the State affirmed all federally-identified PM–10 nonattainment areas and addressed the boundary issue as follows:

> [W]e understand that it is EPA's policy to use county boundaries as the default, though procedures set forth in EPA's guidance documents may also be applied. Given the nature of the emission sources contributing to California's PM–10 problems, we tend to think that large nonattainment boundaries are appropriate for planning purposes. We would like an opportunity to confirm that for each particular area, though, and will provide supplemental comments shortly.

The State also requested EPA to use the State's recommendations as the basis for its rulemaking. The EPA receive no further comments from the State, and therefore proceeded to propose Sacramento County as the nonattainment boundaries for the area. In the September 22, 1992 notice proposing to redesignate Sacramento County as nonattainment, EPA described its policy for establishing PM–10 nonattainment area boundaries:

> Generally, the PM–10 nonattainment area boundaries are presumed to be, as appropriate, the county, township, or other municipal subdivision in which the ambient particulate matter monitor recording the PM–10 violation(s) is located. The EPA has presumed that such boundaries would include both the area violating the PM–10 NAAQS and any area significantly contributing to the violations. However, a boundary other than the county perimeter or municipal boundary may be more appropriate. Affected States may submit information indicating that, consistent with section 107(d)(1)(A)(i), a boundary should be alternatively defined (57 FR 43848).

The EPA indicated that the "PM–10 SIP Development Guideline" (EPA–450/2–86–001) (Guideline) contained guidance on the information that should be submitted to support such alternative boundaries.

The Guideline recommends employing the following techniques singly or in combination to alternatively define area boundaries: (1) Qualitative analysis of the area of representativeness of the monitoring station, together with consideration of terrain, meteorological, and sources of emissions; (2) spatial interpolation of air monitoring; and (3) air quality simulation by dispersion modeling (Guideline, pages 2–9 through 2–10).

The EPA received no comments from the State concerning the boundaries for the area in response to the September 22, 1992 proposal. Thus, the State's only relevant guidance to EPA suggests that the State supports the general designation of this area as nonattainment and, given the nature of California's PM–10 problems, large boundaries for planning purposes (see section 107(d)(3)(C)).

Further, three exceedances of the PM–10 NAAQS have been observed in Sacramento County at two different monitoring sites.

Sacramento Health Center, Stockton Boulevard

Site number 06–067–04001 in Sacramento: an exceedance was measured on November 18, 1989 (155 μg/m³) and December 18, 1989 (158 μg/m³). This monitoring site is located in the city of Sacramento.

Sacramento Del Paso Manor

Site number 06–067–0006 in Sacramento: exceedances were measured on December 25, 1990 (187 μg/m³). This monitoring site is located in the county, east of the city of Sacramento.

In addition, monitoring data from 1989, 1990, and 1991 indicate that Sacramento County has experienced elevated levels of PM–10. In several cases (described below), these levels represented greater than or equal to 80 percent of the PM–10 NAAQS. These observed concentrations do not represent exceedances of the PM–10 NAAQS. Nevertheless, these data were

collected from five different monitoring sites in the County and provide additional evidence of the scope of elevated PM-10 concentrations in the County.

Elevated PM-10 Concentrations in Sacramento County

1989
Site 06-067-0001: 139 μg/m³
Site 06-067-0002: 125 μg/m³
Site 06-067-0006: 142 μg/m³
Site 06-067-0283: 120 μg/m³
1990
Site 06-067-0001: 153 μg/m³
Site 06-067-0006: 135 μg/m³
Site 06-067-0006: 124 μg/m³
Site 06-067-0010: 140 μg/m³
Site 06-067-0010: 134 μg/m³
Site 06-067-0010: 120 μg/m³
1991
Site 06-067-0006: 127 μg/m³
Site 06-067-0010: 134 μg/m³

The commenter that requested EPA to provide boundaries that are only a portion of the county did not specifically suggest alternative boundaries and did not conduct the analysis recommended by EPA's policy. However, the commenter did suggest that "an extensive review of ambient air monitoring data, emission inventory data, and meteorological data could be performed" to determine a boundary for the area. Such "extensive" data collection and analysis is what the SIP development process will involve.

Previously, EPA has indicated that it would consider using its authority under section 110(k)(6) of the Act to correct the boundaries of a nonattainment area where, for example, SIP equivalent information submitted to EPA reveals that the previous boundaries were in error (see, e.g., 56 FR 37656, notes 6-7 (August 8, 1991), and 57 FR 56762-63 (November 30, 1992)). Thus, this authority provides another mechanism for the consideration of further information on this issue.

Finally, PM-10 air quality problems are generally areawide. The commenter concerned about the scope of the boundaries indicated that residential wood combustion contributed to at least one of the air quality exceedances monitored and also indicated that PM-10 levels in the area are affected by motor vehicle emissions. These are precisely the types of sources that give rise to broader areawide PM-10 air quality problems.

Colorado—Portion of Routt County

The State of Colorado submitted comments indicating that on May 28, 1991, the Routt County Commissioners adopted a PM-10 nonattainment boundary for a portion of Routt County which included the city of Steamboat Springs, as well as certain surrounding areas in Routt County. The adoption incorporated a map indicating the boundary of the area in question. Subsequently, on June 20, 1991, this boundary was adopted by the Colorado Air Quality Control Commission. The State requested that EPA issue a final boundary consistent with that adopted by the State. In today's final action, EPA has adopted a final boundary for the affected portion of Routt County that is consistent with the State's recommendation and is taking final action to redesignate the area.

Idaho—Kootenai County

The EPA received many comments on its proposed nonattainment redesignation for this area. The EPA is still assessing these comments and is not making a final decision at this time. The EPA expects to make a final decision for this area within the next few months and will issue a notice in the **Federal Register** announcing its final decision at that time.

Idaho—Part of Shoshone County

The 1990 Amendments authorize a State, on its own initiative, to submit to EPA a revised designation for an area in that State (see section 107(d)(3)(D)). The city of Pinehurst, a portion of Shoshone County, was designated nonattainment for PM-10 by operation of law upon enactment of the 1990 Amendments (see section 107(d)(4)(B), 40 CFR § 81.313 (1992)). After the 1990 Amendments, EPA received information from Idaho requesting that EPA expand the nonattainment boundary for this area to include additional townships along the Silver Valley (see 56 FR 37658 (August 8, 1991)). In the September 22, 1992 proposal for today's action, EPA proposed expanding the boundary consistent with the State's request (57 FR 43849).

The Idaho Department of Environmental Quality (IDEQ) submitted information indicating that it is in part rescinding its request to expand the PM-10 nonattainment area boundary for Pinehurst. The IDEQ requested that EPA expand the boundary to include an area just slightly larger than the city of Pinehurst. The IDEQ indicated that during the SIP development process for the city of Pinehurst it obtained information that allowed it to further refine the PM-10 nonattainment boundary for this area.

Because the State has withdrawn a portion of its previous request, it is no longer pending before EPA. Therefore, in today's action EPA is approving for redesignation to nonattainment the more circumscribed boundary requested by the State which includes an area slightly larger than the city of Pinehurst. The EPA also notes that the State has indicated to EPA that the moderate PM-10 SIP developed for the city of Pinehurst covers the slightly expanded boundary. The EPA will assess this during its review of the moderate area SIP for the city of Pinehurst. The moderate area plan for Pinehurst is ultimately approved by EPA, and it covers the expanded areas outside the city, then it would be unnecessary for the State to submit a separate moderate area plan addressing the area encompassed in the slightly expanded boundary.

New Mexico—Bernalillo County

In the proposal for today's action, EPA indicated that the city of Albuquerque provided information demonstrating that since a 1989 exceedance of the annual PM-10 NAAQS, the same site (#35-001-1013 or "the Alameda site") had monitored a downward trend in the annual values (57 FR 43848). The EPA further indicated that the downward trend was likely attributable at least in part to steps that the City had taken to reduce PM-10 emissions. For example, an area near the monitor that was suspected of contributing to the PM-10 problem had been paved in order to reduce dust generated from various activities in the area. Nevertheless, EPA proceeded with proposing the designation because certain measures taken to reduce PM-10 had not been submitted to EPA as a SIP revision and, therefore, EPA had no way of ensuring that the measures would be permanent and federally enforceable.

Since the proposal, the State of New Mexico has submitted these measures to EPA as SIP revisions. One revision involved a topsoil disturbance program that, among other things, prohibits the disturbance or removal of certain amounts of soil without a valid permit. The EPA approved this submittal in a direct final rulemaking notice published on February 23, 1993 (58 FR 10970). A second submittal contains a winter woodburning curtailment program for the city of Albuquerque. Section 107(d)(3)(A) of the Act provides that, among other things, "planning and control considerations" are relevant in determining whether the Administrator should proceed with a redesignation. The EPA believes the control measures adopted by the State are addressing the PM-10 air quality problem that prompted EPA's proposed redesignation

for this area.[7] Further, an assessment of recent data indicates that the downward trend of the annual NAAQS at the Alameda site appears to be continuing. Accordingly, at this time, EPA is not redesignating Bernalillo County as nonattainment for PM–10. The area will retain its unclassifiable designation.

Today's action in no way precludes EPA from redesignating this area as nonattainment at a later date should information reveal a PM–10 air quality problem with either the 24-hour or annual NAAQS. In fact, in the September 22, 1992 proposal, EPA specifically indicated that it was aware of potential violations of the 24-hour NAAQS in Albuquerque and was assessing the situation. The EPA is continuing to review this issue.

Washington—Part of Benton, Franklin, and Walla Walla Counties

The EPA received many comments on its proposed nonattainment redesignation for this area. The EPA is still assessing these comments and is not making a final decision regarding the redesignation of this action at this time. The EPA expects to make a final decision concerning this area within the next few months and will issue a notice in the **Federal Register** announcing its final decision at that time.

B. Sulfur Dioxide: District of Columbia—Two Areas in Washington, DC

The EPA received a comment from a commenter who contended that the area within a 1 kilometer range of the General Services Administration's (GSA) central heating plant and the area within 1.5 kilometers of GSA's west heating plant should not be redesignated to nonattainment until EPA and the District of Columbia have completed the process of negotiating a compliance plan with GSA. The aforementioned compliance plan is required under the terms of the enforceable compliance agreement entered into by EPA, the District of Columbia, and GSA. It is the District's intention to incorporate the terms of the final compliance plan and compliance agreement, along with a technical analysis, demonstrating that the emissions from GSA's two heating plants no longer cause violations of the NAAQS for SO_2 into a formal SIP revision to be submitted to EPA.

As previously stated in the September 22, 1992 **Federal Register** notice (57 FR 23846), EPA proceeded with the redesignation of the two areas surrounding the GSA heating plants because the District of Columbia had not submitted the aforementioned SIP revision to EPA. Since the date of the redesignation proposal, EPA has worked very closely with the District of Columbia and GSA to resolve this issue. The District has committed to submit a SIP revision for the areas by October 31, 1993. This SIP revision consists of requirements to reduce emissions at the sources in question and provide an attainment demonstration for the area.

Therefore, EPA has decided not to finalize the redesignation to nonattainment at this time, pending review of the forthcoming SIP submission. The EPA reserves the right to finalize the proposed redesignation of the area if the SIP revision submitted by the District of Columbia is ultimately disapproved by EPA.

Illinois—Portion of Madison and St. Clair Counties

The EPA received several comments addressing its proposed SO_2 nonattainment redesignations for portions of these two counties. At the outset of the redesignation process, EPA notified the Governor of Illinois that, based upon available information, EPA believed that Madison and St. Clair Counties should be redesignated nonattainment for SO_2 (56 FR 16274, April 22, 1991). In the State's response, it largely agreed with EPA (see, e.g., 57 FR 43846). However, during the comment period on EPA's proposed action, the Illinois Environmental Protection Agency (IEPA) submitted comments claiming that recent developments may eliminate the need for redesignation of these areas. The IEPA informed EPA that it is working with sources in these areas to develop permanent and enforceable permit revisions which will serve to address the SO_2 air quality problem in these areas. The State has committed to submit these changes to EPA in the form of a SIP revision by October 31, 1993, and as far in advance of that date as possible. Therefore, the State has requested that EPA not proceed with the nonattainment designation for these areas at this time. Others commenting on behalf of industry in these areas took a similar position to that of IEPA.[8]

The EPA is deferring final action at this time on the nonattainment redesignation for these areas in light of the recent planning efforts by the State and certain sources in the areas. However, EPA reserves the option of issuing a nonattainment redesignation for these areas at a future date. In particular, if the State does not submit the SIP revision for these areas by the October 31, 1993 commitment date which addresses the SO_2 air quality problem in these areas, EPA intends to assess whether a nonattainment redesignation for these areas should be finalized and would likely proceed with such a final redesignation at that time.

Pennsylvania—Portion of Allegheny County

As stated in the September 22, 1992 **Federal Register** notice (57 FR 23846), EPA's rationale for proposing redesignation of the portion of Allegheny County inclusive of Lincoln, Liberty, Glassport, and Port Vue Boroughs and the city of Clairton to nonattainment is due to monitored violations of the 24-hour standard for SO_2. The 24-hour standard was violated in 1986 and 1988.

The commenters contend that the principle source of SO_2 emissions in the proposed nonattainment area, U.S. Steel-Clairton Works, has invested a substantial amount of money and effort into making enhancements to its coke oven gas desulfurization facility. Furthermore, it is suggested that the changes have led to documented improvements in air quality in the "Clairton area." The commenters contend that the recent actions on the part of U.S. Steel are adequate to protect the NAAQS for SO_2 in the proposed nonattainment area. The commenters provided information correlating the monitored exceedances with specific sulfur-removal equipment failures and outages. The commenters believe that the recent upgrading of the desulfurization facility at the Clairton Works has remedied these previous equipment malfunctions which produced the monitored exceedances of the NAAQS. Therefore, the area should not be redesignated to nonattainment.

In response to above comments, EPA is encouraged by the progress made by U.S. Steel in reducing its emissions of SO_2. Therefore, EPA is not taking final action at this time for the "Clairton area." The EPA will work closely with the State of Pennsylvania and Allegheny County as it codifies these significant improvements to the desulfurization facility into the federally-approved SIP for Allegheny County (through the Pennsylvania SIP). However, EPA retains the right to finalize the proposed redesignation of the area if Allegheny

[7] Note also that "planning and control considerations" have informed EPA's decision to defer action on the SO_2 areas discussed below.

[8] One commenter raised additional issues including allegations about the procedures and technical basis associated with EPA's proposed redesignation for the affected portion of Madison County. Because, as indicated below, EPA is not taking final action on this area at this time, EPA is deferring response to these comments.

County does not submit a SIP revision for the "Clairton area" as expeditiously as possible.

IV. Significance of Today's Action

A. Significance for PM-10

Areas redesignated as nonattainment in today's action are subject to the applicable requirements of part D, title I of the Act and will be classified as moderate by operation of law [see section 188(a) of the Act]. Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things, the following requirements: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation; (2) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM-10; (3) quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrates reasonable further progress, as defined in section 171(1), toward timely attainment; and (4) either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM-10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable [see, e.g., sections 188(c), 189(a), 189(c), and 172(c) of the Act]. The EPA has issued detailed guidance on the statutory requirements applicable to moderate PM-10 nonattainment area (see 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)).

The State is also required to submit contingency measures, pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM-10 NAAQS by the applicable attainment date (see 57 FR 13510-13512, 13543-13544). The EPA is hereby establishing the schedule for submission of contingency measures as called for in section 172(b) of the Act. The affected States are to submit contingency measures for the areas redesignated nonattainment for PM-10 in today's action within 18 months of redesignation.

B. Significance for SO_2

The EPA is, by today's action, redesignating two areas as nonattainment for both the primary and secondary standards for SO_2. The affected States must submit implementation plans to EPA within 18 months after promulgation of the nonattainment designations for SO_2, meeting the requirements of part D, title I of the Act (see section 191(a) of the Act). The implementation plans must provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation [see section 192(a) of the Act]. As with PM-10, EPA has issued detailed guidance on the development of SIP's for SO_2 nonattainment areas that are consistent with part D, title I of the Act (see 57 FR 13498).

VI. Miscellaneous

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities [5 U.S.C. 605(b)]. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that an affected State must adopt new regulations, based on an area's nonattainment status, EPA will review the effect that those actions have on small entities at the time the State submits those regulations. I certify that the redesignation action announced today will not have a significant economic impact on a substantial number of small entities.

Petitions for judicial review of this action must be filed as provided by section 307(b)(1) of the Act within February 22, 1994. Filing an administrative petition for reconsideration of the rule for purposes of judicial review nor extend the time within which a petition for judicial review of the rule may be filed, and shall not postpone the effectiveness of the rule (see section 307(b)(1)). This action may not be challenged in any subsequent proceedings to enforce its requirements (see section 307(b)(2)).

VII. Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 1993.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 81.303 is amended in the table for "Arizona—PM-10" by adding a second entry for "Gila County" and by adding an entry for "Mohave County" to read as follows:

§ 81.303 Arizona.

* * * * *

Arizona—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Gila County (part):				
Payson: T10N, Sections 1-3, 10-15, 22-27, and 34-36 of R9E; T11N, Sections 1-3, 10-15, 22-27 and 34-36 of R9E; T10-11N, R10E; T10N, Sections 4-9, 16-21, and 28-33 of R11E; T11N, Sections 4-9, 16-21, and 28-33 of R11E.	January 20, 1994	Nonattainment .	January 20, 1994	Moderate.

Arizona—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Mohave County (Part):				
Bullhead City: T21N, R20–21W, excluding Lake Mead National Recreation Area; T20N, R20–22W; T19N, R21–22W excluding Fort Mohave Indian Reservation.	January 20, 1994	Nonattainment .	January 20, 1994	Moderate.
* * * * * * *				

* * * * *

3. Section 81.305 is amended in the table for "California—PM–10 Nonattainment Areas" by adding entries for "Sacramento County" and "San Bernadino County" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Sacramento County	January 20, 1994	Nonattainment .	January 20, 1994	Moderate.
San Bernadino, Inyo, and Kern Counties Searles Valley planning area Hydrologic Unit #18090205.	November 15, 1990.	Nonattainment .	November 15, 1990.	Moderate.
San Bernadino County (part): excluding that portion located in the Searles Valley Planning area, and excluding that area in the South Coast Air Basin.	January 20, 1994	Nonattainment .	January 20, 1994	Moderate.
* * * * * * *				

* * * * *

4. Section 81.306 is amended in the table for "Colorado—PM–10 Nonattainment Areas" by adding an entry for "Routt County" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*	*	*
Routt County (Part):				
The Steamboat Springs Area Airshed as adopted by the Routt County Commissioners on May 28, 1991 and the Colorado Air Quality Control Commission on June 20, 1991.	January 30,1994	Nonattainment	January 30, 1994	Moderate.
* * * *	*	*	*	*

* * * * *

6. Section 81.313 is amended in the table for "Idaho—PM–10 Nonattainment Areas" by adding an entry for "Shoshone County" to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*	*	*
Shoshone County (Part):				
That portion of Shoshone County excluding the initial PM–10: including the South half of Southeast quarter of Section 31 of Range 2 east, Township 49; South quarter of Section 32 of Range 2 east, Township 49 north Section 5 of Range 2 east, Township 48 northeast half of Section 6 of Range 2 east, Township 48 northwest quarter of Section 8 of Range 2 east, Township 48 North; and excluding that portion of Shoshone County designated nonattainment for PM–10 on November 15, 1990.	January 20, 1994	Nonattainment	January 20, 1994	Moderate.
City of Pinehurst	November 15, 1990.	Nonattainment	November 15, 1990.	Moderate.
* * * *	*	*	*	*

* * * * *

7. Section 81.327 is amended in the table for "Montana—PM–10 Nonattainment Areas" by adding an entry for "Sanders County" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*	*	*
Sanders County (Part):				
Thompson Falls and vicinity: including the following Sections: R29W, T21N, Sections: 5, 6, 7, 8, 9, 10, 15, and 16.	January 20, 1994	Nonattainment	January 20, 1994	Moderate.
* * * *	*	*	*	*

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8. Section 81.333 is amended by adding a table for "New York—PM–10" and by adding an entry "New York County" to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
New York County	January 20, 1994	Nonattainment	January 20, 1994	Moderate.
* * *	*	*	*	*

* * * * *

9. Section 81.338 is amended by amending the table for "Oregon—PM–10 Nonattainment Areas" by adding an entry for "Lane County" to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Lane County (part) Oakridge: The Urban Growth boundary area	January 20, 1994	Nonattainment	January 20, 1994	Moderate.
* * *	*	*	*	*

* * * * *

10. Section 81.339 is amended in the table for "Pennsylvania—SO_2" by revising the entry for "Warren County" to read as follows:

§ 81.339 Pennsylvania.

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PENNSYLVANIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
VI. Northwest Pennsylvania Intrastate AQCR:				
(A) Warren County:				
Conewango Twp	x			
Mead Twp		x	x	
Clarendon Boro				
Warren Boro	x			
Pleasant Twp	x	x		
Glade Twp	x	x		
* * * * * * *				

* * * * *

11. Section 81.349 is amended in the table for "West Virginia—PM–10 Nonattainment Areas" by adding an entry for part of "Brooke County" and "Hancock County," to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Hancock and Brooke Counties (Part) The city of Weirton	January 20, 1994	Nonattainment	January 20, 1994	Moderate.
* * * * * * *				

* * * * *

12. Section 81.349 is amended in the table for "West Virginia—SO_2" by adding an entry for "Hancock County" to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Hancock County (Part) The city of Weirton, including Butler and Clay:				
Magisterial Districts	x	x		
Remainder of State				x
* * * * * * *				

[FR Doc. 93-30966 Filed 12-20-93; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905-AC87

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: This rule amends existing regulations governing the Health Education Assistance Loan (HEAL) program to require lenders to report a borrower's HEAL indebtedness to one or more national credit bureaus after the loan has been fully disbursed; to include hearing procedures prior to termination from the program for lenders, holders, and schools; and to provide authority for schools to withhold services from defaulted HEAL borrowers.

EFFECTIVE DATE: This regulation is effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: James W. Farrington, D.M.D., Deputy Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1173.

SUPPLEMENTARY INFORMATION: On October 1, 1990, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the **Federal Register**, (55 FR 40140), a Notice of Proposed Rulemaking (NPRM) to establish performance standards against which school, lender, and holder default rates would be measured and to amend the HEAL regulations to require lenders to report a borrower's HEAL indebtedness to one or more national credit bureaus after the loan has been fully disbursed; to include hearing procedures prior to termination from the program for lenders, holders, and schools; and to provide authority for schools to withhold services from defaulted HEAL borrowers. The public comment period on the proposed regulations closed on November 30, 1990. The Department received 121 public comments on this NPRM from 105 school officials, 10 professional associations, and 6 lenders and holders. The Health Professions Education Extension Amendments of 1992 (Pub. L. 102-408) established specific performance standards for schools, therefore school performance standards will not be addressed in this final regulation. Performance standards for lenders and holders will be addressed in a separate action. The comments received on the proposed rule and the Department's responses to the comments are discussed below according to the subparts, section numbers, and headings of the HEAL regulations affected.

Subpart D—The Lender and Holder

Section 60.33 Making a HEAL Loan

Twelve respondents opposed paragraph (h) of this section, which would require the lender to report a borrower's HEAL indebtedness to one or more credit bureaus at the time the loan is made. These respondents were concerned about potential problems that could arise due to credit bureaus' unfamiliarity with student loans, and believed that it would be necessary to educate credit bureaus regarding student loans if this provision were to work effectively. For example, respondents indicated that this requirement could lead to a credit report indicating a negative credit rating as a result of a HEAL loan on which no payments were made, when actually the borrower was in a deferment status or was otherwise not expected to be making payments. Thus, the terms and conditions of educational loans would need to be made known to credit bureaus to avoid improper negative credit ratings during grace periods and deferments. While the Department shares this concern, it also believes that the benefits of this proposal, in terms of making creditors fully aware of a borrower's indebtedness and thus helping to prevent overborrowing, are compelling enough to warrant its immediate implementation.

There was also concern regarding the possibility that a borrower's credit rating might be adversely affected by a "technical" default, which occurs when a borrower who qualifies for deferment is placed in default. To distinguish between a "technical" and "true" default, respondents indicated that it would be necessary to have a reliable and user-friendly system of tracking and encouraging borrowers to file deferment forms. In response, the Department notes that it is continuing to pursue approaches for simplifying the deferment notification process to avoid "technical" defaults. However, it must also be noted that the responsibility for notifying the lender or holder of deferment activities continues to rest with the borrower, and thus it is ultimately the borrower's responsibility if he or she is placed in default due to failure to notify the lender or holder of deferment eligibility. A so-called "technical" default is, in truth, a legal default in that the borrower has breached the contractual requirement to either begin repayment or request a deferment by mailing the appropriate forms. In these instances, the borrower generally can resolve the default in a satisfactorily manner by providing the proper deferment documentation to the lender or holder.

Numerous respondents stated that the proposal does not indicate whether reporting to credit bureaus is to occur after the initial or final loan disbursement and offered various suggestions in this regard. Two commenters suggested that reporting should occur within 120 days after the loan is fully disbursed rather than when the loan is initially made, since borrowers may reduce the original loan amount or return the second disbursement. This approach would minimize the reporting of erroneous data, spare borrowers the problems and hardships of incorrect reports, and save lenders the expense of costly manual corrections. Other suggestions were to report no sooner than the beginning of the grace period or closer to the time repayment is to begin. The Department agrees that it would be appropriate to delay reporting until after the loan is fully disbursed, and believes that 120 days is an adequate amount of time to allow for this reporting to be done. However, the Department does not favor delaying reporting until the beginning of the grace period or repayment period, since it is likely that a borrower may incur consumer debt during this time that should be granted by a creditor with full knowledge of the borrower's HEAL indebtedness. Accordingly, the provision in paragraph (h) of this section has been modified to clarify that reporting must occur no later than 120 days after the date that the lender makes the final disbursement on each loan.

One respondent stated that the requirement should specify that the reporting must be to national, rather than local, credit bureaus. The Department agrees and has amended this provision in paragraph (h) of this section as well.

Section 60.43 Limitation, Suspension, or Termination of the Eligibility of a HEAL Lender or Holder

Five respondents opposed this section, which would revise the procedures for limiting, suspending, or terminating the eligibility of a HEAL lender or holder. Of these, three respondents indicated that it seemed unnecessarily harsh for a hearing to be denied at the discretion of the Secretary, and that the right to a hearing should not be contingent upon a determination by the Secretary that a hearing is justified. This concern focused on a belief that the provision was proposing to eliminate due process. One respondent stated that the existing procedures followed by the Department of Education (ED) for the Federal Stafford Loan program were better suited to HEAL. In response, the Department clarifies that these procedures do not eliminate due process, but merely assure that the hearing process is limited to cases where there are factual issues in dispute. If such issues cannot be presented, there is no basis for conducting a hearing.

Three respondents suggested that a mechanism such as a registered letter or certified mail with a return receipt be used in the notification process to assure that the document is received, especially given the short time period within which a reply is required. The Department notes that, although this was not specifically stated in the proposed provision, certified mail is routinely used in other departmental student aid programs when termination is pending, and will be used for the HEAL program as well. However, because of the concerns expressed, the provision in the introductory text of paragraph (b) of this section, has been amended to state that certified mail will be used to notify a lender or holder when termination is pending. (A similar amendment has been made to § 60.60(b) relative to notifying any school subject to termination.)

One respondent stated that the timeliness and location of the hearing should be studied further. In response, the Department has found that these timeframes have worked effectively in the past. With regard to location, the Department's resources do not permit it to hold hearings outside the Washington, DC, metropolitan area. However, in some cases an Administrative Law Judge may be able to try a case without oral argument or through telephone conferences.

One respondent asked whether schools would be notified of a lender's pending termination, to provide them with time to seek alternative lenders and to review the lender's handling of their accounts as it relates to the default issue. The Department notes that schools can obtain information on a lender's status at any time by contacting the Division of Student Assistance.

Section 60.60 Limitation, Suspension, or Termination of the Eligibility of a HEAL School

Six respondents opposed this section, which would revise the procedures for limiting, suspending or terminating the eligibility of a HEAL school. Many of the concerns expressed were similar to those discussed and addressed under § 60.43 (see above), which proposed a similar provision for lenders and holders. Most concerns focused on a perception that this provision gives the Department too much control over the hearing process. Respondents suggested, for example, that schools (rather than the Department) should determine whether a hearing is appropriate, or that any party which submits a request and summary or arguments should be granted a hearing. The Department clarifies that the provision is not designed to arbitrarily allow the Department to deny a hearing, but merely assures when a hearing is granted that there are substantive and relevant issues in dispute that warrant a hearing.

One respondent stated that schools should be allowed to comment on the procedures to be followed in the hearing process. In response, the Department clarifies that the hearing would be handled in accordance with existing standard procedures for the Health Professions Student Loan and Nursing Student Loan programs and are not being established specifically for the HEAL program.

Two respondents requested that the Department provide schools with information regarding their HEAL borrowers, with one asking for quarterly status reports, and the other insisting that the Department provide schools with a report which shows the accounts used in calculating the default rates, so that the school can verify that the default rate is accurate. The Department notes that it currently provides schools with reports listing the status of their HEAL borrowers on a regular basis, and will work with schools to assure that they have appropriate data on their HEAL borrowers. It also provides schools on an annual basis a list of all loans that comprise their annual default rate and the calculation used to determine their default rate.

As an alternative to termination, one respondent suggested that schools that fail to meet the standard be given the option of higher interest rates, penalties or increased premiums. In response, the Department notes that the Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) established school performance standards, which include different levels of risk and penalties and higher insurance premiums. Termination procedures are addressed in this final regulation.

One respondent questioned what effect a previous HEAL audit would have on a hearing if, for example, the school had complied with all findings. The Department notes that, while audit results could be used by the school as an indication of the effectiveness of its management activities, it would still be necessary for the school to demonstrate compliance with the HEAL regulations to avoid the penalties of non-compliance.

Section 60.61 Responsibilities of a HEAL School

Fifty-one respondents opposed paragraph (d) of this section, which would require that a school withhold services, including, but not limited to, academic transcripts, financial aid transcripts, and alumni services, from a defaulted HEAL borrower, except in instances where the borrower has filed for bankruptcy.

Nine respondents asserted that withholding academic transcripts would be counterproductive, in that it would make it more difficult for a defaulted graduate to secure gainful employment from which repayments could be initiated, or to obtain residencies, staff positions, or continuing education. Others indicated that this proposal was not feasible, explaining that State schools have limited control over the release of academic transcripts and that withholding such could violate a defaulter's property rights as guaranteed by the Constitution. Commenters also stated that the withholding of services should be an institutional prerogative rather than a Federal mandate.

Nine respondents questioned their ability, as financial aid office staff, to monitor or withhold alumni services. It was noted that in some cases, part of the alumni services is to offer counseling to student loan borrowers, and that withholding this service could be counterproductive. Some respondents also indicated that the alumni association is sometimes a separate legal entity which does not fall under the control of the school, and that it was beyond the scope of the Department's

authority to suggest withholding such services. Other concerns were as follows: (1) Withholding services on behalf of another entity (i.e., the HEAL lender or holder) exceeds the ordinary fiduciary responsibilities of the school; (2) withholding services based on third party information presents a great risk to the school, which would need indemnification protection holding them harmless in legal action for damages relating to withholding services when the action resulted from incorrect, misleading, or untimely information; and (3) this would not have much impact in reducing defaults, while creating an added burden for schools.

Some respondents suggested that (1) more guidance was needed on specific services to be withheld and penalties of noncompliance, and (2) the provision should be flexible enough to allow for negotiation with the student, since this could drastically affect a borrower's ability to practice.

The Department wants to provide schools with the authority necessary to assist in improving their school default rates and encourage payments on defaulted loans. Withholding services, such as the type of measures which have been proposed, from a HEAL borrower who has defaulted on a HEAL loan received while enrolled in that school, may encourage that borrower to begin repayment on the defaulted loan. However, since schools may determine that there are situations when withholding services would hinder the borrower's ability to repay a HEAL loan, the Department has amended this provision to authorize, rather than require, schools to withhold services from defaulted HEAL borrowers. This will allow each school to determine how to implement this provision in a manner that will be most beneficial to its efforts to reduce HEAL defaults. The Department clarifies that, prior to this regulation the HEAL regulations were silent on this issue, thereby necessitating the school to depend upon State law. Schools interested in withholding services of the type proposed had to consult their own legal counsel to determine what actions, if any, were permissible under State law. Since Federal regulations supersede State law, this should no longer be necessary.

Respondents suggested that once the borrower makes satisfactory repayment arrangements, services should be restored, so that borrowers would have incentive to remedy the default. The Department agrees that services should be restored once the borrower provides evidence to the school that a default has been satisfactorily resolved. The provision has been amended to reflect this.

Eleven respondents stated that the requirement to withhold financial aid transcripts conflicted with ED prohibition against withholding a financial aid transcript from a student. Under the ED requirements, the financial aid transcript must be released but must indicate that the student is in default. Other respondents were concerned that some State licensing boards require a copy of the academic transcript to take State boards, and schools should be permitted to release the transcript for this purpose, with a statement on the transcript indicating the borrower's default status. In response to these comments, the Department has deleted the requirement to withhold financial aid transcripts and has made the withholding of academic transcripts optional. In addition, the Department concurs that academic and financial aid transcripts, when released, must indicate the default status of the borrower. The provision has been amended accordingly.

Two respondents stated that this would be an administrative nightmare to police, since the school is not normally the lender and does not receive timely notification of a borrower's default status. Another respondent suggested that the Department must assure that schools are notified of defaults in a timely manner. In response to concerns regarding timely notification of defaults, the Department notes that schools are sent copies of the Department's second preclaims letter, which informs them that a borrower is in default. In addition, the Department will continue to work on improving communication with schools to assure timely notification of the status of HEAL borrowers. Nevertheless, it will be the defaulted borrower's responsibility to provide the school with documentation from the lender, holder, or Department when a default has been resolved.

Six respondents requested specific guidance regarding whether this provision is consistent with or preempts existing collection standards established under the Fair Debt Collection Practices Act (FDCPA). The Department notes that this activity is not under the purview of the Fair Debt Collection Practices Act.

Five respondents indicated that the Department needed to clarify how "technical" defaults were to be treated under this provision, and were concerned that "technical" defaults would be placed in jeopardy along with real defaults. In response, the Department notes that it is continuing to pursue approaches for simplifying the deferment notification process to avoid "technical" defaults. However, as stated previously, it must also be noted that the responsibility for notifying the lender or holder of deferment activities continues to rest with the borrower, and thus it is ultimately the borrower's responsibility if he or she is placed in default due to failure to notify the lender or holder of deferment eligibility. A so-called "technical" default is, in truth, a legal default in that the borrower has breached the contractual requirement to either being repayment or request a deferment by mailing the appropriate forms. In these instances, the borrower generally can resolve the default in a satisfactory manner by providing the proper deferment documentation to the lender or holder.

Another respondent was concerned that a school must have access to accurate information on when the borrower has filed for bankruptcy. The Department concurs, however it is the borrower's responsibility to provide court documentation that verifies the filing for bankruptcy upon the request of the school.

Several respondents indicated that the Department should clarify whether the school would be expected to withhold services only for defaulted borrowers who received funds from that school, or from any student who defaulted on a HEAL loan at any school. In response, the Department clarifies that schools would only be expected to withhold services from borrowers who defaulted on loans received while enrolled at that school.

One respondent suggested that residency programs could withhold services which would be more meaningful to the borrower. The Department notes that in the administration of the HEAL program there is no formal linkage with residency programs. As a result, it is not possible to require residency programs to withhold services from defaulted HEAL borrowers.

Regulatory Flexibility Act and Executive Order 12291

The Department expects that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of HEAL schools, lenders, and holders. Under these regulations, lenders are required to report a borrower's HEAL indebtedness to one or more national credit bureaus no later than 120 days after the loan has been fully disbursed; lender, holder, and school hearing procedures would be required prior to termination from the

program; and authority would be provided for schools to withhold services from defaulted HEAL borrowers. These regulations should not require significant additional resources for the majority of schools, lenders, and holders. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL schools, lenders, and holders.

The Department has also determined that this rule does not meet the criteria for a major rule as defined by section (b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of $100 million for major rules, therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by OMB under the Paperwork Reduction Act of 1980 and assigned control number 0915–0144. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Education Assistance Loan (HEAL) Program: Withholding Services and Credit Reporting.

Description: Lenders and holders must report new HEAL loans to national credit bureaus. Lenders, holders, and schools requesting a hearing prior to termination must submit a statement of material issues in dispute. Schools are authorized to withhold services from defaulted HEAL borrowers.

Description of Respondents: Non-profit institutions and businesses or other for profit.

Estimated Annual Reporting Burden:

Section	Number of respond.	Responses per respond.	Total annual response	Hours per response	Total burden hours
60.33(h)	23	1,246	28,660 (borrowers)	1 min. (.02 hrs.)	477
60.43(b)	10	1	10	3 hrs.	30
60.60(b)	10	1	10	3 hrs.	30
Total Burden Hours					537

We received no public comments on the estimated public reporting burden. After implementing the performance standard provisions of Public Law 102–408 the estimate of the annual number of respondents has been revised downward from the proposed rule.

List of Subjects in 42 CFR Part 60

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs—education, Student aid, Loan programs—health.

Dated: September 30, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: November 18, 1993.

Donna E. Shalala,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

Accordingly, 42 CFR part 60 is amended to read as follows:

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR part 60 is revised to read as follows:

Authority: Sec. 215, of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739A of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532, 102 Stat. 3122–3125 (42 U.S.C. 294–294*l*–1); renumbered as secs. 702–720, as amended by 106 Stat. 1994–2011 (42 U.S.C. 292–292p).

2. Section 60.33, in subpart D, is amended by revising the parenthetical phrase at the end of the section text; and by adding a new paragraph (h) to read as follows:

Subpart D—The Lender and Holder

§ 60.33 Making a HEAL loan.

* * * * *

(h) The lender must report a borrower's HEAL indebtedness to one or more national credit bureaus within 120 days of the date the final disbursement on the loan is made. (Approved by the Office of Management and Budget under control numbers 0915–0043, 0915–0108, and 0915–0144)

3. Section 60.43 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); by adding a new paragraph (b); and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 60.43 Limitation, suspension, or termination of the eligibility of a HEAL lender or holder.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender or holder that violates or fails to comply with any provision of title VII, part A, subpart I of the Act as amended (42 U.S.C. 292–292p), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a lender or holder's participation in the program, the Secretary will provide the entity an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any lender or holder subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the lender or holder's participation in the program and stating that the entity may request, within 30 days of the receipt of this notice, a formal hearing. if the entity requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The lender or holder does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential. In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the lender or holder setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the lender or holder will be terminated from participation in the program. An entity will be permitted to reapply for participation in the program

when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0144)

4. Section 60.60, in subpart E, is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraph (a); by adding a new paragraph (b); and by adding a parenthetical phrase at the end of the section text to read as follows:

Subpart E—The School

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

(a) The Secretary may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible school that violates or fails to comply with any provision of title VII, part A, subpart I of the Act as amended (42 U.S.C. 292–292p), these regulations, or agreements with the Secretary concerning the HEAL program. Prior to terminating a school's participation in the program, the Secretary will provide the school an opportunity for a hearing in accordance with the procedures under paragraph (b) of this section.

(b) The Secretary will provide any school subject to termination with a written notice, sent by certified mail, specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must, within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial, by certified mail, to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program. A school will be permitted to reapply for participation in the program when it demonstrates, and the Secretary agrees, that it is in compliance with all HEAL requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0144)

5. Section 60.61, in subpart E, is amended by adding a new paragraph (d) to read as follows:

§ 60.61 Responsibilities of a HEAL school.

* * * * *

(d) A school is authorized to withhold services from a HEAL borrower who is in default on a HEAL loan received while enrolled in that school, except in instances where the borrower has filed for bankruptcy. Such services may include, but are not limited to academic transcripts and alumni services. Defaulted HEAL borrowers who have filed for bankruptcy shall provide court documentation that verifies the filing for bankruptcy upon the request of the school. Schools will also supply this information to the Secretary upon request. All academic and financial aid transcripts that are released on a defaulted HEAL borrower must indicate on the transcript that the borrower is in default on a HEAL loan. It is the responsibility of the borrower to provide the school with documentation from the lender, holder, or Department when a default has been satisfactorily resolved, in order to obtain access to services that are being withheld, or to have the reference to default removed from the academic and financial aid transcripts.

[FR Doc. 93–31064 Filed 12–20–93; 8:45 am]

BILLING CODE 4160–15–M

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD–771–CN]

RIN 0938–AG23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates; Correction

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

ACTION: Final rule; correction.

SUMMARY: In the September 1, 1993, issue of the **Federal Register** (FR Doc 93–21026) (58 FR 46270), we revised the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. Additionally, in the addendum to that final rule, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs applicable to discharges occurring on or after October 1, 1993, and set forth update factors for the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This notice corrects errors made in that document.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

SUPPLEMENTARY INFORMATION: In the addendum to the September 1, 1993 final rule with comment, in Table 6D—Revised Diagnosis Code Titles, we published revised titles for the following diabetes codes, 250.10, 250.20, 250.30, 250.40, 250.50, 250.60, 250.70, 250.80, 250.90. Although we indicated in Table 6D that these codes would no longer be considered complications or comorbid conditions (CCs), we did not make the appropriate corresponding changes to Table 6F—Additions to the CC Exclusions List and Table 6G—Deletions to the CC Exclusions List. The above diabetes codes should have appeared throughout Table 6G as deletions to the CC exclusion list; however, they incorrectly appeared in Table 6F. We are republishing corrected Tables 6F and 6G in their entirety to correct this error.

The final rule also contained other technical and typographical errors. Therefore, we are making the following corrections to the September 1, 1993 final rule (58 FR 46270):

§ 412.108 [Corrected]

1. On page 46339, in the first column, in § 412.108, in paragraph (c)(2)(i) in the sixth line and paragraph (c)(2)(ii) in the sixth line, the word "exceeds" is corrected to read "is exceeded by".

2. On page 46383, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, for the Johnstown, PA area, the wage index value is corrected from 0.8784 to 0.8786 and the GAF is corrected from 0.9150 to 0.9152.

3. On page 46384, in Table 4A, for the Philadelphia, PA–NJ area, the wage index value is corrected from 1.1265 to 1.1254, and the GAF is corrected from 1.0850 to 1.0843.

4. On page 46385, in Table 4A, for the San Diego, CA area, the wage index value is corrected from 1.1908 to 1.2040 and the GAF is corrected from 1.1270 to 1.1356. For the St. Louis, MO–IL area, the wage index value is corrected from 0.9192 to 0.9182 and the GAF is corrected from 0.9439 to 0.9432.

5. On page 46387, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, for the rural Pennsylvania area, the wage index value is corrected from 0.8784 to 0.8786 and the GAF is corrected from 0.9150 to 0.9152. The wage index value for rural Indiana is corrected from 0.7693 to 0.7720 and the GAF is corrected from 0.8356 to 0.8376.

6. On page 46387, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, the wage index value for hospitals reclassified to the Dutchess County, NY area is corrected from 0.0623 to 1.0623.

7. On page 46388, in Table 4C, the wage index value for hospitals reclassified to the Newark, NJ area is corrected from 1.1145 to 1.1008 and the GAF is corrected from 1.0771 to 1.0680; the wage index value for hospitals reclassified to the Philadelphia, PA–NJ area is corrected from 1.1160 to 1.1151 and the GAF is corrected from 1.0781 to 1.0775; and the wage index value for hospitals reclassified to the St. Louis, MO–IL area is corrected from 0.9192 to 0.9182 and the GAF is corrected from 0.9439 to 0.9432.

8. On page 46389, in Table 4D—Average Hourly Wage for Urban Areas, for the Philadelphia, PA–NJ urban area, the average hourly wage is corrected from 19.4459 to 19.4273; and the average hourly wage for the San Diego, CA area is corrected from 20.5556 to 20.7829.

9. On page 46390, in Table 4E—Average Hourly Wage for Rural Areas, for the rural Pennsylvania area, the average hourly wage is corrected from 15.0077 to 15.0080.

10. As discussed above, Table 6F—Additions to the CC Exclusions List and Table 6G—Deletions to the CC Exclusions List, which were set forth in the final rule on pages 46406–46424, are corrected and republished below in their entirety:

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

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[CCs that are added to the list are in Table 6f—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis]

*0700	05609	07030	07051	0720	07279	25013	25072
78003	05671	07031	07052	0721	0728	25021	25073
*0701	05679	07041	07053	0722	*1144	25022	25081
78003	0568	07042	07059	0723	1140	25023	25082
*07020	07020	07043	0706	07271	*1145	25031	25083
78003	07021	07049	0709	07272	1140	25032	25091
*07021	07030	07051	0720	07279	*25000	25033	25092
78003	07031	07052	0721	0728	25002	25041	25093
*07030	07041	07053	0722	*07999	25003	25042	2510
78003	07042	07059	0723	0520	25012	25043	2513
*07031	07043	0706	07271	0521	25013	25051	2580
78003	07049	0709	07272	0527	25022	25052	2581
*07041	07051	0720	07279	0528	25023	25053	2588
78003	07052	0721	0728	0529	25032	25061	2589
*07042	07053	0722	*07998	0530	25033	25062	78001
78003	07059	0723	0520	05310	25042	25063	78003
*07043	0706	07271	0521	05311	25043	25071	*25010
78003	0709	07272	0527	05312	25052	25072	25002
*07049	0720	07279	0528	05313	25053	25073	25003
78003	0721	0728	0529	05319	25062	25081	25012
*07051	0722	*07989	0530	05379	25063	25082	25013
78003	0723	0520	05310	0538	25072	25083	25022
*07052	07271	0521	05311	05479	25073	25091	25023
78003	07272	0527	05312	0548	25082	25092	25032
*07053	07279	0528	05313	0550	25083	25093	25033
78003	0728	0529	05319	0551	25092	2510	25042
*07059	*07988	0530	05379	0552	25093	2513	25043
78003	0520	05310	0538	05571	78003	2580	25052
*0706	0521	05311	05479	05579	*25001	2581	25053
78003	0527	05312	0548	0558	25002	2588	25062
*0709	0528	05313	0550	05600	25003	2589	25063
78003	0529	05319	0551	05601	25012	78001	25072
*07888	0530	05379	0552	05609	25013	78003	25073
0520	05310	0538	05571	05671	25022	*25003	25082
0521	05311	05479	05579	05679	25023	25001	25083
0527	05312	0548	0558	0568	25032	25002	25092
0528	05313	0550	05600	07020	25033	25003	25093
0529	05319	0551	05601	07021	25042	25011	78003
0530	05379	0552	05609	07030	25043	25012	*25011
05310	0538	05571	05671	07031	25052	25013	25002
05311	05479	05579	05679	07041	25053	25021	25003
05312	0548	0558	0568	07042	25062	25022	25012
05313	0550	05600	07020	07043	25063	25023	25013
05319	0551	05601	07021	07049	25072	25031	25022
05379	0552	05609	07030	07051	25073	25032	25023
0538	05571	05671	07031	07052	25082	25033	25032
05479	05579	05679	07041	07053	25083	25041	25033
0548	0558	0568	07042	07059	25092	25042	25042
0550	05600	07020	07043	0706	25093	25043	25043
0551	05601	07021	07049	0709	78003	25051	35052
0552	05609	07030	07051	0720	*25002	25052	25053
05571	05671	07031	07052	0721	25001	25053	25062
05579	05679	07041	07053	0722	25002	25061	25063
0558	0568	07042	07059	0723	25003	25062	25072
05600	07020	07043	0706	07271	25011	25063	25073
05601	07021	07049	0709	07272	25012	25071	25082

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25083	25041	25033	25003	25093	2513	25043	25071
25092	25042	25042	25011	78003	2580	25052	25072
25093	25043	25043	25012	*25031	2581	25053	25073
78003	25051	25052	25013	25002	2588	25062	25081
*25012	25052	25053	25021	25003	2589	25063	25082
25001	25053	25062	25022	25012	78001	25072	25083
25002	25061	25063	25023	25013	78003	25073	25091
25003	25062	25072	25031	25022	*25033	25082	25092
25011	25063	25073	25032	25023	25001	25083	25093
25012	25071	25082	25033	25032	25002	25092	2510
25013	25072	25083	25041	25033	25003	25093	2513
25021	25073	25092	25042	25042	25011	78003	2580
25022	25081	25093	25043	25043	25012	*25041	2581
25023	25082	78003	25051	25052	25013	25002	2588
25031	25083	*25022	25052	25053	25021	25003	2589
25032	25091	25001	25053	25062	25022	25012	5800
25033	25092	25002	25061	25063	25023	25013	5804
25041	25093	25003	25062	25072	25031	25022	58081
25042	2510	25011	25063	25073	25032	25023	5809
25043	2513	25012	25071	25082	25033	25032	5810
25051	2580	25013	25072	25083	25041	25033	5811
25052	2581	25021	25073	25092	25042	25042	5812
25053	2588	25022	25081	25093	25043	25043	5813
25061	2589	25023	25082	78003	25051	25052	58181
25062	78001	25031	25083	*25032	25052	25053	58189
25063	78003	25032	25091	25001	25053	25062	5819
25071	*25020	25033	25092	25002	25061	25063	5834
25072	25002	25041	25093	25003	25062	25072	5845
25073	25003	25042	2510	25011	25063	25073	5846
25081	25012	25043	2513	25012	25071	25082	5847
25082	25013	25051	2580	25013	25072	25083	5848
25083	25022	25052	2581	25021	25073	25092	5849
25091	25023	25053	2588	25022	25081	25093	585
25092	25032	25061	2589	25023	25082	78003	59010
25093	25033	25062	78001	25031	25083	*25042	59011
2510	25042	25063	78003	25032	25091	25001	5902
2513	25043	25071	*25030	25033	25092	25002	78001
2580	25052	25072	25002	25041	25093	25003	78003
2581	25053	25073	25003	25042	2510	25011	*25043
2588	25062	25081	25012	25043	2513	25012	25001
2589	25063	25082	25013	25051	2580	25013	25002
78001	25072	25083	25022	25052	2581	25021	25003
78003	25073	25091	25023	25053	2588	25022	25011
*25013	25082	25092	25032	25061	2589	25023	25012
25001	25083	25093	25033	25062	78001	25031	25013
25002	25092	2510	25042	25063	78003	25032	25021
25003	25093	2513	25043	25071	*25040	25033	25022
25011	78003	2580	25052	25072	25002	25041	25023
25012	*25021	2581	25053	25073	25003	25042	25031
25013	25002	2588	25062	25081	25012	25043	25032
25021	25003	2589	25063	25082	25013	25051	25033
25022	25012	78001	25072	25083	25022	25052	25041
25023	25013	78003	25073	25091	25023	25053	25042
25031	25022	*25023	25082	25092	25032	25061	25043
25032	25023	25001	25083	25093	25033	25062	25051
25033	25032	25002	25092	2510	25042	25063	25052

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25053	25063	25082	78001	25031	33522	25082	3461
25061	25072	25083	78003	25032	33523	25083	34571
25062	25073	25091	*25060	25033	33524	25091	34581
25063	25082	25092	25002	25041	33529	25092	34591
25071	25083	25093	25003	25042	3358	25093	3481
25072	25092	2510	25012	25043	3359	2510	3491
25073	25093	2513	25013	25051	340	2513	34981
25081	78003	2580	25022	25052	3432	2580	34982
25082	*25051	2581	25023	25053	3440	2581	3580
25083	25002	2588	25032	25061	34501	2588	3581
25091	25003	2589	25033	25062	34510	2589	3590
25092	25012	37700	25042	25063	34511	3200	3591
25093	25013	37701	25043	25071	3452	3201	78001
2510	25022	37702	25052	25072	3453	3202	78003
2513	25023	78001	25053	25073	34541	3203	*25070
2580	25032	78003	25062	25081	34551	3207	25002
2581	25033	*25053	25063	25082	34561	32081	25003
2588	25042	25001	25072	25083	34571	32082	25012
2589	25043	25002	25073	25091	34581	32089	25013
5800	25052	25003	25082	25092	34591	3209	25022
5804	25053	25011	25083	25093	3481	3210	25023
58081	25062	25012	25092	2510	3491	3211	25032
5809	25063	25013	25093	2513	34981	3213	25033
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5811	25073	25022	*25061	2581	3580	3218	25043
5812	25082	25023	25002	2588	3581	3220	25052
5813	25083	25031	25003	2589	3590	3221	25053
58181	25092	25032	25012	3200	3591	3222	25062
58189	25093	25033	25013	3201	78001	3229	25063
5819	78003	25041	25022	3202	78003	3240	25072
5834	*25052	25042	25023	3203	*25063	3241	25073
5845	25001	25043	25032	3207	25001	3249	25082
5846	25002	25051	25033	32081	25002	325	25083
5847	25003	25052	25042	32082	25003	3314	25092
5848	25011	25053	25043	32089	25011	3350	25093
5849	25012	25061	25052	3209	25012	33510	43301
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59010	25021	25063	25062	3211	25021	33519	43321
59011	25022	25071	25063	3213	25022	33520	43331
5902	25023	25072	25072	3214	25023	33521	43381
78001	25031	25073	25073	3218	25031	33522	43391
78003	25032	25081	25082	3220	25032	33523	43401
*25050	25033	25082	25083	3221	25033	35524	43411
25002	25041	25083	25092	3222	25041	33529	43491
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25012	25043	25092	78003	3240	25043	3359	78003
25013	25051	25093	*25062	3241	25051	340	*25071
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25023	25053	2513	25002	325	25053	3440	25003
25032	25061	2580	25003	3314	25061	34501	25012
25033	25062	2581	25011	3350	25062	34510	25013
25042	25063	2588	25012	33510	25063	34511	25022
25043	25071	2589	25013	33511	25071	3452	25023
25052	25072	37700	25021	33519	25072	3453	25032
25053	25073	37701	25022	33520	25073	34541	25033
25062	25081	37702	25023	33521	25081	34551	25042

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25043	2581	25011	44481	4416	25071	3491	4539
25052	2588	25012	44489	78003	25072	34981	5800
25053	2589	25013	4449	*25081	25073	34982	5804
25062	43301	25021	4460	25002	25081	3580	58081
25063	43311	25022	44620	25003	25082	3581	5809
25072	43321	25023	44621	25012	25083	3590	5810
25073	43331	25031	44629	25013	25091	3591	5811
25082	43381	25032	4463	25022	25092	37700	5812
25083	43391	25033	4464	25023	25093	37701	5813
25092	43401	25041	4465	25032	2510	37702	58181
25093	43411	25042	4466	25033	2513	43301	58189
43301	43491	25043	4467	25042	2580	43311	5819
43311	436	25051	4510	25043	2581	43321	5834
43321	4372	25052	45111	25052	2588	43331	5845
43331	4374	25053	45119	25053	2589	43381	5846
43381	4375	25061	4512	25062	3200	43391	5847
43391	4376	25062	45181	25063	3201	43401	5848
43401	4410	25063	452	25072	3202	43411	5849
43411	4411	25071	4530	25073	3203	43491	585
43491	4413	25072	4531	25082	3207	436	59010
4416	4415	25073	4532	25083	32081	4372	59011
78003	4416	25081	4533	25092	32082	4374	5902
*25072	4440	25082	4538	25093	32089	4375	78001
25001	4441	25083	4539	43301	3209	4376	78003
25002	44421	25091	78001	43311	3210	4410	*25083
25003	44422	25092	78003	43321	3211	4411	25001
25011	44481	25093	*25080	43331	3213	4413	25002
25012	44489	2510	25002	43381	3214	4415	25003
25013	4449	2513	25003	43391	3218	4416	25011
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25022	44620	2581	25013	43411	3221	4441	25013
25023	44621	2588	25022	43491	3222	44421	25021
25031	44629	2589	25023	4416	3229	44422	25022
25032	4463	43301	25032	78003	3240	44481	25023
25033	4464	43311	25033	*25082	3241	44489	25031
25041	4465	43321	25042	25001	3249	4449	25032
25042	4466	43331	25043	25002	325	4460	25033
25043	4467	43381	25052	25003	3314	44620	25041
25051	4510	43391	25053	25011	3350	44621	25042
25052	45111	43401	25062	25012	33510	44629	25043
25053	45119	43411	25063	25013	33511	4463	25051
25061	4512	43491	25072	25021	33519	4464	25052
25062	45181	436	25073	25022	33520	4465	25053
25063	452	4372	25082	25023	33521	4466	25061
25071	4530	4374	25083	25031	33522	4467	25062
25072	4531	4375	25092	25032	33523	4510	25063
25073	4532	4376	25093	25033	33524	45111	25071
25081	4533	4410	43301	25041	33529	45119	25072
25082	4538	4411	43311	25042	3358	4512	25073
25083	4539	4413	43321	25043	3359	45181	25081
25091	78001	4415	43331	25051	340	452	25082
25092	78003	4416	43381	25052	3432	4530	25083
25093	*25073	4440	43391	25053	3440	4531	25091
2510	25001	4441	43401	25061	3452	4532	25092
2513	25002	44421	43411	25062	3453	4533	25093
2580	25003	44422	43491	25063	3481	4538	2510

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2513	43301	58189	25043	2581	43321	5834	32089
2580	43311	5819	25052	2588	43331	5845	3209
2581	43321	5834	25053	2589	43381	5846	3210
2588	43331	5845	25062	3200	43391	5847	3211
2589	43381	5846	25063	3201	43401	5848	3213
3200	43391	5847	25072	3202	43411	5849	3214
3201	43401	5848	25073	3203	43491	585	3218
3202	43411	5849	25082	3207	436	59010	3220
3203	43491	585	25083	32081	4372	59011	3221
3207	436	59010	25092	32082	4374	5902	3222
32081	4372	59011	25093	32089	4375	78001	3229
32082	4374	5902	43301	3209	4376	78003	3240
32089	4375	78001	43311	3210	4410	*25093	3241
3209	4376	78003	43321	3211	4411	25001	3249
3210	4410	*25090	43331	3213	4413	25002	325
3211	4411	25002	43381	3214	4415	25003	3314
3213	4413	25003	43391	3218	4416	25011	3350
3214	4415	25012	43401	3220	4440	25012	33510
3218	4416	25013	43411	3221	4441	25013	33511
3220	4440	25022	43491	3222	44421	25021	33519
3221	4441	25023	4416	3229	44422	25022	33520
3222	44421	25032	78003	3240	44481	25023	33521
3229	44422	25033	*25092	3241	44489	25031	33522
3240	44481	25042	25001	3249	4449	25032	33523
3241	44489	25043	25002	325	4460	25033	33524
3249	4449	25052	25003	3314	44620	25041	33529
325	4460	25053	25011	3350	44621	25042	3358
3314	44620	25062	25012	33510	44629	25043	3359
3350	44621	25063	25013	33511	4463	25051	340
33510	44629	25072	25021	33519	4464	25052	3432
33511	4463	25073	25022	33520	4465	25053	3440
33519	4464	25082	25023	33521	4466	25061	3452
33520	4465	25083	25031	33522	4467	25062	3453
33521	4466	25092	25032	33523	4510	25063	3481
33522	4467	25093	25033	33524	45111	25071	3491
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33529	45119	43321	25043	3359	45181	25081	3580
3358	4512	43331	25051	340	452	25082	3581
3359	45181	43381	25052	3432	4530	25083	3590
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34982	5804	25003	25082	3581	5809	2589	43381
3580	58081	25012	25083	3590	5810	3200	43391
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3591	5811	25023	25093	37701	5813	3203	43491
37700	5812	25032	2510	37702	58181	3207	436
37701	5813	25033	2513	43301	58189	32081	4372
37702	58181	25042	2580	43311	5819	32082	4374

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4375	78001	25043	25093	28319	28319	2849	*2859
4376	78003	25052	*2599	*2814	*2827	2850	28310
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4413	25003	25063	25012	28319	28319	2800	*2898
4415	25012	25072	25013	*2818	*2828	2814	28310
4416	25013	25073	25022	28310	28310	2818	28311
4440	25022	25082	25023	28311	28311	2824	28319
4441	25023	25083	25032	28319	28319	28260	*2899
44421	25032	25092	25033	*2819	*2829	28261	28310
44422	25033	25093	25042	28310	28310	28262	28311
44481	25042	78003	25043	28311	28311	28263	28319
44489	25043	*2513	25052	28319	28319	28269	*33720
4449	25052	25002	25053	*2820	*2830	2830	3350
4460	25053	25003	25062	28310	28310	28310	33510
44620	25062	25012	25063	28311	28311	28311	33511
44621	25063	25013	25072	28319	28319	28319	33519
44629	25072	25022	25073	*2821	*28310	2832	33520
4463	25073	25023	25082	28310	2800	2839	33521
4464	25082	25032	25083	28311	2814	2840	33522
4465	25083	25033	25092	28319	2818	2848	33523
4466	25092	25042	25093	*2822	2824	2849	33524
4467	25093	25043	*27411	28310	28260	2850	33529
4510	78003	25052	78820	28311	28261	2851	3358
45111	*2511	25053	78829	28319	28262	*2832	3359
45119	25002	25062	*2800	*2823	28263	28310	*33721
4512	25003	25063	28310	28310	28269	28311	3350
45181	25012	25072	28311	28311	2830	28319	33510
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4530	25022	25082	*2801	*2824	28311	28310	33519
4531	25023	25083	28310	28310	28319	28311	33520
4532	25032	25092	28311	28311	2832	28319	33521
4533	25033	25093	28319	28319	2839	*2840	33522
4538	25042	78003	*2808	*2825	2840	28310	33523
4539	25043	*2515	28310	28310	2848	28311	33524
5800	25052	53082	28311	28311	2849	28319	33529
5804	25053	*2598	28319	28319	2850	*2848	3358
58081	25062	25002	*2809	*28260	2851	28310	3359
5809	25063	25003	28310	28310	*28311	28311	*33722
5810	25072	25012	28311	28311	2800	28319	3350
5811	25073	25013	28319	28319	2814	*2849	33510
5812	25082	25022	*2810	*28261	2818	28310	33511
5813	25083	25023	28310	28310	2824	28311	33519
58181	25092	25032	28311	28311	28260	28319	33520
58189	25093	25033	28319	28319	28261	*2850	33521
5819	78003	25042	*2811	*28262	28262	28310	33522
5834	*2512	25043	28310	28310	28263	28311	33523
5845	25002	25052	28311	28311	28269	28319	33524
5846	25003	25053	28319	28319	2830	*2851	33529
5847	25012	25062	*2812	*28263	28310	28310	3358
5848	25013	25063	28310	28310	28311	28311	3359
5849	25022	25072	28311	28311	28319	28319	*33729
585	25023	25073	28319	28319	2832	*2858	3350
59010	25032	25082	*2813	*28269	2839	28310	33510
59011	25033	25083	28310	28310	2840	28311	33511
5902	25042	25092	28311	28311	2848	28319	33519

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33520	*43311	*43391	*4413	43311	53291	5307	53082
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33523	43321	43321	4416	43381	53310	5304	*53231
33524	43331	43331	*4415	43391	53311	5307	53082
33529	43381	43381	4416	43401	53320	53084	*53240
3358	43391	43391	*4416	43411	53321	9981	53082
3359	*43320	*43400	4410	43491	53331	*5309	*53241
*34461	43301	43401	4411	4416	53340	53084	53082
78820	43311	43411	4413	53082	53341	*53100	*53250
78829	43321	43491	4415	*5302	53350	53082	53082
*34481	43331	436	4416	53082	53351	*53101	*53251
3432	43381	*43401	*4417	*5304	53360	53082	53082
3440	43391	43401	4410	53084	53361	*53110	*53260
*34489	*43321	43411	4411	*5307	53371	53082	53082
3432	43301	43491	4413	53082	53391	*53111	*53261
3440	43311	436	4415	53084	53400	53082	53082
*3488	43321	*43410	4416	*53081	53401	*53120	*53270
78003	43331	43401	*4419	5304	53410	53082	53082
*3489	43381	43411	4416	5307	53411	*53121	*53271
78003	43391	43491	*45182	53084	53420	53082	53082
*34989	*43330	436	4510	9981	53421	*53130	*53290
78003	43301	*43411	4511	*53082	53431	53082	53082
*3499	43311	43401	45119	4560	53440	*53131	*53291
78003	43321	43411	4512	45620	53441	53082	53082
*430	43331	43491	45181	5307	53450	*53140	*53300
78003	43381	436	*45183	53082	53451	53082	53082
*431	43391	*43490	4510	53100	53460	*53141	*53301
78003	*43331	43401	45111	53101	53461	53082	53082
*4320	43301	43411	45119	53110	53471	*53150	*53310
78003	43311	43491	4512	53111	53491	53082	53082
*4321	43321	436	45181	53120	53501	*53151	*53311
78003	43331	*43491	*45184	53121	53511	53082	53082
*4329	43381	43401	4510	53131	53521	*53160	*53320
78003	43391	43411	45111	53140	53531	53082	53082
*43300	*43380	43491	45119	53141	53541	*53161	*53321
43301	43301	436	4512	53150	53551	53082	53082
43311	43311	*4350	45181	53151	53561	*53170	*53330
43321	43321	43301	*4560	53160	53783	53082	53082
43331	43331	43381	53082	53161	56202	*53171	*53331
43381	43381	43391	*45620	53171	56203	53082	53082
43391	43391	*4351	53082	53191	56212	*53190	*53340
*43301	*43381	43321	*45989	53200	56213	53082	53082
43301	43301	*436	43301	53201	5693	*53191	*53341
43301	43311	43401	43311	53210	56985	53082	53082
43321	43321	43411	43321	53211	5780	*53200	*53350
43331	43331	43491	43331	53220	5781	53082	53082
43381	43381	*44024	43381	53221	5789	*53201	*53351
43391	43391	44024	43391	53231	9981	53082	53082
*43310	*43390	7854	43401	53240	*53083	*53210	*53360
43301	43301	*4410	43411	53241	5304	53082	53082
43311	43311	4416	43491	53250	5307	*53211	*53361
43321	43321	*4411	4416	53251	53084	53082	53082
43331	43331	4416	53082	53260	9981	*53220	*53370
43381	43381	*4412	*4599	53261	*53084	53082	53082
43391	43391	4416	43301	53271	5304	*53221	*53371

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53082	53082	78829	8059	80843	80615	82013	80631
*53390	*56202	*5969	80600	80849	80616	82019	80632
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*53391	56203	78829	80602	80852	80618	82021	80634
53082	53082	*5996	80603	80853	80619	82022	80635
*53400	*56212	78820	80604	80859	80620	82030	80636
53082	53082	78829	80605	8088	80621	82031	80637
*53401	*56213	*600	80606	8089	80622	82032	80638
53082	53082	78820	80607	82000	80623	8208	80639
*53410	*5693	78829	80608	82001	80624	8209	8064
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80371	80441	85102	85172	85242	80009	80079	80149
80372	80442	85103	85173	85243	80010	80080	80150
80373	80443	85104	85174	85244	80011	80081	80151
80374	80444	85105	85175	85245	80012	80082	80152
80375	80445	85106	85176	85246	80013	80083	80153
80376	80446	85109	85179	85249	80014	80084	80154
80379	80449	85110	85180	85250	80015	80085	80155
80380	80450	85111	85181	85251	80016	80086	80156
80381	80451	85112	85182	85252	80019	80089	80159
80382	80452	85113	85183	85253	80020	80090	80160
80383	80453	85114	85184	85254	80021	80091	80161
80384	80454	85115	85185	85255	80022	80092	80162
80385	80455	85116	85186	85256	80023	80093	80163
80386	80456	85119	85189	85259	80024	80094	80164
80389	80459	85120	85190	85300	80025	80095	80165
80390	80460	85121	85191	85301	80026	80096	80166
80391	80461	85122	85192	85302	80029	80099	80169
80392	80462	85123	85193	85303	80030	80100	80170
80393	80463	85124	85194	85304	80031	80101	80171
80394	80464	85125	85195	85305	80032	80102	80172
80395	80465	85126	85196	85306	80033	80103	80173
80396	80466	85129	85199	85309	80034	80104	80174
80399	80469	85130	85200	85310	80035	80105	80175
80400	80470	85131	85201	85311	80036	80106	80176
80401	80471	85132	85202	85312	80039	80109	80179
80402	80472	85133	85203	85313	80040	80110	80180
80403	80473	85134	85204	85314	80041	80111	80181
80404	80474	85135	85205	85315	80042	80112	80182
80405	80475	85136	85206	85316	80043	80113	80183
80406	80476	85139	85209	85319	80044	80114	80184
80409	80479	85140	85210	85400	80045	80115	80185
80410	80480	85141	85211	85401	80046	80116	80186
80411	80481	85142	85212	85402	80049	80119	80189

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80190	80325	80395	80465	85126	85196	85306	03849
80191	80326	80396	80466	85129	85199	85309	0388
80192	80329	80399	80469	85130	85200	85310	0389
80193	80330	80400	80470	85131	85201	85311	6800
80194	80331	80401	80471	85132	85202	85312	6801
80195	80332	80402	80472	85133	85203	85313	6802
80196	80333	80403	80473	85134	85204	85314	6803
80199	80334	80404	80474	85135	85205	85315	6804
8021	80335	80405	80475	85136	85206	85316	6805
80220	80336	80406	80476	85139	85209	85319	6806
80221	80339	80409	80479	85140	85210	85400	6807
80222	80340	80410	80480	85141	85211	85401	6808
80223	80341	80411	80481	85142	85212	85402	6809
80224	80342	80412	80482	85143	85213	85403	6820
80225	80343	80413	80483	85144	85214	85404	6821
80226	80344	80414	80484	85145	85215	85405	6822
80227	80345	80415	80485	85146	85216	85406	6823
80228	80346	80416	80486	85149	85219	85409	6825
80229	80349	80419	80489	85150	85220	85410	6826
80230	80350	80420	80490	85151	85221	85411	6827
80231	80351	80421	80491	85152	85222	85412	6828
80232	80352	80422	80492	85153	85223	85413	6829
80233	80353	80423	80493	85154	85224	85414	*V091
80234	80354	80424	80494	85155	85225	85415	0380
80235	80355	80425	80495	85156	85226	85416	0381
80236	80356	80426	80496	85159	85229	85419	0382
80237	80359	80429	80499	85160	85230	9251	0383
80238	80360	80430	8500	85161	85231	9252	03840
80239	80361	80431	8501	85162	85232	*9290	03841
8024	80362	80432	8502	85163	85233	9251	03842
8025	80363	80433	8503	85164	85234	9252	03843
8026	80364	80434	8504	85165	85235	*9299	03844
8027	80365	80435	8505	85166	85236	9251	03849
8028	80366	80436	8509	85169	85239	9252	0388
8029	80369	80439	85100	85170	85240	*9588	0389
80300	80370	80440	85101	85171	85241	9251	6800
80301	80371	80441	85102	85172	85242	9252	6801
80302	80372	80442	85103	85173	85243	*9590	6802
80303	80373	80443	85104	85174	85244	9251	6803
80304	80374	80444	85105	85175	85245	9252	6804
80305	80375	80445	85106	85176	85246	*9598	6805
80306	80376	80446	85109	85179	85249	9251	6806
80309	80379	80449	85110	85180	85250	9252	6807
80310	80380	80450	85111	85181	85251	*9599	6808
80311	80381	80451	85112	85182	85252	9251	6809
80312	80382	80452	85113	85183	85253	9252	6820
80313	80383	80453	85114	85184	85254	*V090	6821
80314	80384	80454	85115	85185	85255	0380	6822
80315	80385	80455	85116	85186	85256	0381	6823
80316	80386	80456	85119	85189	85259	0382	6825
80319	80389	80459	85120	85190	85300	0383	6826
80320	80390	80460	85121	85191	85301	03840	6827
80321	80391	80461	85122	85192	85302	03841	6828
80322	80392	80462	85123	85193	85303	03842	6829
80323	80393	80463	85124	85194	85304	03843	*V092
80324	80394	80464	85125	85195	85305	03844	0380

0381	6823	6805	03849	0381	6823	6805
0382	6825	6806	0388	0382	6825	6806
0383	6826	6807	0389	0383	6826	6807
03840	6827	6808	6800	03840	6827	6808
03841	6828	6809	6801	03841	6828	6809
03842	6829	6820	6802	03842	6829	6820
03843	*V094	6821	6803	03843	*V0981	6821
03844	0380	6822	6804	03844	0380	6822
03849	0381	6823	6805	03849	0381	6823
0388	0382	6825	6806	0388	0382	6825
0389	0383	6826	6807	0389	0383	6826
6800	03840	6827	6808	6800	03840	6827
6801	03841	6828	6809	6801	03841	6828
6802	03842	6829	6820	6802	03842	6829
6803	03843	*V0951	6821	6803	03843	*V0991
6804	03844	0380	6822	6804	03844	0380
6805	03849	0381	6823	6805	03849	0381
6806	0388	0382	6825	6806	0388	0382
6807	0389	0383	6826	6807	0389	0383
6808	6800	03840	6827	6808	6800	03840
6809	6801	03841	6828	6809	6801	03841
6820	6802	03842	6829	6820	6802	03842
6821	6803	03843	*V0970	6821	6803	03843
6822	6804	03844	0380	6822	6804	03844
6823	6805	03849	0381	6823	6805	03849
6825	6806	0388	0382	6825	6806	0388
6826	6807	0389	0383	6826	6807	0389
6827	6808	6800	03840	6827	6808	6800
6828	6809	6801	03841	6828	6809	6801
6829	6820	6802	03842	6829	6820	6802
*V093	6821	6803	03743	*V0980	6821	6803
0380	6822	6804	03844	0380	6822	6804
0381	6823	6805	03849	0381	6823	6805
0382	6825	6806	0388	0382	6825	6806
0383	6826	6807	0389	0383	6826	6807
03840	6827	6808	6800	03840	6827	6808
03841	6828	6809	6801	03841	6828	6809
03842	6829	6820	6802	03842	6829	6820
03843	*V0950	6821	6803	03843	*V0990	6821
03844	0380	6822	6804	03844	0380	6822
03849	0381	6823	6805	03849	0381	6823
0388	0382	6825	6806	0388	0382	6825
0389	0383	6826	6807	0389	0383	6826
6800	03840	6827	6808	6800	03840	6827
6801	03841	6828	6809	6801	03841	6828
6802	03842	6829	6820	6802	03842	6829
6803	03843	*V096	6821	6803	03843	
6804	03844	0380	6822	6804	03844	
6805	03849	0381	6823	6805	03849	
6806	0388	0382	6825	6806	0388	
6807	0389	0383	6826	6807	0389	
6808	6800	03840	6827	6808	6800	
6809	6801	03841	6828	6809	6801	
6820	6802	03842	6829	6820	6802	
6821	6803	03843	*V0971	6821	6803	
6822	6804	03844	0380	6822	6804	

TABLE 6G—DELETIONS TO THE CC EXCLUSIONS LIST

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[CCs that are deleted from the list are in Table 6g—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*0798	0530	25020	25080	25040	25060	4331	*2599
0520	05310	25030	25090	25050	25070	4332	25010
0521	05311	25040	*25031	25060	25080	4333	25020
0527	05312	25050	25010	25070	25090	4340	25030
0528	05313	25060	25020	25080	4330	4341	25040
0529	05319	25070	25030	25090	4331	4349	25050
0530	05379	25080	25040	*25061	4332	*2510	25060
05310	0538	25090	25050	25010	4333	25010	25070
05311	05479	*25010	25060	25020	4340	25020	25080
05312	0548	25010	25070	25030	4341	25030	25090
05313	0550	25020	25080	25040	4349	25040	*27411
05319	0551	25030	25090	25050	*25081	25050	7882
05379	0552	25040	*25040	25060	25010	25060	*2800
0538	05571	25050	25010	25070	25020	25070	2831
05479	05579	25060	25020	25080	25030	25080	*2801
0548	0558	25070	25030	25090	25040	25090	2831
0550	05600	25080	25040	*25070	25050	*2511	*2808
0551	05601	25090	25050	25010	25060	25010	2831
0552	05609	*25011	25060	25020	25070	25020	*2809
05571	05671	25010	25070	25030	25080	25030	2831
05579	05679	25020	25080	25040	25090	25040	*2810
0558	0568	25030	25090	25050	4330	25050	2831
05600	07020	25040	*25041	25060	4331	25060	*2811
05601	07021	25050	25010	25070	4332	25070	2831
05609	07030	25060	25020	25080	4333	25080	*2812
05671	07031	25070	25030	25090	4340	25090	2831
05679	07041	25080	25040	4330	4341	*2512	*2813
0568	07042	25090	25050	4331	4349	25010	2831
07020	07043	*25020	25060	4332	*25090	25020	*2814
07021	07049	25010	25070	4333	25010	25030	2831
07030	07051	25020	25080	4340	25020	25040	*2818
07031	07052	25030	25090	4341	25030	25050	2831
07041	07053	25040	*25050	4349	25040	25060	*2819
07042	07059	25050	25010	*25071	25050	25070	2831
07043	0706	25060	25020	25010	25060	25080	*2820
07049	0709	25070	25030	25020	25070	25090	2831
07051	0720	25080	25040	25030	25080	*2513	*2821
07052	0721	25090	25050	25040	25090	25010	2831
07053	0722	*25021	25060	25050	4330	25020	*2822
07059	0723	25010	25070	25060	4331	25030	2831
0706	07271	25020	25080	25070	4332	25040	*2823
0709	07272	25030	25090	25080	4333	25050	2831
0720	07279	25040	*25051	25090	4340	25060	*2824
0721	0728	25050	25010	4330	4341	25070	2831
0722	*25000	25060	25020	4331	4349	25080	*2825
0723	25010	25070	25030	4332	*25091	25090	2831
07271	25020	25080	25040	4333	25010	*2598	*28260
07272	25030	25090	25050	4340	25020	25010	2831
07279	25040	*25030	25060	4341	25030	25020	*28261
0728	25050	25010	25070	4349	25040	25030	2831
*0799	25060	25020	25080	*25080	25050	25040	*28262
0520	25070	25030	25090	25010	25060	25050	2831
0521	25080	25040	*25060	25020	25070	25060	*28263
0527	25090	25050	25010	25030	25080	25070	2831
0528	*25001	25060	25020	25040	25090	25080	*28269
0529	25010	25070	25030	25050	4330	25090	2831

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*2827	4331	4340	7882	66512	66514	7331	8082
2831	4332	4341	*6019	66514	*66591	8058	8083
*2828	4333	4349	7882	*66501	66512	8059	80843
2831	*4331	*4599	*6020	66512	66514	80600	80849
*2829	4330	4330	7882	66514	*66592	80601	80851
2831	4331	4331	*6021	*66503	66512	80602	80852
*2830	4332	4332	7882	66512	66514	80603	80853
2831	4333	4333	*6022	66514	*66593	80604	80859
*2831	*4332	4340	7882	*66510	66512	80605	8088
2800	4330	4341	*6028	66512	66514	80606	8089
2814	4331	4349	7882	66514	*66594	80607	82000
2818	4332	*5308	*6029	*66511	66512	80608	82001
2824	4333	5304	7882	66512	66514	80609	82002
28260	*4333	5307	*64680	66514	*66940	80610	82003
28261	4330	9981	66512	*66512	66512	80611	82009
28262	4331	*5933	66514	66500	66514	80612	82010
28263	4332	7882	*64681	66501	*66941	80613	82011
28269	4333	*5934	66512	66503	66512	80614	82012
2830	*4338	7882	66514	66510	66514	80615	82013
2831	4330	*5935	*64682	66511	*66942	80616	82019
2832	4331	7882	66512	66512	66512	80617	82020
2839	4332	*5960	66514	66514	66514	80618	82021
2840	4333	7882	*64683	*66514	*66944	80619	82022
2848	*4339	*5964	66512	66500	66512	80620	82030
2849	4330	7882	66514	66501	66514	80621	82031
2850	4331	*59651	*64684	66503	*66980	80622	82032
2851	4332	7882	66512	66510	66512	80623	8208
*2832	4333	*59652	66514	66511	66514	80624	8209
2831	*4340	7882	*64690	66512	*66981	80625	82100
*2839	4340	*59653	66512	66514	66512	80626	82101
2831	4341	7882	66514	*66550	66514	80627	82110
*2840	4349	*59654	*64691	66512	*66982	80628	82111
2831	436	7882	66512	66514	66512	80629	*7530
*2848	*4341	*59655	66514	*66551	66514	80630	7882
2831	4340	7882	*64693	66512	*66983	80631	*75310
*2849	4341	*59659	66512	66514	66512	80632	7882
2831	4349	7882	66514	*66554	66514	80633	*75311
*2850	436	*5968	*64890	66512	*66984	80634	7882
2831	*4349	7882	66512	66514	66512	80635	*75312
*2851	4340	*5969	66514	*66580	66514	80636	7882
2831	4341	7882	*64891	66512	*66990	80637	*75313
*2858	4349	*5996	66512	66514	66512	80638	7882
2831	436	7882	66514	*66581	66514	80639	*75314
*2859	*4350	*600	*64892	66512	*66991	8064	7882
2831	4330	7882	66512	66514	66512	8065	*75315
*2898	*4351	*6010	66514	*66582	66514	80660	7882
2831	4332	7882	*64893	66512	*66992	80661	*75316
*2899	*436	*6011	66512	66514	66512	80662	7882
2831	4340	7882	66514	*66583	66514	80669	*75317
*34461	4341	*6012	*64894	66512	*66993	80670	7882
7882	4349	7882	66512	66514	66512	80671	*75319
*3448	*45989	*6013	66514	*66584	66514	80672	7882
3432	4330	7882	*650	66512	*66994	80679	*7532
3440	4331	*6014	66512	66514	66512	8068	7882
*4330	4332	7882	66514	*66590	66514	8069	*7533
4330	4333	*6018	*66500	66512	*7331	8080	7882

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*7534	80031	80101	80171	80306	80376	80446	85109
7882	80032	80102	80172	80309	80379	80449	85110
*7535	80033	80103	80173	80310	80380	80450	85111
7882	80034	80104	80174	80311	80381	80451	85112
*7536	80035	80105	80175	80312	80382	80452	85113
7882	80036	80106	80176	80313	80383	80453	85114
*7537	80039	80109	80179	80314	80384	80454	85115
7882	80040	80110	80180	80315	80385	80455	85116
*7538	80041	80111	80181	80316	80386	80456	85119
7882	80042	80112	80182	80319	80389	80459	85120
*7539	80043	80113	80183	80320	80390	80460	85121
7882	80044	80114	80184	80321	80391	80461	85122
*7809	80045	80115	80185	80322	80392	80462	85123
7882	80046	80116	80186	80323	80393	80463	85124
*7882	80049	80119	80189	80324	80394	80464	85125
7882	80050	80120	80190	80325	80395	80465	85126
*7886	80051	80121	80191	80326	80396	80466	85129
7882	80052	80122	80192	80329	80399	80469	85130
*7889	80053	80123	80193	80330	80400	80470	85131
7882	80054	80124	80194	80331	80401	80471	85132
*7909	80055	80125	80195	80332	80402	80472	85133
7907	80056	80126	80196	80333	80403	80473	85134
*7998	80059	80129	80199	80334	80404	80474	85135
7882	80060	80130	8021	80335	80405	80475	85136
*8738	80061	80131	80220	80336	80406	80476	85139
925	80062	80132	80221	80339	80409	80479	85140
*8739	80063	80133	80222	80340	80410	80480	85141
925	80064	80134	80223	80341	80411	80481	85142
*9050	80065	80135	80224	80342	80412	80482	85143
925	80066	80136	80225	80343	80413	80483	85144
*925	80069	80139	80226	80344	80414	80484	85145
80000	80070	80140	80227	80345	80415	80485	85146
80001	80071	80141	80228	80346	80416	80486	85149
80002	80072	80142	80229	80349	80419	80489	85150
80003	80073	80143	80230	80350	80420	80490	85151
80004	80074	80144	80231	80351	80421	80491	85152
80005	80075	80145	80232	80352	80422	80492	85153
80006	80076	80146	80233	80353	80423	80493	85154
80009	80079	80149	80234	80354	80424	80494	85155
80010	80080	80150	80235	80355	80425	80495	85156
80011	80081	80151	80236	80356	80426	80496	85159
80012	80082	80152	80237	80359	80429	80499	85160
80013	80083	80153	80238	80360	80430	8500	85161
80014	80084	80154	80239	80361	80431	8501	85162
80015	80085	80155	8024	80362	80432	8502	85163
80016	80086	80156	8025	80363	80433	8503	85164
80019	80089	80159	8026	80364	80434	8504	85165
80020	80090	80160	8027	80365	80435	8505	85166
80021	80091	80161	8028	80366	80436	8509	85169
80022	80092	80162	8029	80369	80439	85100	85170
80023	80093	80163	80300	80370	80440	85101	85171
80024	80094	80164	80301	80371	80441	85102	85172
80025	80095	80165	80302	80372	80442	85103	85173
80026	80096	80166	80303	80373	80443	85104	85174
80029	80099	80169	80304	80374	80444	85105	85175
80030	80100	80170	80305	80375	80445	85106	85176

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85179	85249
85180	85250
85181	85251
85182	85252
85183	85253
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85191	85301
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85200	85310
85201	85311
85202	85312
85203	85313
85204	85314
85205	85315
85206	85316
85209	85319
85210	85400
85211	85401
85212	85402
85213	85403
85214	85404
85215	85405
85216	85406
85219	85409
85220	85410
85221	85411
85222	85412
85223	85413
85224	85414
85225	85415
85226	85416
85229	85419
85230	925
85231	*9290
85232	925
85233	*9299
85234	925
85235	*9588
85236	925
85239	*9590
85240	925
85241	*9598
85242	925
85243	*9599
85244	925
85245	
85246	

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

Dated: December 10, 1993.

Thomas F. Joyce,

Acting Deputy Secretary for Information Resources Management.

[FR Doc. 93-30936 Filed 12-20-93; 8:45 am]

BILLING CODE 4120-01-P-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 392

[FHWA Docket No. MC-90-14]

RIN 2125-AC69

Radar Detectors in Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending 49 CFR parts 390 and 392 to ban the use of radar detectors in all commercial motor vehicles (CMVs) as defined in 49 CFR 390.5. This final rule completes an action initiated in response to the Congressional mandate set forth in section 342 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Pub. L. 102-143) and responds to a petition filed

jointly on July 18, 1990, by the Insurance Institute for Highway Safety and seven other organizations.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Driver Standards Division, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This final rule completes action initiated under Public Law 102–143 (signed October 28, 1991). Section 342 of that public law required the Secretary of Transportation to publish a notice of proposed rulemaking to amend the Federal Motor Carrier Safety Regulations to prohibit the use of radar detectors in operating commercial motor vehicles.

This final rule also responds to a July 18, 1990, petition jointly filed by the following organizations:

(1) Advocates for Highway and Auto Safety;
(2) American Automobile Association;
(3) American Trucking Associations;
(4) Insurance Institute for Highway Safety;
(5) International Association of Chiefs of Police;
(6) National Association of Governors' Highway Safety Representatives;
(7) National Safety Council; and
(8) Public Citizen.

In the 1992 DOT Appropriations Act, the Congress directed the Secretary of Transportation to initiate rulemaking proposing a national ban on the use of radar detectors in CMVs (Pub. L. 102–143, section 342 (Oct. 28, 1991)). On January 24, 1992, at 57 FR 2885 the FHWA published a notice of proposed rulemaking (NPRM) proposing to ban the use of radar detectors in CMVs that are under the FHWA's jurisdiction. The comment period closed on May 26, 1992.

Based on comments received to the docket, the FHWA acknowledges that traffic engineering experts, various sectors of the transportation industry, enforcement authorities, other organizations, drivers of CMVs and automobiles, and the general public hold widely divergent views on the rationale for, and efficacy of, banning the use of radar detectors in CMVs. Moreover, the FHWA recognizes that scientific proof unequivocally establishing a direct causative linkage between radar detector use and CMV accidents may not exist. Nevertheless, the FHWA believes that sufficient safety rationale and justification exist to support banning the use of radar detectors in CMVs as discussed more fully below. The FHWA is aware that the Senate report accompanying the 1994 Department of Transportation Appropriations Bill (S. Rpt. 103–150 at 111) directed the FHWA to further study the effects of radar detector use by CMVs on highway safety. The FHWA intends to carefully monitor the effects of the radar detector ban on CMV operations and safety.

The final regulatory evaluation for this rulemaking, which is contained in the public docket, has been completed and summarizes data on the relationships between radar detector use and speeding, and between speeding and accident severity, including additional statistical data provided by commenters to the January 24, 1992, NPRM (57 FR 2885).

Discussion of Petition

On July 18, 1990, the FHWA received from the Insurance Institute for Highway Safety and 7 other organizations a petition for rulemaking to ban the use of radar detectors in CMVs regulated by the FHWA. In support of the petition, evidence was submitted that (1) radar detector use correlates with speeding, (2) drivers of tractor/trailer combinations use radar detectors more frequently than drivers of any other vehicle types and (3) drivers of tractor/trailer combinations using radar detectors are 2 to 3 times more inclined to speed than those without.

Petitioners' data consist mostly of observations made in Maryland and Virginia and five other eastern States. One study shows that of tractor/trailer combinations observed to be speeding in Maryland (856) and Virginia (943), those operating with radar detectors were 3 times as likely in Maryland and 2 times as likely in Virginia to exceed 65 mph than CMVs without radar detectors. The study also showed that approximately 40 percent of all CMVs were operated with radar detectors. The petitioners concluded that an FHWA ban on the use of radar detector devices in CMVs is warranted and justified. The FHWA agrees, even though the petitioners' studies were not necessarily applicable to all motor carrier operations and there is no established direct linkage between radar detector use and highway accidents. Based on petitioners' information and comments received to the docket, the FHWA has determined that the societal benefits to be derived from unhampered speed law enforcement overwhelmingly outweigh the anticipated marginal benefits associated with individual radar detector utilization in CMVs.

Discussion of the NPRM Docket Comments

Prior to taking final action on this rulemaking, the FHWA considered a total of 26,454 comments which were received to the docket. The following table displays the comments by respondent class:

TABLE 1.—RESPONDENTS TO THE NOTICE OF PROPOSED RULEMAKING BY CATEGORY

Departments of State, Transportation and Motor Vehicles	24
Police Agencies	442
Safety Interest Groups	50
Radar Detector Industry	23
Legal Profession	97
Motor Carriers and Drivers	458
Trucking and Motorcoach Associations	7
Other Organizations	378
General Public	313
Form Letters and Petitions (total signatures)	24,667
Total Respondents	26,459

Departments of State, Transportation and Motor Vehicles

All of the 24 Departments of State, transportation, or motor vehicles and the American Association of Motor Vehicle Administrators voiced strong support for banning the use of radar detectors in CMVs. For example, the Illinois Department of State concluded, based on findings from its Safe Trucking Task Force, created in 1991, that the only reason for using a radar detector is to evade the law. The Virginia DMV, in its pilot program, observed over 30,000 radar detectors in use since July of 1990. Of all CMVs observed, 40 percent were using radar detectors.

Police Agencies

The International Association of Chiefs of Police (IACP), the Commercial Vehicle Safety Alliance (CVSA) and over 400 State and local police provided comments to the docket. All but one of these agencies emphatically supported banning the use of radar detectors in CMVs. The Maine State Police was the lone dissenter. They believed a ban on radar detectors would not have the desired effect and would actually present a new set of problems for enforcement personnel.

Conversely, the Missouri Highway Patrol reports that speed is one of the

major contributing factors to accidents in the State, especially in those cases resulting in death and personal injury. In all 1989 fatal traffic accidents occurring in Missouri, 42.3 percent involved speed as a contributing factor. For high speed violations, the proportion of arrested drivers having radar detectors in their vehicles also increased. The Missouri Highway Patrol found that of those drivers driving up to 10 mph over the posted speed limit, 26.4 percent had radar detector devices in use. For those travelling between 11 and 20 mph over the posted speed limit, 28.1 percent had radar detectors in use and for those vehicles travelling 21 mph or more over the posted speed limit, 38.1 percent were using such devices.

The New Jersey Department of Law and Public Safety also reported a positive correlation between radar detector use and excessive speed (speed limit presumed to be 55 mph). They observed that 90 percent of radar detector users exceeded speeds of 60 mph and 40 percent exceeded speeds of 65 mph. By comparison, 70 percent of the non-detector users exceeded 60 mph and less than 20 percent exceeded 65 mph.

The Arizona Department of Public Safety reported that their survey conducted during the FHWA-sponsored "Roadcheck '91," found that 60 percent of all CMVs checked for radar detectors in a 72-hour period were equipped with such devices.

Safety Interest Groups

Over 45 comments were received from various safety interest groups. Comments in support of the proposal were unanimous. For example, the National Association of Governor's Highway Safety Representatives, Public Citizen and Advocates for Highway and Auto Safety rely on petitioners' data and various National Highway Traffic Safety Administration studies to argue in favor of the ban. These organizations believe that the only purpose for a radar detector is to permit a driver to speed; and therefore allow drivers to break the law. These organizations strongly encourage the FHWA to ban radar detectors in CMVs.

Radar Detector Industry

Of the seven radar detector manufacturers that commented, all voiced strong opposition to the FHWA's proposal to ban the use of radar detectors in CMVs. For example, the President of Valentine Research, Inc., commented that his customers (users of radar detector devices) are practicing "Jeffersonian democracy" in using his product. He argues that his customers should be free to travel at speeds that they consider safe, especially since the speed limits across the country have been under-posted by as much as 15 mph. However, the manufacturer also readily admits that the primary purpose of radar detectors is to permit drivers to speed, which he refers to as "voting with their accelerators." Other representatives argue that radar units frequently malfunction and give inaccurate speed readings, resulting in State enforcement which they claim borders on harassment of innocent drivers.

RADAR, Inc.'s comments point out the FHWA's and petitioners' inability to cite research establishing a linkage between radar detector usage and excessive speeds. It contends that in those States which have banned such devices, there has been no significant impact in reducing radar detector usage or vehicle speeds. Also, it argues that should the FHWA ban become final, approximately 8,400 jobs in the radar detector industry will be adversely affected.

Legal Profession

Of the 97 comments received from the legal profession, 28 commenters supported the ban as proposed, asserting that these devices serve no legal purpose. Those commenters opposing the proposal question the necessity of such governmental intervention by raising legal and constitutional issues concerning search and seizure.

Motor Carriers and Drivers

Of the more than 400 trucking representatives/companies that commented, an overwhelming number (over 95 percent) voiced strong opposition to the FHWA proposal. Most of the trucking representatives viewed the action as an infringement upon individual rights. For example, one trucker from Ohio brings up the legal comparison of banning radar detectors to cable companies trying to ban satellite dishes. He asserts that Congress decided that "airwaves were free out in the air and free to anyone who wanted to receive them." Others cited a Maryland court case where Government Employees' Insurance Company (GEICO) cancelled an insurance policy because the policy holder used a radar detector. Apparently, GEICO's action was overturned by a Maryland court on the grounds that it was an unfair discriminatory practice. Moreover, drivers contend that they are being unfairly treated by some police organizations through unwarranted speed enforcement. Thus, they argue, they will be losing a valuable protection against such abuse, i.e., because of the inaccuracy of speed detection devices, their possession of radar detectors serves a justifiable purpose.

Trucking and Motorcoach Associations

The American Trucking Associations (ATA), the National Private Truck Council (NPTC), the American Bus Association (ABA) and the Motor Vehicle Manufacturers Association support the proposal. The ATA stated that the majority of motor carriers have policies prohibiting the use of radar detectors. Those carriers that do not have such policies believe that Federal action is necessary in order that they may legally maintain an enforceable policy. The NPTC and the ABA believe previous research demonstrates that use of radar detectors is linked to increased travel speeds and thus the FHWA should ban radar detectors and any other future speed measurement detection technology.

Additionally, ABA asserts that if the proposal is adopted the States should be required to pass legislation to ban radar detectors as a condition of receiving Motor Carrier Safety Assistance Program (MCSAP) funds. On the other hand, the Owner-Operator Independent Drivers Association (OOIDA) commented that the FHWA's proposal is an infringement upon States' rights since speed enforcement on interstate highways is a function of State law, policy and practice.

Other Organizations

Over 350 comments were received from various insurance organizations, private businesses, and health care professionals. Comments in support of the proposal were nearly unanimous. These organizations endorsed the proposition that the only use for radar detectors was to help break the law.

General Public

Of the more than 300 comments received from the general public, approximately 55 percent voiced strong opposition to the ban for a variety of reasons, including the fear that a ban in CMVs will lead to a ban in all vehicles; that there is a constitutional right to send and receive signals through the air waves; that the ban discriminates against CMV drivers; and that there is no evidence to support the ban.

Form Letters and Signature Petitions

In addition to the comments discussed above, the FHWA received many form letters and petitions containing numerous signatures.

Approximately 19,000 opposed the ban and 5,500 were in favor of it.

Enforcement Policy

In the NPRM, the FHWA proposed enforcement of the ban to be accomplished under the provisions of 49 CFR 392.5. By amending this section, drivers and companies may be cited for possession or use of all devices defined as radar detectors and, consequently, subject to the penalty provision of 49 U.S.C. 521 or a corresponding State penalty provision. Several commenters suggested that the FHWA should require States to adopt legislation to ban radar detectors in CMVs as a condition for receiving MCSAP funds. The FHWA will consider this issue in the future. In the meanwhile, given the overwhelming support from law enforcement agencies, the FHWA expects that the States will adopt the provision as they adopt changes to the FMCSRs. In addition to highway enforcement, the FHWA also expects States to enforce the ban as part of the routine roadside inspection process conducted under the MCSAP. Thus, the FHWA believes that it is not critical for purposes of this rulemaking to address the issue of making adoption of the ban by States as a condition for receiving MCSAP funds at this time.

Discussion of Questions

The NPRM requested comment to the docket on three questions concerning specific provisions of the rulemaking (Questions 1 to 3).

Question 1: Should the definition of "radar detector" be expanded to anticipate and include devices that may allow drivers to detect advanced speed limit enforcement technology such as laser beams?

The overwhelming majority of the respondents who addressed this question, which included 26 State law enforcement agencies, 6 State departments of transportation/departments of motor vehicles and the Commercial Vehicle Safety Alliance (CVSA), were in favor of expanding the definition of "radar detector" to include other detection devices such as laser detectors. The FHWA agrees. The FHWA is, therefore, expanding the definition to include other detection devices as more fully discussed in the section-by-section analysis.

Question 2(a): How widespread are permanently or semipermanently installed radar detectors in CMVs nationwide?

The majority of the respondents who addressed this question, which included 20 State law enforcement agencies and 3 of the petitioners, provided no specific information. Other commenters indicated a range from 35 percent to 75 percent use in CMVs. Notwithstanding the uncertainty concerning the extent of actual nationwide use, the FHWA believes that detector use is sufficiently widespread to require a ban on its use in CMVs.

Question 2(b): What would be the impacts of dealing with such installed devices as vehicle appurtenances under Parts 393 and/or 396?

Most of the respondents who addressed this question, which included 22 State law enforcement agencies and 2 State departments of transportation/departments of motor vehicles, either did not have an opinion on the impact or offered very general comments on effectiveness without specifically addressing Parts 393 and/or 396. The FHWA has, therefore, decided not to address radar detectors under Parts 393 or 396 in this rulemaking.

Question 2(c): Should discovery of such a device upon inspection be grounds for a vehicle out-of-service order under § 396.9?

The overwhelming majority of the respondents who addressed this question, which included 23 State law enforcement agencies and 5 State departments of transportation/departments of motor vehicles, were against making the discovery of such a device being grounds for a vehicle out-of-service order under section 396 because such possession or use would not constitute an imminent hazard as defined in the out-of-service criteria. The FHWA agrees and will not address radar detectors under section 396 in this rulemaking. Discovery of such a device will not be grounds for a CMV out-of-service order.

Question 2(d): If not, what should the consequences of discovery of such a device be?

The overwhelming majority of the respondents who addressed this question, which included 21 State law enforcement agencies, believed that the consequences should include a citation and fine, confiscation of the device, or both. The FHWA agrees that a citation and fine should be imposed, but not confiscation because we do not believe it is within our present authority to seize property summarily and, therefore, do not intend to impose such a requirement on States. If a State has independent authority to seize such property and elects to exercise this authority, this rule does not prohibit such an enforcement practice.

Question 3: How would State enforcement programs and procedures be affected by the adoption of this proposal?

The majority of the respondents who addressed this question, which included 20 State law enforcement agencies and 2 of the petitioners, believed that the ban on the use of radar detectors in CMVs should either supplement existing State enforcement policies or should be included in States' statutes to support enforcement policies. The FHWA realizes that the final rule will encourage States to enforce the ban on radar detectors in CMVs engaged in intrastate as well as interstate commerce as part of the MCSAP. There will be a positive effect on State speed enforcement programs and procedures resulting in an improvement in overall highway safety.

In addition to the above questions, the NPRM requested comments on several other issues, including the operation and maintenance of equipment designed to enforce the ban (Questions 6 to 10). While most of the docket respondents did not directly comment on these specific issues, the general subject matter was covered by many of the respondents. The few respondents who did comment specifically on the issues did not refute or add to the data submitted by the petitioners with respect to radar detector detection technologies. The FHWA is satisfied that existing technology is reasonably available to detect the use of radar detectors which will facilitate enforcement of the ban.

Section-by-Section Analysis

Definition of Radar Detector

History has demonstrated that as radar equipment used by law enforcement agencies is upgraded and becomes more sophisticated, the radar detection industry has quickly responded with its own upgraded and more sophisticated equipment. As a means of combatting this situation, law enforcement agencies are starting to look at other technologies to help them in speed limit enforcement, such as aerial and VASCAR strategies and new technologies, such as laser beams. Although the FHWA believes that fewer than 400 laser units are currently in use around the country, due to their current cost of approximately 3 times that of a radar detector unit, law enforcement agencies are gradually adding this highly effective technology to their speed enforcement program.

As the CVSA stated in its docket response to Question 1, "A broader definition will accommodate the changes we are likely to see in years to come." The overwhelming majority of the respondents to Question 1 echoed that same thought. The FHWA is,

therefore, expanding the definition to include any device that detects radio microwaves, laser beams or any other future speed measurement technology used by law enforcement agencies on highways for enforcement purposes as a means of preventing the compromise of new, more effective enforcement tools.

Applicability

This final rule changes portions of 49 CFR parts 390 and 392 to directly affect drivers of CMVs as defined in part 390, which include vehicles used in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(2) Is designed to transport 16 or more passengers, including the driver; or

(3) Is used to transport hazardous materials in quantities that require placarding.

Vehicles that meet the above definition and are used exclusively in intrastate commerce also may be indirectly affected. Under the MCSAP, most States adopt the Federal Motor Carrier Safety Regulations and enforce the requirements with respect to both interstate and intrastate drivers and carriers. Section 390.5 defines "radar detector" as any device or mechanism that detects radio microwaves, laser beams or any other future speed limit measurement technology used by enforcement officials to measure the speed of CMVs upon public roads and highways for enforcement purposes.

The definition would specifically exclude detectors that are:

(1) Transported outside the driver's compartment of the vehicle; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver.

Under item number (1) above, since the driver and passenger areas of a bus constitute a single compartment, the final rule notes that the "driver's compartment" of a passenger-carrying CMV includes all space designed to accommodate the driver and passengers alike.

If both of the above conditions are met, a radar detection device would be excluded from the definition of "radar detectors" and its transportation in a CMV would be permitted. This will allow a driver apprehended with a radar detector to continue legally operating the CMV by disengaging the device and storing it outside the cab.

Rulemaking Analysis and Notices

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest and controversy involving the use of radar detectors. A regulatory evaluation addressing regulatory impacts has been prepared and is available for inspection in the Docket Room 4232 of the FHWA, 400 Seventh Street SW., Washington, DC 20590. The FHWA regulatory evaluation presents the agency's evaluation of the economic and other impacts of this final rule. This evaluation finds the benefits of this action are five times larger than the cost. The agency's methodology and calculations used to derive this estimate are contained in Appendix A to the Regulatory Evaluation.

Regulatory Flexibility Act

Based on information available to the FHWA and under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has determined that this action will not have a significant economic impact on a substantial number of small entities. This regulation does not ban the production of radar detectors, and manufacturers would still be allowed to sell the devices to automobile drivers and foreign markets. The FHWA believes that the manufacturers' core business is passenger vehicle drivers and given the relative sizes of the heavy vehicle and passenger vehicle populations, any potential economic impact should not be significant.

Executive Order 12612 (Federalism Assessment)

The final rule will impact the policy-making discretion of the States. The FHWA has reviewed the ban on radar detectors in light of the purposes of the underlying legislation and the Executive Order on Federalism (Executive Order 12612, October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles while formulating and implementing policies. These policies have been taken fully into account in the development of this regulation.

In 1988, the FHWA received a similar petition from five of the organizations that signed the 1990 petition. On November 8, 1988, the FHWA denied that petition on the grounds that a Federal ban on radar detectors would violate the principles of federalism because the situation "is common to the States and not truly national in scope." The FHWA continues to recognize that the enforcement of speed limit laws on the highways is a function of State law, policy and practice. Nevertheless, the FHWA is empowered with long-standing authority to regulate the safety of operators interstate motor carriers of passengers and property under 49 U.S.C. 3102. In particular, the Motor Carrier Safety Act of 1984 (1984 Act) (Pub. L. 98–554, 98 Stat. 2832) also provides ample authority for this rulemaking. In addition, Public Law 102–143 specifically directs the Department of Transportation to publish a rulemaking addressing this issue. The Senate Committee report on Public Law 102–143 stated that, "while the general prohibition of radar detectors is properly left to the States, the use of radar detectors in vehicles in interstate commerce is an appropriate arena for the Federal Government to regulate." [1] Consistent with federalism principles, the final rule provides for a Federal ban, but provides significant discretion for States in their enforcement.

It is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. The FHWA has determined that this action accords fully with the Federalism Executive Order.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

[1] S. Rep. No. 148, 102d Cong., 1st Sess. 90 (1991).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 392

Commercial motor vehicles, Highways and roads, Motor vehicle safety, Radar detectors.

Issued on: December 14, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL [AMENDED]

1. The authority citation for 49 CFR Part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by adding one definition, placing it in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the vehicle. For this purpose, the *driver's compartment* of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the vehicle.

* * * * *

PART 392—DRIVING OF MOTOR VEHICLES [AMENDED]

3. The authority citation for 49 CFR part 392 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

4. Section 392.71 is added to subpart G, as follows:

§ 392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

[FR Doc. 93–30892 Filed 12–17–93; 5:00 pm]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 58, No. 243
Tuesday, December 21, 1993

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD23

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22 & 23), Dark Air-Cured (Types 35 & 36), Virginia Sun-Cured (Type 37), Cigar-Filler (Type 46), and Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary) is required by the Agricultural Adjustment Act of 1938 (the Act), as amended, to proclaim by March 1, 1994, national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35 & 36) tobaccos for the 1994–95, 1995–96, and 1996–97 marketing years (MY's) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) kinds of tobacco for the 1994–95 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referenda, and other related matters which are discussed in this proposed rule.

DATES: Comments must be received on or before February 4, 1994, in order to be assured consideration.

ADDRESSES: Send comments to the Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3090, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in room 3739, South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, ASCS, room 3739, South Building, P.O. Box 2415, Washington, DC 20013–2415, on 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Robert L. Tarczy.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since ASCS is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR part 723 set forth in this proposed rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 723 have been approved through August 31, 1995, by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35, and assigned OMB No. 0560–0058. Public reporting burden for these collections is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paper Reduction Project (OMB No. 0560–0058), Washington, DC 20503.

Statutory Background

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than March 1, 1994, with respect to kinds of tobacco specified in this proposed rule, the amount of the national marketing quota which will be in effect for MY 1994 in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

Section 312(c) of the Act requires that the Secretary conduct, within 30 days after proclamation of national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35 & 36) tobaccos, referenda of farmers engaged in the 1993 production of each kind of tobacco to determine whether they favor or oppose marketing quotas for MY's 1994, 1995, and 1996. This referendum is required because MY 1993 is the last year of the three consecutive MY's for which marketing quotas previously proclaimed for these two kinds of tobacco will be in effect.

If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, the results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not become effective, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments, through the national factor. The national factor is determined by dividing the preliminary quota (the sum of quotas for old farms) into the quota determined for the MY in question (less the reserve). Procedures will continue unchanged for (1) converting marketing quotas into acreage allotments; (2) apportioning allotments among old farms; (3) apportioning reserves for use in (a) establishing allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments; and (4) holding referenda.

Request for Comments

This rule proposes to amend 7 CFR part 723, subpart A to include 1994-crop national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos. These six kinds of tobacco account for about 3 percent of total U.S. tobacco production. Accordingly, comments are requested concerning the proposed establishment of the national marketing quotas for the subject tobaccos at the following levels:

(1) Fire-Cured (Type 21) Tobacco

The 1994-crop national marketing quota for fire-cured (type 21) tobacco will range from 2.0 to 2.4 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.2.

(2) Fire-Cured (Types 22 & 23) Tobacco

The 1994-crop national marketing quota for fire-cured (types 22 & 23) tobacco will range from 30 to 38 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

(3) Dark Air-Cured (Types 35 & 36) Tobacco

The 1994-crop national marketing quota for dark air-cured (types 35 & 36) tobacco will range from 8.9 to 11.1 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

(4) Virginia Sun-Cured (Type 37) Tobacco

The 1994-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 115,000 to 128,000 pounds. This range reflects the assumption that the national acreage factor will range from 0.90 to 1.1.

(5) Cigar-Filler (Type 46) Tobacco

The 1994-crop national marketing quota for cigar-filler (type 46) tobacco will be zero.

Accordingly, the national acreage factor will be zero.

(6) Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

The 1994-crop national marketing quota for cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos will range from 11.2 to 14.0 million pounds. This range reflects the assumption that the national acreage factor will range from 0.80 to 1.0.

List of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723, subpart A be amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Sections 723.113 through 723.118 are revised to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

The 1994-crop national marketing quota will range from 2.0 to 2.4 million pounds.

§ 723.114 Fire-cured (types 22 & 23) tobacco.

The 1994-crop national marketing quota will range from 30 to 38 million pounds.

§ 723.115 Dark air-cured (types 35 & 36) tobacco.

The 1994-crop national marketing quota will range from 8.9 to 11.1 million pounds.

§ 723.116 Sun-cured (type 37) tobacco.

The 1994-crop national marketing quota will range from 115,000 to 128,000 pounds.

§ 723.117 Cigar-filler and cigar-binder (types 42–44 & 53–55) tobacco.

The 1994-crop national marketing quota will range from 11.2 to 14.0 million pounds.

§ 723.118 Cigar-filler (type 46) tobacco.

The 1994-crop national marketing quota will be 0.0 pounds.

Signed at Washington, DC December 14, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–31028 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 985

[FV93-985-2PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1994-95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1994-95 marketing year. This action would be taken to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West.

DATES: Comments must be received by January 20, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724; or Christian D. Nissen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, saleable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1994-95 marketing year, which begins on June 1, 1994. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately eight spearmint oil handlers subject to regulation under the order and approximately 259 producers of spearmint oil in the regulated production area. Of the 259 producers, 157 producers hold "Class 1" (Scotch) oil allotment base, and 144 producers hold "Class 3" (Native) oil allotment base. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1994-95 marketing year at its October 6, 1993, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 spearmint oil in a vote of 6 in favor and 2 opposed. The members voting in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 spearmint oil in an unanimous vote.

This proposed rule would establish a salable quantity of 723,326 pounds and an allotment percentage of 41 percent for Scotch oil, and a salable quantity of 897,388 pounds and an allotment percentage of 46 percent for Native oil. This action would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1994-95 marketing year, which begins on June 1, 1994. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1994-95 marketing year is based upon the Committee's recommendation and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—122,187 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 814,589 pounds from the 1993–94 marketing year total available supply of 936,776 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—830,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 regulated production—707,813 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Scotch oil for the 1994–95 marketing year—1,764,209 pounds.

(E) Computed allotment percentage—40.12 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—41 percent.

(G) The Committee's recommended salable quantity 723,326 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1994—0 pounds. This number is derived by subtracting the estimated 1993–94 marketing year trade demand of 914,715 pounds from the 1993–94 marketing year total available supply of 914,715 pounds.

(B) Estimated trade demand (domestic and export) for the 1994–95 marketing year—944,513 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1992, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1994 production—944,513 pounds. This number is the difference between the estimated 1994–95 marketing year trade demand and the estimated carry-in on June 1, 1994.

(D) Total allotment base for Native oil—1,950,843 pounds.

(E) Computed allotment percentage—48.42 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity 897,388 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantity of 723,326 pounds and allotment percentage of 41 percent for Class 1 spearmint oil is based on anticipated 1994–95 marketing year supply and trade demand.

The Committee's recommended salable quantity of 897,388 pounds and allotment percentage of 46 percent for Class 3 spearmint oil is less than the Committee's estimated 1994–95 marketing year trade demand of 944,513 pounds and computed allotment percentage of 48.42 percent. The 1994–95 marketing year estimated trade demand represents an average of the trade demand over the last 13 years. During the past several years, sales of Native spearmint oil have fluctuated. The Committee reduced the salable quantity and allotment percentage to allow for the possibility of below average sales during the 1994–95 marketing year. This action was taken to prevent wide fluctuations in salable quantities and allotment percentages established in subsequent years. Wide fluctuations in yearly established salable quantities and allotment percentages could make it difficult for producers to plan farming operations.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity. Alternatively, the Committee may offer to sell spearmint oil from the Class 1 and Class 3 reserve pools to meet any increased market demand. The estimated reserve pools for Class 1 and Class 3 spearmint oil currently stand at 950,000 pounds and 1,400,000 pounds, respectively. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1993–94 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.213 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.213 Salable quantities and allotment percentages—1994–95 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1994, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 723,326 pounds and an allotment percentage of 41 percent.

(b) "Class 3" (Native) oil—a salable quantity of 897,388 pounds and an allotment percentage of 46 percent.

Dated: December 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–31031 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[DA-94-02]

Milk in the New England and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO-14-A67
1002	New York-New Jersey.	AO-71-A82
1004	Middle Atlantic	AO-160-A70
1005	Carolina	AO-388-A7
1006	Upper Florida	AO-356-A31
1007	Georgia	AO-366-A37
1011	Tennessee Valley	AO-251-A38
1012	Tampa Bay	AO-347-A34
1013	Southeastern Florida	AO-286-A41
1030	Chicago Regional	AO-361-A32
1032	Southern Illinois-Eastern Missouri.	AO-313-A41
1033	Ohio Valley	AO-166-A64
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A59
1040	Southern Michigan	AO-225-A46
1044	Michigan Upper Peninsula.	AO-299-A29
1046	Louisville-Lexington-Evansville.	AO-123-A65
1049	Indiana	AO-319-A42
1050	Central Illinois	AO-355-A29
1064	Greater Kansas City	AO-23-A62
1065	Nebraska-Western Iowa.	AO-86-A51
1068	Upper Midwest	AO-178-A49
1075	Black Hills, South Dakota.	AO-248-A23
1076	Eastern South Dakota.	AO-260-A33
1079	Iowa	AO-295-A45
1093	Alabama-West Florida.	AO-386-A15
1094	New Orleans-Mississippi.	AO-103-A57
1096	Greater Louisiana	AO-257-A44
1099	Paducah, Kentucky	AO-183-A48
1106	Southwest Plains	AO-210-A55
1108	Central Arkansas	AO-243-A47
1124	Pacific Northwest	AO-368-A24
1126	Texas	AO-231-A63
1131	Central Arizona	AO-271-A33
1134	Western Colorado	AO-301-A24
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A14
1137	Eastern Colorado	AO-326-A28
1138	New Mexico-West Texas.	AO-335-A39
1139	Great Basin	AO-309-A33

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider alternative pricing proposals to replace the current Class II pricing formula used to establish the Class II price in all Federal milk orders. The hearing was requested by the Milk Industry Foundation and the International Ice Cream Association, two groups which represent the processors of much of the milk marketed under Federal orders, and by the National Milk Producers Federation, which represents a large portion of the producers under the order program.

Proponents have requested that this issue be handled on an emergency basis.

DATES: The hearing will convene at 9 a.m. on January 6, 1994.

ADDRESSES: The hearing will be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314 (703) 683-6000.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314, beginning at 9 a.m., on Thursday, January 6, 1994, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to proposals No. 1 through 5.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

The authority citation for 7 CFR parts 1001 through 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Milk Industry Foundation, International Ice Cream Association, and National Milk Producers Federation:

Proposal No. 1

Replace the Class II price formula with the basic formula price for the second preceding month plus a fixed differential of $0.30 and announce the price by the fifth day of the preceding month.

1. Revise § .50 (in most orders) to read as follows:

§ .50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the fifth day of the preceding month. The Class II price shall be the basic formula price for the second preceding month plus $0.30.

2. Delete § .51(a) Basic Class II formula price.

3. Revise § .53 to read as follows:

§ .53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I and Class II prices for the following month, and the Class III price for the preceding month.

Proposed by Friendship Dairies, Inc.:

Proposal No. 2

Replace the Class II price formula with the basic formula price for the second preceding month plus a fixed differential of $0.10, announce the price by the fifth day of the preceding month and make any other conforming changes necessary.

Revise § .50 (in most orders) to read as follows:

§ .50 Class prices.

* * * * *

(b) *Class II price.* For Class II milk, the price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the fifth day of the preceding month. The Class II price shall be the basic formula price for the second preceding month plus a fixed differential of 10 cents.

Proposed by Women Involved in Farm Economics (WIFE):

Proposal No. 3

Replace the Class II price formula with the basic formula price plus a fixed differential of $0.50.

Proposed by Farmers Union Milk Marketing Cooperative:

Proposal No. 4

Replace the Class II price formula with a Class II price which is 60 cents above the Class III or Class III-A price, whichever is higher.

Proposed by Central Milk Producers Cooperative:

Proposal No. 5

Include the "add-back" provision in the Class II price calculation to read as follows:

When the current month's Class II price is less than the current month's Class III price, the resulting difference shall be added to the next announced Class II price.

Proposed by Dairy Division, Agricultural Marketing Service:

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: December 14, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–31029 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–29]

Airworthiness Directives; Precision Airmotive Corporation (Formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 Series Carburetors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 series carburetors. This proposal would require a modification in those carburetors not equipped with a mixture control retainer clip. This proposal is prompted by eight reports of excessive retention screw wear causing rough engine operation or engine power loss on engines equipped with a Model HA–6 series carburetor between January 1986 and August 1992. The actions specified by the proposed AD are intended to prevent the interruption of fuel flow to the engine caused by the mixture control shaft moving out of position because of excessive wear of the mixture control shaft retention screw.

DATES: Comments must be received by January 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–29, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at

this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Precision Airmotive Corporation, 3220 100th Street Southwest, suite E, Everett, WA 98204. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jon A. Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Transport Airplane Directorate, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055-4056, telephone No. (206) 227-2687; fax (227) 206-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 No. 93-ANE-29." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93-ANE-29, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

This proposed AD is applicable to certain Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA-6 series carburetors. The Federal Aviation Administration (FAA) has received eight reports of excessive retention screw wear causing rough engine operation or engine power loss on aircraft with engines equipped with Model HA-6 series carburetors, between January 1986 and August 1992. One of these engine power-loss events resulted in an engine failure during takeoff, and another caused a forced landing.

The FAA has determined that the mixture control shaft retention screw, Part Number (P/N) 15-A1, had worn excessively, allowing the mixture control shaft to "back out" of position, thus interrupting fuel flow to the power jet. This condition, if not corrected, may result in an engine power loss.

The FAA has reviewed and approved the technical contents of Marvel-Schebler/Tillotson Service Bulletin (SB) No. A1-78, dated September 1978, that describes procedures for installation of a mixture control shaft retainer clip (P/N 55-A239), screw (P/N 15-B395), and washer (P/N 78-A292) in all Model HA-6 series carburetors.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same design, the proposed AD would require installation of a retainer clip, replacement screw, and washer on Model HA-6 series carburetors to prevent movement of the existing mixture control shaft in the event of excessive wear of the mixture control shaft retainer screw. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 10,000 Model HA-6 series carburetor units in the worldwide fleet. The FAA estimates that it would take approximately 1 work hour per carburetor to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $34 per carburetor. Based on these figures, the total cost impact of the proposed AD is estimated to be $890,000.

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

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler): Docket No. 93-ANE-29.

Applicability: Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA-6 series carburetors that do not have a mixture control, Part Number (P/N) 55-A239, screw P/N 15-B395, and washer 78-A239.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss, accomplish the following:

(a) For Model HA-6 series carburetors, not equipped with a mixture control shaft retainer clip (P/N 55-A239), screw (P/N 15-B395), and washer (P/N 78-A292), install these items, in accordance with Marvel-Schebler/Tillotson Service Bulletin No. A1-78, dated September 1978, within 12 months after the effective date of this AD.

(b) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on December 13, 1993.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-31116 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF EDUCATION

34 CFR Part 366

RIN 1820-AA81

Centers For Independent Living; Reopening of Comment Period

AGENCY: Department of Education.

ACTION: Reopening of comment period.

SUMMARY: On October 27, 1993, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the Centers for Independent Living program (58 FR 57942). The comment period for the NPRM ended on December 13, 1993.

The Department has received requests from the independent living community, including centers for independent living (CILs) and advocacy organizations, for an extension of the comment period on the NPRM. The CILs are consumer-run projects and, in many cases, are relatively small. Many do not have ready access to the **Federal Register**. The Department sent copies of the NPRM to the CILs, but they were not received in time for them to develop comments. A longer comment period would give CILs an opportunity to publicize the NPRM in local newsletters and otherwise make available to a large portion of the independent living community information about the NPRM. The Department believes this would improve the quality of information available for rulemaking, so the Secretary is reopening the comment period.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: All comments concerning this notice or the notice of proposed rulemaking should be addressed to Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202-2531.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Mary E. Switzer Building, Washington, DC 20202-2741. Telephone/TDD: (202) 205-9362.

Dated: December 14, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-31036 Filed 12-20-93; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NJ12-1-6035; NY9-1-6034; PR2-1-6036; VI2-1-6037; FRL-4815-9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Region 2 States: New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve each state implementation plan (SIP) revision submitted by the States of New Jersey and the U.S. Virgin Islands, and to fully approve each state SIP revision submitted by New York and the Commonwealth of Puerto Rico for the purpose of establishing State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (PROGRAMs). The implementation plans were submitted by the states to satisfy the Federal mandate of the Clean Air Act (CAA) to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the conditional and full approvals are set forth in this notice; additional information is available at the address indicated in the **Addresses** section.

DATES: Comments must be received in writing on or before January 20, 1994.

ADDRESSES: Written comments should be addressed to:William J. Muszynski, P.E., Acting Regional Administrator, EPA Region 2, 26 Federal Plaza, New York, NY 10278. Send all comments in duplicate and identify the State SIP to which the comments apply.

Copies of all of the States' submittals and EPA's technical support documents are available for inspection during normal business hours at the EPA address above in room 505. In addition, copies of a specific state submittal and EPA's technical support document can be found at the appropriate state office below:

New Jersey-Office of Permit Information and Assistance, New Jersey Department of Environmental Protection and Energy, 401 East State Street, Trenton, NJ 08625-0423, Attention: Chuck McCarty.

New York-Bureau of Technical Services, Air Resources Division, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233, Attention: Virginia Rest.

Puerto Rico-Air Programs Area, Puerto Rico Environmental Quality Board, Eurobank Building, 431 Ponce de Leon Avenue, Hato Rey, PR 00910, Attention: Francisco Claudio.

The U.S. Virgin Islands-Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Building 111, Apartment 114, Water Gut Homes, Christiansted, St. Croix, VI 00820, Attention: Benjamin Nazario.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Permitting and Toxics Support Section, at the above EPA address or at telephone number (212) 264-9356.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally

approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of Title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

The States of New Jersey, New York, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands have submitted SIP revisions to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following PROGRAM components:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis of Region II States' PROGRAMs

Each states' PROGRAM has been evaluated to determine if it has adequately met the section 507 requirements. Concerning the SBAP component, section 507(a) of the CAA sets forth six requirements [1] that the state must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA. The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources.

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that includes two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. In addition to establishing the minimum membership of the CAP, section 507(e) of the CAA delineates four responsibilities of the Panel:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(2) To periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2];

(3) To review and assure that information for small business stationary sources is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

A. New Jersey

On January 11, 1993, New Jersey submitted a request to revise its SIP to include the Program required by section 507.

1. Small Business Assistance Program

The SBAP will be located within the New Jersey Department of Environmental Protection and Energy (DEPE), Office of Permit Information and Assistance.

New Jersey will meet the first section 507(a) requirement of developing, collecting, and coordinating technical and compliance information for small businesses through the establishment of an electronic bulletin board and an information clearinghouse to provide information on CAA rules and regulations, control technologies, a calendar of events, and directories of Federal, state, and private hotline numbers. Additional outreach methods include: mass mailings of a semiannual newsletter to small businesses; periodic public service announcements; workshops and seminars; and responses to small business requests via a telephone hotline.

New Jersey will meet the second section 507(a) requirement by coordinating information relating to pollution prevention and accidental release prevention and detection from technical personnel within DEPE and other Federal, state and local agencies. The information gathered will be provided to small businesses through

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

the clearinghouse, electronic bulletin board and telephone hotline. In addition, a directory of experts in the areas of pollution prevention and accidental release prevention and non-polluting manufacturing materials will be compiled and made available to small businesses.

New Jersey will meet the third section 507(a) requirement of assisting small businesses on applicable requirements and procedures for permit issuance by developing information packets that include information on rules, permit requirements, time frames, compliance, testing, and recordkeeping. Inspectors will also teach small business owners/operators to conduct self inspections. As new rules are promulgated, DEPE will use newsletters, press releases and public service announcements to inform small businesses on appropriate compliance methods and procedures.

New Jersey will meet the fourth and fifth section 507(a) requirements of notifying small businesses of their rights and obligations by developing a database that lists small business sources and notifying such sources of changes in regulations that affect them. In addition, public service announcements, press releases, and mailings of the newsletter will ensure timely notice of rules for the small business community. New Jersey will work with trade associations, educational facilities, environmental groups and other organizations in establishing environmental partnerships to bring about voluntary compliance with CAA regulations. By June 1994, DEPE will determine how it will establish its auditing program, either by referring sources to qualified auditors or by providing the audits itself using Agency staff.

New Jersey will meet the sixth section 507(a) requirement by developing specific procedures for responding to small business requests for modification of work practices or technological method of compliance or timeframes for meeting compliance by June 1994. Databases and experts within DEPE will provide guidance information on compliance methods and technologies to small businesses.

2. Ombudsman

New Jersey has designated the New Jersey Department of Commerce and Economic Development, Office of Business Advocacy, to be the Small Business Ombudsman's Office. This office is authorized to request information from other state agencies that assist small businesses; testify before the legislature regarding the small business program and small business concerns; conduct independent evaluations of all aspects of the SBAP; provide comments to the EPA and state/local air pollution control agencies; work with local trade associations and financial institutions; and communicate small business concerns to the Governor's office. The Ombudsman will also assist the PROGRAM in the following ways: preparing and disseminating information written in layperson terms to small businesses; providing workshops to small businesses on CAA regulations; investigating complaints by small businesses; and operating a telephone hotline. The Ombudsman's Office will receive adequate personnel and funding through Title V operating permit fees.

3. Compliance Advisory Panel

New Jersey will propose legislation which will include provisions authorizing the appointment of members and the four duties of the CAP pursuant to section 507(e). It is expected that enabling legislation will be enacted and the members of the CAP appointed in February 1994, but no later than November 15, 1994.

4. Eligibility

New Jersey will provide assistance to all small business sources as defined in section 507(c)(1) of the CAA and to additional sources, as SBAP resources and staffing allow. Upon petition by a source, New Jersey has included provisions in its SIP to allow DEPE, after notice and opportunity for public comment, to include major small business sources or those emitting over 50 tpy of any regulated pollutant or 75 tpy of all regulated pollutants, as long as the source does not emit more that 100 tpy of all regulated pollutants, to be eligible for assistance under the PROGRAM. In addition, DEPE, in consultation with the EPA and U.S. Small Business Administration (SBA) Administrators, and after notice and opportunity for public comment, may exclude source categories if sources have sufficient technical and financial capabilities.

EPA proposes to find that New Jersey has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA or has delineated milestone dates for when any remaining Program elements will be enacted. EPA proposes to find that New Jersey presently lacks the requisite authority to establish a Compliance Advisory Panel. Therefore, EPA is proposing to conditionally approve New Jersey's section 507 Program. Full approval will be granted once authority to establish the CAP has been enacted and submitted as a SIP revision.

B. New York

On January 11, 1993, New York submitted a request to revise its SIP to include the Program required by section 507.

1. Small Business Assistance Program

The SBAP will be located within the New York State Environmental Facilities Corporation (EFC). EFC is a public benefit corporation that helps business and government agencies reduce pollution in the most efficient manner. EFC presently provides technical assistance and advisory services via contract on such programs as managing waste water treatment, controlling air pollution, remediating inactive hazardous waste sites, recycling and waste reduction, and managing and financing environmental projects. The New York State Department of Environmental Conservation (DEC) Small Business Section will provide oversight, training and direction to the EFC to ensure that the EFC properly fulfills its section 507(a) responsibilities.

New York will meet the first section 507(a) requirement by having EFC develop, collect, and coordinate technical and compliance information for small businesses. EFC will identify Federal and state requirements that impact small businesses and will utilize EPA's hotline centers for information on control technology, monitoring, and pollution prevention. EFC will provide the gathered information to small businesses through: workshops and seminars; distribution of newsletters and pamphlets to trade organizations and sources on its mailing list; and public service announcements. An information clearinghouse and hotline number will be established within the EFC.

New York will meet the second section 507(a) requirement by distributing material and holding seminars on methods of pollution prevention and accidental release prevention and detection, including alternative technologies, process changes, and methods of operation that help reduce air pollution. Site specific guidance on pollution prevention and accidental chemical release prevention will be provided to small businesses during audits. In addition, EFC will assist small businesses in preparing risk management plans, as required under section 112(r) of the CAA.

New York will meet the third section 507(a) requirement by providing advice

to small businesses on identification of applicable rules; identification of alternatives for achieving compliance such as process changes, recycling programs, material substitutions, and other methods/processes which may reduce or eliminate air pollution; the permit application process including fees and timeframes; and the consequences of operating in violation of the CAA. Information will be provided to small businesses through EFC's telephone hotline, clearinghouse, news releases, direct mailings, and public service announcements.

New York will meet the fourth and fifth section 507(a) requirements by notifying affected small businesses of their rights and obligations as rules are promulgated. Small businesses will be informed of their rights and obligations through the telephone hotline, direct mailings, and notices in trade publications and newspapers. EFC will publish and distribute a quarterly newsletter with descriptions of small business rights and responsibilities under the law, updates on Federal and state air programs, features on technologies pertinent to selected source categories, and lists of available resources. EFC will also provide free-of-charge on-site environmental audits for up to a three day limit at the request of small business sources. The audits will inform sources of potential non-compliance with CAA requirements and suggest measures to achieve compliance, as well as information on pollution prevention. Depending on demand, EFC will use existing staff, as well as a pool of subcontractors to provide these audits.

New York will meet the sixth section 507(a) requirement by reviewing requests for modification of work practices or technological method of compliance or timeframes for achieving compliance under the CAA at the requests of small businesses. EFC will evaluate such requests and assist the small business in completing and submitting the application to the appropriate DEC Regional Office. The DEC Regional Office will review such requests according to the Agency's existing procedures. If DEC disapproves the request, the small business could obtain assistance from EFC on modifying the request for resubmittal or file a complaint with the Ombudsman's Office. EFC will also work with the applicant in coordination with EPA for requests that relate to Federal standards.

2. Ombudsman

New York currently has an existing Ombudsman's office located within the New York State Department of Economic Development (DED), Division of Small Business. The DED Ombudsman's Office is at the Deputy Commissioner level and has direct access to the Governor, DEC Air Resources Division Director and other state agencies. DED also interfaces with other small business representatives. The Ombudsman will operate a telephone hotline to receive both requests for information and complaints, inform affected small businesses of regulatory requirements, and provide an outreach network to inform trade organizations of the role of the SBAP. The Ombudsman will conduct independent evaluations of all aspects of the SBAP and will identify small business problems and propose solutions. The Ombudsman's Office will receive adequate personnel and funding through Title V operating permit fees.

3. Compliance Advisory Panel

New York has enacted legislation which includes provisions authorizing the section 507(e) appointment of members to the CAP. In addition, the legislation also authorizes the CAP to fulfill its four section 507(e) responsibilities (in which DEC's Small Business section will serve as Secretariat to the CAP).

4. Eligibility

New York has included the section 507(c)(1) definition of a small business in its SIP, but has also extended the definition to include major small business sources or those emitting over 50 tpy of any regulated pollutant or 75 tpy of all regulated pollutants, as long as the source does not emit more that 100 tpy of all regulated pollutants, to be eligible for assistance under the PROGRAM. Section 507(c)(1) defined sources will not be impacted negatively due to this expansion of the definition of a small business. New York does not plan to exclude any source categories for having sufficient technical and financial capabilities at this time; however, if it becomes necessary to do so in the future, DEC will consult with the EPA and SBA Administrators and provide for notice and opportunity for public comment.

EPA proposes to find that New York has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA or has delineated milestone dates for when any remaining Program elements will be enacted. The Ombudsman's Office and SBAP office were designated in November 1992. New York has the requisite authority to establish a Compliance Advisory Panel and will appoint the members by November 15, 1993. EPA is therefore proposing to approve this submittal.

C. Puerto Rico

On November 16, 1992, Puerto Rico submitted a request to revise its SIP to include the Program required by section 507.

1. Small Business Assistance Program

The SBAP will be located within the Planning Division of the Air Quality Area of Puerto Rico's Environmental Quality Board (EQB).

Puerto Rico will meet the first section 507(a) requirement of developing, collecting and coordinating technical and compliance information for small businesses by gathering information from EQB personnel and through EPA's technical support centers. EQB will ensure that small businesses are aware of its PROGRAM through public service announcements and notifications to trade associations. Small business representatives may obtain compliance and technical information at any three of EQB's regional offices in Ponce, Mayaguez and Arecibo. The Air Planning Division's phone will serve as a hotline for small businesses to call with requests. EQB will access EPA's technical support centers for regulatory and compliance information in order to respond to small business requests. The different types of requests and responses will be entered into a computer tracking system, and on a quarterly basis, a summary will be prepared for each small business contact.

Puerto Rico will meet the second section 507(a) requirement by conducting workshops and seminars for small businesses on pollution prevention and accidental chemical release prevention using information packets developed by EPA's Pollution Prevention Office and the Chemical Emergency Preparedness and Prevention Office. Outside agencies such as the Industrial Association and the local Emergency Planning Committees will also assist EQB in these workshops and seminars.

Puerto Rico will meet the third section 507(a) requirement by providing advice to small businesses on identification of applicable rules and state implementation plan requirements. Information on permitting procedures and a determination of whether a permit is required will also be provided at the request of small businesses. In addition, Puerto Rico will assist small businesses in identification of alternatives for achieving compliance with local regulations such as process changes, recycling programs, material

substitutions, and other methods that may reduce pollutants.

Puerto Rico will meet the fourth and fifth section 507(a) requirements by notifying affected small businesses of their rights and obligations as rules are promulgated. This will be accomplished through dissemination of information, training of field inspectors to properly inform small businesses of their rights during site visits and presentations at small business associations. The Planning Division will work with EQB's Environmental Assessments Office on developing an audit program. Audits, which would take place at the request of a small business for a minimal charge, would include such activities as an evaluation of the operations of the small business, guidance on pollution prevention and compliance control options, and recommendations on monitoring and recordkeeping methods.

Puerto Rico will meet the sixth section 507(a) requirement by preparing a layperson's explanation of the requirements for submitting a request for modification of work practice or technological method of compliance or milestone schedules for such modifications. The Planning Division will be available to evaluate such modification requests and help the small business submit its request to the proper office. For regulations that have not been delegated to the state, the SBAP will coordinate such request with the EPA.

2. Ombudsman

EQB has recommended to the Governor that the existing Citizen's Ombudsman's, the Puerto Rico Citizen's Investigating Official's, authority be extended to include the duties of section 507(a)(3). The Governor will designate the Ombudsman by February 1994. Currently, the Puerto Rico Citizen's Investigating Official (Ombudsman), who is appointed by the Governor with the advice and consent of the legislature, has the authority to: recruit and nominate personnel and contract the technical and professional services needed for the office to implement its duties; determine the procedures for the filing and handling of complaints to carry out investigations regarding the administrative acts of agencies; examine all agency files and order the testimony of witnesses; and inform the agency of his opinion and recommendations, or in the case of civil or criminal violations of law, request the Secretary of Justice to institute proper legal proceedings. Puerto Rico enacted enabling legislation which charges the Ombudsman's Office with, but not limited to, the following duties: conducting independent evaluations of the SBAP; reviewing and providing comments to the EPA and EQB on regulations that impact small businesses; aiding in the dissemination of information; sponsoring meetings and conferences; investigating and resolving complaints from small businesses against the local air pollution control agencies; assisting in the preparation of documents written in layperson terms; and interfacing with other Federal and state agencies and private financial institutions that may assist small businesses.The Ombudsman's Office will receive adequate personnel and funding through the Title V operating permit program.

3. Compliance Advisory Panel

Puerto Rico has enacted legislation which includes provisions authorizing the section 507(e) appointment of members to the CAP. The legislation also authorizes the CAP to fulfill its four section 507(e) responsibilities.

4. Eligibility

Puerto Rico has adopted the section 507(c)(1) definition of a small business. Puerto Rico has also included provisions in its SIP to allow Puerto Rico, after notice and public comment, to include major small business sources or those emitting over 50 tpy of any regulated pollutant or 75 tpy of all regulated pollutants, as long as the source does not emit more that 100 tpy of all regulated pollutants, to be eligible for assistance under the PROGRAM. Puerto Rico, in consultation with the EPA and SBA Administrators, and after notice and opportunity for public comment, may exclude source categories if sources have sufficient technical and financial capabilities. Puerto Rico will develop an inventory of all small businesses in Puerto Rico by reviewing all Puerto Rico facilities' environmental assessment documents currently on record at EQB to determine if the facility meets the small business definition. A public notice will be published in Puerto Rico once this program is fully approved by EPA so that sources not currently in the inventory may request to be added.

EPA proposes to find that the Commonwealth of Puerto Rico has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA or has delineated milestone dates for when any remaining Program elements will be enacted. The SBAP office was designated in November 1992. The Small Business Ombudsman's Office will be designated by February 28, 1994. Puerto Rico has the requisite authority to establish a Compliance Advisory Panel and will appoint the members by June 30, 1994. EPA is, therefore, proposing to approve this submittal.

D. The U.S. Virgin Islands

On January 15, 1993, the U.S. Virgin Islands submitted a request to revise its SIP to include the Program required by section 507.

1. Small Business Assistance Program

The SBAP will be located within the Virgin Islands Department of Planning and Natural Resources (DPNR), Division of Environmental Protection, with a contact for each district–St. Croix and St. Thomas/St. John.

The U.S. Virgin Islands will meet the first section 507(a) requirement of developing, collecting and coordinating technical and compliance information for small businesses by: establishing a public awareness program about the CAA and applicable territorial laws through public service announcements, seminars and workshops; developing a reference library; distributing informational packages to businesses as air toxic rules are promulgated; and distributing fact sheets and newsletters to small businesses. DPNR will seek assistance from the Virgin Islands Small Business Development Center and other organizations in compiling a small business mailing list and in conducting seminars.

The U.S. Virgin Islands will meet the second 507(a) requirement by developing and distributing information packets on pollution prevention and accidental release detection and prevention at the request of small businesses. Technical personnel within DPNR most familiar with pollution prevention and accidental release prevention will be utilized to respond to small business questions.

The U.S. Virgin Islands will meet the third section 507(a) requirement of assisting small businesses on applicable requirements and procedures for permit issuances by: establishing a computerized data base of affected sources so that DPNR can inform small businesses that need to apply for an operating permit; providing information on permitting requirements, procedures and fees; and informing small businesses of alternative methods for achieving compliance such as process changes, recycling programs and material substitutions, and other methods that may reduce or eliminate emissions.

The U.S. Virgin Islands will meet the fourth and fifth section 507(a) requirements by distributing information to notify small businesses

of their legal rights under the CAA. DPNR will establish an audit program by compiling a list of qualified auditors that small businesses may use to help evaluate their facilities.

The U.S. Virgin Islands will meet the sixth section 507(a) requirement by reviewing small business requests for modifications pursuant to procedures found in the Virgin Islands Air Pollution Control Program Rules and Regulations. The DPNR will coordinate with EPA Region II to review requests in cases where the Virgin Islands has not been delegated the authority to address such a modification request. The Ombudsman can also review small business owners complaints of dissatisfaction with the results of DPNR's or EPA's review of the modification and make recommendations to the DPNR.

2. Ombudsman

The Governor of the U.S. Virgin Islands has designated the Director of the Virgin Islands Small Business Development Agency (VI-SBDA) as the territorial Ombudsman. The VI-SBDA has direct access to the Governor's office and other territorial agencies; is able to propose legislation or administrative action necessary to assist small business; and has an existing reputation as a valuable source of information with other representatives of small businesses and the small business community itself. The VI-SBDA will assist DPNR in planning and developing the SBAP; will review and make recommendations to the EPA and DPNR regarding the development and implementation of regulations that impact small businesses; will conduct seminars and workshops with the assistance of outside organizations; and will act as liaison between the Governor's office and the DPNR to help in the dissemination of program information and broadcasting of public service announcements. The Small Business Development Center of the University of the Virgin Islands will work with the Ombudsman in developing community programs, workshops and seminars. Both offices will be provided adequate staffing and resources through Title V operating permit fees.

3. Compliance Advisory Panel

The U.S. Virgin Islands will propose legislation which includes provisions authorizing the section 507(e) appointment of CAP members. In addition, the U.S. Virgin Islands will include the four duties of the CAP in its draft legislation. It is expected that the legislation will be enacted by October 1993 such that the members to the CAP will be appointed by April 1994 (but no later than November 15, 1994).

4. Eligibility

The U.S. Virgin Islands has included the section 507(c)(1) definition of a small business in its enabling legislation. The U.S. Virgin Islands has also included provisions in its SIP to allow the DPNR, after notice and opportunity for public comment, to include major small business sources or those emitting over 50 tpy of any regulated pollutant or 75 tpy of all regulated pollutants, as long as the source does not emit more that 100 tpy of all regulated pollutants, to be eligible for assistance under the PROGRAM. DPNR, in consultation with the EPA and SBA Administrators, and after public notice and opportunity for public hearing, may exclude source categories if sources have sufficient technical and financial capabilities.

EPA proposes to find that the Territory of the U.S. Virgin Islands has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA or has delineated milestone dates for when any remaining Program elements will be enacted. EPA proposes to find that the U.S. Virgin Islands presently lacks the requisite authority to establish a Compliance Advisory Panel. Therefore, EPA is proposing to conditionally approve the U.S. Virgin Islands' section 507 Program. Full approval will be granted once authority to establish the CAP has been enacted and submitted as a SIP revision.

III. Conclusion

In this action, EPA is proposing to conditionally approve the SIP revisions submitted by the States of New Jersey and the U.S. Virgin Islands, and to fully approve the SIP revisions submitted by New York and the Commonwealth of Puerto Rico.

Because New Jersey and the U.S. Virgin Islands have made commitments that EPA believes meet the requirements necessary for EPA to grant conditional approval, EPA is proposing a conditional approval under section 110(k)(4) of the Act. If EPA takes final conditional approval on the commitments, New Jersey and the U.S. Virgin Islands must meet their commitment to have their programs fully operational by November 15, 1994 and submit these requirements to EPA by that date. If New Jersey or the U.S. Virgin Islands fails to adopt or submit any of these requirements to EPA within this time frame, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Jersey or U.S. Virgin Islands SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register**. If the state adopts and submits these requirements to EPA within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved Small Business Plan will also be removed from the SIP. If EPA approves the submittal, those newly approved rules will become a part of the SIP and will modify or replace the commitment and the Small Business Plan on which the conditional approval is based.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that the sanctions clock has begun. If the State does not submit and EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is conditionally or fully approving four (4) State programs created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The programs being conditionally or fully approved today do not impose any new regulatory burden on small businesses; these are programs under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's conditional or full approvals of these four programs do not impose any new regulatory requirements on small businesses, I certify that this action does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 3, 1993.

Kathleen C. Callahan,

Acting Regional Administrator.

[FR Doc. 93–31100 Filed 12–20–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 261

[SW–FRL–4816–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period on the proposed delisting decision for Conversion Systems, Inc., Horsham, Pennsylvania, which appeared in the **Federal Register** on November 2, 1993 (see 58 FR 58521). This extension of the comment period is provided to allow commenters an opportunity to finalize their data gathering efforts and responses to the Agency's proposed decision.

DATES: EPA will accept public comments on this proposed decision until January 3, 1994. Comments postmarked after the close of the comment period will be stamped "late."

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (Mail Code 5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to James Kent, Delisting Section, Waste Identification Branch, CAD/OSW (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–93–CSEP–FFFFF."

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 1993, EPA proposed to grant a petition submitted by Conversion Systems, Inc. (CSI), Horsham, Pennsylvania, pursuant to §§ 260.20 and 260.22, to exclude certain solid wastes generated by CSI's electric arc furnace dust (EAFD) treatment facilities from the list of hazardous wastes contained in §§ 261.31 and 261.32. See 58 FR 58521 for a more detailed explanation of why the Agency proposed to grant CSI's petition.

On December 2, 1993, the Agency received a request from one commenter to extend the comment period so that the commenter could finalize its responses to the Agency's proposed rule. The Agency considered this commenter's request and has decided to extend the comment period until January 3, 1994.

The public comment period for the proposed rule was originally scheduled to end on December 17, 1993. This notice extends the comment period for the proposed rule to allow commenters an opportunity to finalize their data gathering efforts and responses to the Agency's proposed decision.

Dated: December 10, 1993.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 93–31094 Filed 12–20–93; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 58, No. 243
Tuesday, December 21, 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

Animal and Plant Health Inspection Service

[Docket No. 93-025-4]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of rescheduled public meeting.

SUMMARY: We are advising producers of veterinary biologics and other interested persons that we have rescheduled the fifth annual public meeting on veterinary biologics. We are holding the meeting to discuss current regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products.

Place, Dates, and Times of Meeting: The fifth annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA, on Tuesday, April 12, 1994, from 8 a.m. to 5 p.m., and Wednesday, April 13, 1994, from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: For information concerning additional agenda topics, contact Dr. Frank Y. Tang, Biotechnology Coordination and Technical Assistance, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; telephone (301) 436-4833; fax (301) 436-8669.

For information concerning registration and hotel reservations, contact Ms. Lorie Lykins, Veterinary Biologics Field Operations, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, 223 South Walnut Avenue, Ames, IA 50010; telephone (515) 232-5785; fax (515) 232-7120.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service previously announced that the fifth annual public meeting on veterinary biologics, scheduled to be held in Ames, IA, during August, 1993, was postponed because of extensive flooding in the area (see 58 FR 41239, August 3, 1993). This document provides notice to interested persons that that meeting has been rescheduled for April 1994.

The proposed agenda for the fifth annual meeting was announced in the **Federal Register** on July 16, 1993 (see 58 FR 38354-38355). That agenda has been updated. The proposed agenda for the fifth annual meeting on veterinary biologics now includes, but is not limited to, the following topics:

1. Program activity updates;
2. Duration of immunity;
3. Good laboratory practice for veterinary biologics;
4. Public perception of licensed veterinary biologics;
5. Computer validation as it relates to electronic transfer of information;
6. Endotoxin testing by *Limulus* amebocyte lysate assay;
7. New or different pathogenic strains: influence of label claims, testing, and regulation; and
8. Breakout sessions.

A portion of the meeting will be set aside for open discussion, during which attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the approximate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Interested persons are requested to submit any additional topics or updates to the proposed agenda by January 15, 1994, to Dr. Frank Tang, at the address under **FOR FURTHER INFORMATION CONTACT.**

Registration forms, lodging information, and copies of the complete agenda for the fifth annual public meeting may be obtained, after February 15, 1994, from Ms. Lorie Lykins at the address listed under **FOR FURTHER INFORMATION CONTACT.** Advance registration is required. The deadline for registration and hotel reservations for rooms set aside for the meeting is March 15, 1994.

At the present time, no public meeting is scheduled for August, 1994.

Done in Washington, DC, this 15th day of December 1993.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-31079 Filed 12-20-93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93-154-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of September 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of September 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 15th day of December 1993.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-31080 Filed 12-20-93; 8:45 am]

BILLING CODE 3410-34-P

Rural Electrification Administration

Announcement of Applications Received Under the Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of applications received.

SUMMARY: The Administrator of the Rural Electrification Administration (REA) is hereby announcing the applications received during the July 14, 1993, and October 14, 1993, application filing deadlines for the Distance Learning and Medical Link Grant Program.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bryant, Jr., Chief, Planning Branch, or Mark B. Wyatt, Chief, Financing Branch, Rural Development Assistance Staff, Rural Electrification Administration, telephone number (202) 720-1400.

SUPPLEMENTARY INFORMATION: REA is hereby publishing the names of the organizations which applied for grants under 7 CFR part 1703 Subpart D, Distance Learning and Medical Link Grant Program.

These applications contained herein will be considered for funding during Fiscal Year (FY) 1994 along with applications submitted and postmarked no later than January 31, 1994. A separate notice will be published listing those applications received by the January 31, 1994, filing deadline.

This information is being published in accordance with § 1703.115, Public notice of applications received. The applicants are as follows:

July 1993 Applications

ST	Organization Name	Total Grant $ Request
AL	Rural Alabama Health Alliance	500,000
CO	East Otero School District R-1	500,000
CO	Northwest Colorado Board of Cooperative Educational Services	500,000
CO	Conejos County Hospital	79,660
FL	Ramadan Hand Institute/Lake Butler Hospital	125,640
FL	Gadsden Memorial Hospital	122,440
FL	Nature Coast Health Systems, Inc. Nature Coast Regional Hospital	139,320
IN	Union Hospital, Inc.	775,360
KY	Western Kentucky University	205,520
ME	Maine School Administrative District #24	500,000
MO	Sullivan County Memorial Hospital	29,200
MT	St. Patrick Hospital Corporation	210,641
MT	Cascade Public Schools	78,000
NC	Roaring River Elementary School	23,000
ND	Bismarck Public Schools	470,386
NY	Private Emergency Centers, Inc.	500,000
TX	Meadowbrook Elementary School	65,300
UT	Ft. Duchesne Indian Health Clinic	50,000
WI	Sisters of the Sorrowful Mother—Ministry Corporation	500,000
Total		$5,374,467

October 1993 Applications

ST	Organization Name	Request
CA	Kern Educational Telecommunications Consortium	500,000
CO	Montrose County SD RE-1J	94,975
CO	Gunnison Valley Hospital	44,796
CO	University of Northern Colorado	500,000
FL	Lake City Community College	223,411
FL	Lake-Sumter Community College	499,748
FL	Gulf Coast Community College	452,074
GA	Heart of Georgia Technical Institute	996,350

October 1993 Applications—Continued

ST	Organization Name	Request
IA	Southeastern Community College	500,000
IL	Sparta Community Hospital District	18,604
IL	Mercer County Health Department	64,000
IL	Schuyler Community Unit School District #1	335,000
IL	Fairfield Memorial Hospital	141,400
KS	Central Junior-Senior High School	18,000
KS	Area Resource Center of Central Kansas	499,984
KS	Decatur County Hospital & Cedar Living Center	363,798
KY	Kentucky State University	498,937
KY	University of Kentucky/Ky Cooperative Ext. Service	46,800
MD	Chesapeake College	242,890
ME	Rural Health Partners	63,374
MI	McBain Rural Agricultural School District	275,800
MN	Fairmont Community Hospital Association, Inc.	34,877
MO	St. Francis Hospital	129,760
MO	Scotland County Memorial Hospital	31,696
ND	West River Health Services	345,557
NE	Our Lady of Lourdes Hospital	242,000
OH	Apollo Career Center	598,476
OR	Cascades East Area Health Education Center	71,443
PA	Great Lakes Health Network	298,416
PA	J. C. Blair Memorial Hospital	42,872
PA	American College of Physicians	493,608
SD	Oglala Lakota College	500,000
TX	North Texas Education Network Corporation	156,094
TX	Sam Houston State University	1,241,495
TX	Medlife Health Systems	302,000
VT	Grand Isle Supervisory Union	500,000
WI	Western Wisconsin Technical College	449,000
Total		$11,817,235

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Dated: December 9, 1993.

Wally Beyer,

Administrator.

[FR Doc 93–31082 Filed 12–20–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On December 3, 1993, Schuller International Inc. filed a First Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative dumping determination made by the Deputy Minister of National Revenue, Customs, Excise and Taxation, respecting Preformed Fiberglass Pipe Insulation with a Vapor Barrier, Originating in or Exported from the United States of America. This determination was published in the Canada Gazette on November 13, 1993. The Binational Secretariat has assigned Case Number CDA–93–1904–12 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on December 3, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint

in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is January 4, 1994);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 17, 1994); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 15, 1993.

Caratina L. Alston,

Deputy Secretary, FTA Binational Secretariat.

[FR Doc. 93-31120 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 24, 1993 Elkhart Products Corporation and Amcast Industrial Ltd. filed a First Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America. This determination was published in the Canada Gazette on October 30, 1993. The Binational Secretariat has assigned Case Number CDA-93-1904-11 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on November 24, 1993, requesting panel review of the final injury determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 24, 1993);

(b) A Party, investing authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 10, 1994); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 15, 1993.

Caratina L. Alston,

Deputy Secretary, FTA Binational Secretariat.

[FR Doc. 93-31119 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

[Docket No. 921074-3200]

RIN 0693-AB11

Approval of Federal Information Processing Standards Publication 183, Integration Definition for Function Modeling (IDEF0) and Federal Information Processing Standards Publication 184, Integration Definition for Information Modeling (IDEF1X)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved two new standards, which will be published as FIPS Publication 183, Integration Definition for Function Modeling (IDEF0) and FIPS Publication 184, Integration Definition for Information Modeling (IDEF1X).

SUMMARY: On December 14, 1992, notice was published in the **Federal Register** (57 FR 59081) that Federal Information Processing Standards for IDEF0 and IDEF1X were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standards as Federal Information Processing Standards Publications, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

These FIPS contain two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of these standards; and (2) a specifications section which deals with the technical requirements of these standards. Only the announcement sections of the standards are provided in this notice.

EFFECTIVE DATE: These standards are effective June 30, 1994.

ADDRESSES: Interested parties may purchase copies of these standards, including the technical specifications sections, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement section of these standards.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gunn, (301) 975-3260, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: December 10, 1993.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 183 (Date) Announcing the Standard for Integration Definition for Function Modeling (IDEF0)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Integration Definition for Function Modeling (IDEF0).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition for Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS). This standard is based on the Air Force Wright Aeronautical Laboratories Integrated Computer-Aided Manufacturing (ICAM) Architecture, Part II, Volume IV—Function Modeling Manual (IDEF0), June 1981.

This standard describes the IDEF0 modeling language (semantics and syntax), and associated rules and techniques, for developing structured graphical representations of a system or enterprise. Use of this standard permits the construction of models comprising system functions (activities, actions, processes, operations), functional relationships, and data (information or objects) that support systems integration.

This standard is the reference authority for use by system or enterprise modelers required to utilize the IDEF0 modeling technique, by implementors in developing tools for implementing this technique, and by other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. ICAM Architecture Part II—Volume IV—Function Modeling Manual (IDEF0), AFWAL-TR-81-4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

7. Related Documents.

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. Integrated Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, December 1985.

c. ICAM Architecture Part II, Volume V—Information Modeling Manual (IDEF1), AFWAL-TR-81-4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL-TR-82-4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, October 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely and consistently modeling the functions (activities, actions, processes, operations) required by a system or enterprise, and the functional relationships and data (information or objects) that support the integration of those functions;

b. To provide a modeling technique which is independent of Computer-Aided Software Engineering (CASE) methods or tools, but which can be used in conjunction with those methods or tools;

c. To provide a modeling technique that has the following characteristics:

(1) Generic (for analysis of systems of varying purpose, scope and complexity);

(2) Rigorous and precise (for production of correct, usable models);

(3) Concise (to facilitate understanding, communication, consensus and validation);

(4) Conceptual (for representation of functional requirements rather than physical or organizational implementations);

(5) Flexible (to support several phases of the life cycle of a project).

9. Applicability.

The use of this standard is strongly recommended for projects that:

a. Require a modeling technique for the analysis, development, re-engineering, integration, or acquisition of information systems;

b. Incorporate a systems or enterprise modeling technique into a business process analysis or software engineering methodology.

The specifications of this standard are applicable when system or enterprise modeling techniques are applied to the following:

a. Projects requiring IDEF0 as the modeling technique;

b. Development of automated software tools implementing the IDEF0 modeling technique.

The specifications of this standard are not applicable to those projects requiring a function modeling technique other than IDEF0.

Nonstandard features of the IDEF0 technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition for Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretations of the standard.

11.1 Acquisition of IDEF0 Implementations. This publication (FIPS 183) is effective June 30, 1994. For Federal acquisitions after this date, projects utilizing the IDEF0 function modeling technique, or software implementing the IDEF0 modeling technique, should conform to FIPS 183. Conformance to this standard should be considered whether the project or software utilizing the IDEF0 modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing a function modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding the implementing and applicability of this FIPS. All questions concerning the interpretation of this standard should be addressed to: Director, Computer System Laboratory, ATTN: FIPS IDEF0 Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, ATTN: FIPS Waiver Decisions, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 183 (FIPSPUB183) and title. Payment may be made by check, money order, or deposit account.

Federal Information Processing Standards Publication 184 (Date) Announcing the Standard for Integration Definition for Information Modeling (IDEF1X)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Integration Definition for Information Modeling (IDEF1X).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS). This standard is based on the Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, 1 (IDEF1X) November 1985.

This standard describes the IDEF1X modeling language (semantics and syntax) and associated rules and techniques, for developing a logical model of data. IDEF1X is used to produce a graphical information model which represents the structure and semantics of information within an environment or system. Use of this standard permits the construction of semantic data models which may serve to support the management of data as a resource, the integration of information systems, and the building of computer databases.

This standard is the reference authority for use by information modelers required to utilize the IDEF1X modeling technique, implementors in developing tools for implementing this technique, and other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended.

7. Related Documents.

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. ICAM Architecture Part II-Volume V—Information Modeling Manual (IDEF1), AFWAL-TR-81-4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

c. ICAM Architecture Part II-Volume IV—Function Modeling Manual (IDEF0), AFWAL-TR-81-4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL-TR-82-4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, October 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely understanding and analyzing an organization's data resources;

b. To provide a common means of representing and communicating the complexity of data;

c. To provide a technique for presenting an overall view of the data required to run an enterprise;

d. To provide a means for defining an application-independent view of data which can be validated by users and transformed into a physical database design;

e. To provide a technique for deriving an integrated data definition from existing data resources.

9. Applicability. An information modeling technique is used to model data in a standard, consistent, predictable manner in order to manage it as a resource.

The use of this standard is strongly recommended for all projects requiring a standard means of defining and analyzing the data resources within an organization. Such projects include:

a. Incorporating a data modeling technique into a methodology;

b. Using a data modeling technique to manage data as a resource;

c. Using a data modeling technique for the integration of information systems;

d. Using a data modeling technique for designing computer databases.

The specifications of this standard are applicable when a data modeling technique is applied to the following:

a. Projects requiring IDEF1X as the modeling technique;

b. Development of automated software tools implementing the IDEF1X modeling technique.

The specification of this standard are not applicable to those projects requiring data modeling technique other than IDEF1X.

Nonstandard features of the IDEF1X technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of data models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition Method for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretation of the standard.

11.1 Acquisition of IDEF1X Implementations. This publication (FIPS 184) is effective June 30, 1994. Projects utilizing the IDEF1X data modeling technique, or software implementing the IDEF1X data modeling technique, acquired for Federal use after this date should conform to FIPS 184. Conformance to this standard should be considered whether the project utilizing the IDEF1X data modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing an IDEF1X information modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions

regarding the implementation and applicability of this FIPS. All questions concerning the interpretation of IDEF1X should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS IDEF1X Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 184 (FIPSPUB184) and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 93-31039 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 930804-3204]

RIN 0693-AB20

Approval of Withdrawal of Two Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of two Federal Information Processing Standards (FIPS): FIPS PUB 30, Software Summary for Describing Computer Programs and Automated Data Systems (Standard Form 185), and FIPS PUB 53, Transmittal Form for Describing Computer Magnetic Tape File Properties (Standard Form 277).

These FIPS provided standard forms for describing computer programs and computer magnetic tape files which were approved in 1974 and 1978 respectively. Both forms are obsolete and no longer stocked by the General Services Administration. No review and comment period was conducted on this withdrawal since this action will remove obsolete requirements that are applicable to the internal operations of Federal agencies.

EFFECTIVE DATE: This withdrawal is effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

Dated: December 10, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93-31040 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-CN-M

In Situ Burning Oilspill Workshop

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology will conduct a workshop on behalf of the Minerals Management Service, Department of the Interior. The workshop will present the current state of knowledge to the user community and to interested parties. Participants will help to identify and to prioritize research needs and information needs to support decisions on the use of in situ burning of spilled oil. Specific emphasis will be given to environmental and to operational implications of in situ burning response technology. Preprints of the technical papers will be available to attendees to facilitate their participation in panel discussions. After the workshop a proceedings will be published containing the technical papers and the research and information needs identified by the attendees.

DATES: The workshop will be held on Wednesday, January 26, 1994, through Friday, January 28, 1994, from 8:30 a.m. to 5 p.m.

PLACE: The meeting will take place at the Howard Johnson Resort Hotel, 1805 Hotel Plaza Blvd., Lake Buena Vista, FL 32830.

ADDRESSES: To register for the workshop, contact Ms. Kathy Kilmer, National Institute of Standards and Technology, Building 101, room A903, Gaithersburg, MD 20899, telephone: (301) 975-2858; FAX: (301) 948-2067.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Ms. Nora H. Jason, telephone: (301) 975-6862; FAX: (301) 975-6862.

SUPPLEMENTARY INFORMATION: A registration fee will be charged for attending the workshop. Participants are expected to make their own travel arrangements and accommodations.

Dated: December 10, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93-30990 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction of Import Charges for Certain Wool Textile Products Assembled in the Dominican Republic

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs deducting charges.

EFFECTIVE DATE: December 17, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on November 19, 1993 (58 FR 61072) announced that additional

import charges would be deducted for textile products in Category 433 which were cut in the Virgin Islands and assembled in the Dominican Republic and exported to the United States. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to deduct 256 dozen from the import charges made to the current limit for Category 433. Additional deductions will be made at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated June 11, 1992 and September 23, 1992, between the Governments of the United States and the Dominican Republic, I request that, effective on December 17, 1993, you deduct 256 dozen from the charges made to Category 433 for the period which began on January 1, 1993 and extends through December 31, 1993 (see directive dated November 6, 1992).

This letter will be published in the **Federal Register**.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31124 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 30, 1993, the Governments of the United States and the Dominican Republic agreed, among other things, to amend and extend their current bilateral agreement through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish import restraint limits and guaranteed access levels for the period January 1, 1994 through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Memorandum of Understanding (MOU) dated November 30, 1993, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Restraint limit
338/638	638,333 dozen.
339/639	759,617 dozen.
340/640	657,129 dozen.
342/642	462,437 dozen.
347/348/647/648	1,573,040 dozen of which not more than 1,179,780 dozen shall be in Categories 347/348 and not more than 831,038 dozen shall be in Categories 647/648.
351/651	787,786 dozen.
433	20,617 dozen.
443	128,065 numbers.
448	36,061 dozen.
633	96,420 dozen.

Imports charged to these category limits for the periods January 1, 1993 through December 31, 1993 and February 1, 1993 through December 31, 1993 (Category 443) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, pursuant to the November 30, 1993 MOU, and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1994, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the period January 1, 1994 through December 31, 1994:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
443	50,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31125 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Korea

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 22, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6707. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In recent consultations, the Governments of the United States and the Republic of Korea agreed to establish limits for Category 224pt. (HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020) for three consecutive one-year periods, beginning on January 1, 1993 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 224pt. for the 1993 restraint period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 52619, published on November 4, 1992; and 58 FR 54557, published on October 22, 1993.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1992, as amended on October 27, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on December 22, 1993, you are directed to establish a limit at 10,511,592 square meters [1] for cotton and man-made fiber textile products in Category 224pt. [2] for the January 1, 1993 through December 31, 1993 period. Category 224pt. shall remain subject to the Group I limit.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31126 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 224pt.: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6709. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has agreed to increase the consultation levels for Categories 239, 351/851 and 359/859 for the 1993 agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 49074, published on October 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other

vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on December 16, 1993, you are directed to increase the limits for the following categories:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
239	112,903 kilograms.
351/851	32,000 dozen.
359/859	142,892 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31121 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 334/634 is being adjusted for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53475, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on December 16, 1993, you are directed to amend the November 4, 1993 directive to increase the limit for Categories 334/634 to 486,406 dozen [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Thailand.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31123 Filed 12-20-93; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Korea

December 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Republic of Korea is being amended to require an export visa for part Categories 224-V (cotton and man-made fiber woven pile fabric) and 224-O (all other fabric in Category 224), produced or manufactured in Korea and exported from Korea on and after January 1, 1994. Goods in Category 224 which are exported during the period January 1, 1994 through January 31, 1994, shall be permitted entry if visased as 224, 224-V or 224-O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 56 FR 18574, published on April 23, 1991; and 56 FR 22403, published on May 15, 1991.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 17, 1991, as amended on May 9, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea for which the Government of the Republic of Korea has not issued an appropriate visa.

Effective on January 1, 1994, you are directed to amend further the April 17, 1991 directive to require an export visa for shipments of cotton and man-made fiber textile products in part-Categories 224-V [1] and 224-O [2], produced or manufactured in Korea and exported from Korea on and after January 1, 1994. Merchandise in Category

[1] Category 224-V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] Category 224-O: all HTS numbers in Category 224 except those in 224-V.

224 which is exported from Korea during the period January 1, 1994 through January 31, 1994 may be visaed as Category 224 or the correct part-category. Merchandise in Category 224 which is exported on and after February 1, 1994 must be visaed as Category 224–V or 224–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–31122 Filed 12–20–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

[Docket No. PP–89]

Public Hearings on Environmental Impact Statement; Bangor Hydro-Electric Company

AGENCY: Department of Energy.

ACTION: Environmental Impact Statement (EIS): Public Hearings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the Department of Energy (DOE) has prepared a draft EIS to assess the environmental effects of a proposed DOE action: to grant (with terms and conditions) or to deny a Presidential permit authorizing Bangor Hydro-Electric Company (Bangor Hydro) to construct, connect, operate and maintain at the international border between the United States and Canada new facilities for the transmission of electric energy.

Issuance of the Presidential permit by the DOE is one of the necessary steps leading to the construction of an electric transmission line which crosses the U.S. international border. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

INVITATION TO COMMENT: To ensure that the full range of issues related to this proposal are addressed, comments on the content of the draft EIS are invited from all interested parties. Agencies, organizations, and the general public are also invited to present comments at the public hearings meetings scheduled as indicated below. Written comments will be addressed in the final EIS.

ADDRESSES: Written comments or questions concerning the project should be directed to: Xavier Puslowski, Office of Fuels Programs (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–4708.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

The schedule of public hearings is as follows:

1. January 10, 1994 at 7 p.m.–9 p.m., Viola Rand School, Bradley, Maine
2. January 11, 1994 at 2 p.m.–3 p.m.; 7 p.m.–10 p.m., Georgia-Pacific Classroom, Georgia-Pacific Mill, Woodland, Maine

SUPPLEMENTARY INFORMATION: On December 16, 1988, Bangor Hydro applied to the DOE, pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. This application has been docketed as PP–89. Bangor Hydro's proposed project is scheduled for service by 1996 and would consist of construction of an 80-mile, 345-kilovolt (kV), overhead electric transmission line which would cross the U.S.-Canadian border at Baileyville, Maine, extend approximately 80 miles southwest, and terminate at an existing 345/115-kV substation located at Orrington, Maine. The proposed facilities would connect at the international border with similar facilities to be constructed by the New Brunswick Power Commission of Canada.

The DOE has determined that the issuance of a Presidential permit to Bangor Hydro for the proposed facilities would constitute a major federal action significantly affecting the quality of the human environment. Consequently, pursuant to the provisions of NEPA, a draft EIS has been prepared to assess the impact of the proposed action on the environment.

Interested agencies, organizations, and members of the general public are encouraged to attend the public hearings which will be held as previously identified.

Comments and Hearings

The purpose of the public hearings is to obtain information from interested parties for the final EIS. These meetings will be conducted informally; however, a transcript of the meetings will be prepared. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be allotted approximately 10 minutes for their oral statement. Written comments will be incorporated into the final EIS. Meetings will commence at the times specified above and will continue until those present who wish to speak have had an opportunity to do so.

A transcript of the hearings will be retained by the DOE and, upon request, made available for inspection and copying at the Freedom of Information Library, room 1E–090, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Draft EIS Availability

Those individuals who would like to receive a copy of the draft EIS should notify Mr. Xavier Puslowski at the address given in the prior section.

Members of Congress, State and local officials, and interested and affected persons, organizations, and agencies have been sent copies of the draft EIS. Copies also have been placed in appropriate public reading rooms and at designated libraries.

Issued in Washington, DC, on December 14, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–31103 Filed 12–20–93; 8:45 am]

BILLING CODE 6450–01–P

Chicago Operations Office; Noncompetitive Award of Financial Assistance, American Public Power Association

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the American Public Power Association for the purpose of developing a manual of demand-side management (DSM) programs, including case studies, which are most applicable to the needs to publicly owned electric utilities, and to conduct four workshops to teach DSM implementation to the

managers of these public utilities. The proposed project represents an expansion of ongoing DSM activity by the APPA.

FOR FURTHER INFORMATION CONTACT: Warren Zurn, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, NE., Atlanta, Georgia 30308, (404) 347–1047.

SUPPLEMENTARY INFORMATION: More than 500 publicly owned electric utilities have initiated DSM programs nationwide, representing nearly 70% of public power retail electricity sales. Although some utilities are aggressively pursuing demand-side resources, many programs are limited in scope and focus primarily on peak demand reduction rather than energy efficiency.

The customer base of most public power utilities is small; the median number of customers served is about 1,700. This "small size" characteristic is similar for many rural electric cooperatives. The number of utility employees for these smaller systems often ranges from one to ten, and they are charged with all utility operations. These utilities have begun to recognize the value of demand-side management. However, many lack the human and financial resources and the technical expertise to develop individually customized DSM programs. Some are even restricted from traveling out of state to attend the array of advanced DSM courses targeted to larger utilities. These smaller utilities need, and have been asking for, a manual that is full of DSM program ideas and implementation techniques so that they can avoid 'reinventing the wheel."

The project has two phases: (I) Development of a "What Works in Demand-side Management Manual," and (II) Implementation Workshops.

The manual will be a three-ringed binder divided by tabs into five sections: Residential, commercial, industrial, agricultural, and governmental. Each section will identify 5–15 program ideas, load shape objectives, potential savings, expected costs, implementation techniques, and evaluated results. For each program idea, one to three utility case studies will be presented, totaling 100 for the entire manual.

The manual will reach all Southeastern Power Administration (SEPA) customers, and the workshops will reach most. For some, it will be the first glimpse into the details of demand-side management. For many, it will provide the jump start needed to initiate their own programs by helping them start small and build on positive experience.

The project period for the grant is one year, expected to begin in January 1994. DOE plans to provide funding in the amount of $79,893 for this project period.

Issued in Chicago, Illinois, on December 9, 1993.

Maurice A. Broderick,

Deputy Director, Information Management and Support Division.

[FR Doc. 93–31108 Filed 12–20–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–1627–000, CP91–1627–001]

Tennessee Gas Pipeline Co.; Availability of the Final Environmental Impact Statement for the Proposed West-East Crossover Project

December 16, 1993.

Our Final Environmental Impact Statement (FEIS) on Tennessee Gas Pipeline Company's (Tennessee) West-East Crossover Project is now available.

We prepared the FEIS to satisfy the requirements of the National Environmental Policy Act. We conclude that approval of the West-East Crossover Project, with our recommended mitigative measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. Our FEIS also evaluates alternatives to the proposal.

The proposed project involves the construction and operation of:

- about 223.8 miles of interstate natural gas pipeline;
- two new compressor stations; and
- one upgraded compressor station.

The pipeline would connect Tennessee's three existing gas supply lines in Louisiana and Mississippi.

The West-East Crossover Project would shift up to 535 million cubic feet per day (MMcfd) of natural gas from the western main supply lines (Lines 100 and 800), which have excess gas reserves and capacity shortages, to the eastern main supply line (Line 500), which has declining gas reserves and a capacity surplus.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. The period for filing interventions in this case has expired. However, you can still file motions to intervene out-of-time with the FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, if you wish to file a protest with the FERC you should do so in accordance with 18 CFR 385.211.

The FEIS is available for public distribution and inspection at the following address: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208–1371.

We mailed the FEIS to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the FEIS are also available from: Ms. Laura Turner, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0916.

You may also obtain copies of the FEIS from the National Technical Information Service (NTIS), Springfield, Virginia. Please call the NTIS at (703) 487–4780 to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 93–31065 Filed 12–20–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–6–000]

Adirondack Hydro Development Corp.; Notice of Filing

December 9, 1993.

Adirondack Hydro Development Corporation ("Adirondack") (c/o Jonathan W. Gottlieb, Reid & Priest, 701 Pennsylvania Avenue NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on November 26, 1993 for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Adirondack is a subchapter S corporation organized and in good standing under the laws of the state of Delaware which will provide operation and maintenance services to a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York. The New York Public Service Commission has determined that the facility will comply with the criteria set forth in § 365.3(b) of the Commission's Regulations.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in

accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be filed on or before December 23, 1993, and must be served on applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31073 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. ER89-401-017]

Citizens Power & Light Corp; Filing

December 15, 1993.

Take notice that on November 12, 1993, Citizens Power & Light Corporation (Citizens) filed certain information as required by ordering paragraph (M) of the Commission's August 8, 1989 order in this proceeding, 48 FERC ¶61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31068 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 15, 1993.

Take notice that on December 10, 1993, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 8B, to become effective January 1, 1994.

FGT states that on December 1, 1993, FGT filed tariff sheets in the above-referenced docket to reflect the surcharge adjustments to become effective January 1, 1994, resulting from the 1994 Gas Research Institute RD&D expenditures set forth in Opinion No. 384 issued by the Commission on October 5, 1993, in Docket No. RP93-140-000.

FGT states that it inadvertently included the surcharge of 2.0¢ per MMBtu applicable to small customers (as defined in FGT's tariff) on Sheet No. 8B of its December 1, 1993 filing. FGT states that Sheet No. 8B of its FERC Gas Tariff reflects rates applicable to Western Division Transportation on FGT's system under Rate Schedules FTS-1 and ITS-1. The rates applicable to transportation service to small customers under Rate Schedule SFTS are reflected on Sheet No. 8A of FGT's tariff, and the 2.0¢ surcharge is properly reflected on Sheet No. 8A. FGT states that Substitute First Revised Sheet No. 8B reflects the elimination of this small customer surcharge from this tariff sheet.

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 December 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31067 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

December 15, 1993.

Take notice that on December 9, 1993, Granite State Gas Transmission, Inc. (Granite State) filed with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1994:

Second Revised Sheet No. 21
Second Revised Sheet No. 22
Second Revised Sheet No. 23

According to Granite State, the sole purpose of the rate revisions on the foregoing tariff sheets is to state the Gas Research Institute surcharges approved by the Commission for effectiveness on January 1, 1994 (Opinion No. 384; Docket No. RP93-140) in the rates for transportation services under Granite State's Rate Schedules FT-1, FT-NN and IT-1.

Granite State states that copies of its filing have been served on its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31071 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-227-000]

Montana Power Co.; Filing

December 15, 1993.

Take notice that on December 9, 1993, Montana Power Company (Montana) tendered for filing a Notice of Termination of Rate Schedule FERC No. 179, the Firm Capacity and Energy Purchase Agreement (Agreement) between the Montana Power Company and Black Hills Power & Light Company dated July 7, 1989, as amended.

Montana requests a waiver of prior notice be granted and that an effective date for termination of the Agreement be October 1, 1993. This date is consistent with the termination of service under the Agreement.

A copy of the filing was served upon Black Hills Power & Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31092 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP91-224-007]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 15, 1993.

Take notice that on December 9, 1993, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective November 1, 1993:

Second Revised Sheet No. 281
Second Revised Sheet No. 282

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued November 18, 1993, in Docket Nos. RP91-224-007, et al. dealing with processing.

Northern further states that copies of this filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such petitions or protests must be filed on or before December 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make the protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31069 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-361-000 and CP93-361-001]

SunShine Interstate Transmission Co.; Technical Conference

December 15, 1993.

A technical conference will be held to discuss rate, environmental and engineering issues raised in the above-captioned proceedings on Tuesday, January 18, 1994, at 9:30 a.m., in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208-2059.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31066 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-48-001]

Williston Basin Interstate Pipeline Co.; Compliance Tariff Filing

December 15, 1993.

Take notice that on December 13, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 revised tariff sheets listed on Appendix A to the filing, in compliance with the Commission's December 3, 1993 order in this proceeding.

Williston Basin states that the revised tariff sheets reflect the annual principal amount (plus interest) of the ten percent of Gas Supply Realignment Transition Costs (GSR Costs) as an allocated cost attributable to interruptible transportation service provided under Rate Schedule IT-1. The proposed recovery period for the Rate Schedule IT-1 base rate GSR unit cost amount is December 1, 1993 through June 30, 1997. The revised tariff sheets also reflect removal of the facilities transferred by Williston Basin to Koch Hydrocarbon Company from Williston Basin's Rate Base. The proposed effective date of these tariff sheets is December 1, 1993.

As a result of the above described revisions to its GSR Costs filing, Williston Basin also submitted revised tariff sheets to its December 1, 1993 Gas Research Institute Funding Unit Adjustment Filing in Docket No. TM94-2-49-000 solely to incorporate the revised base tariff rates.

Williston Basin states that it is submitting the above tariff sheets under protest.

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 December 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31070 Filed 12-20-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $14,912.58 (plus accrued interest) in Remedial Order funds to members of the public. The funds are being held in escrow pursuant to a Remedial Order involving Pete Aljian Chevron and Shaw & 99 Chevron.

DATES AND ADDRESSES: Comments must be filed on or before January 20, 1994, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Numbers LEF-0089 or LEF-0090.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Remedial Order issued to Pete Aljian Chevron and Shaw & 99 Chevron, two motor gasoline retail outlets located in Castro Valley and Fresno, California. The Remedial Order found that the firms had committed pricing violations in their sales of motor gasoline during the periods of December 15, 1979 through May 28, 1980, and December 15, 1979 through July 7, 1980, respectively.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute

funds remitted by Pete Aljian Chevron and Shaw & 99 Chevron and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to funds remitted to the DOE in other enforcement proceedings under the Mandatory Petroleum Price Regulations.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1 to 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 15, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 15, 1993.

Names of Firms: Pete Aljian Chevron
Shaw & 99 Chevron

Dates of Filing: July 20, 1993

Case Numbers: LEF-0089, LEF-0090

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Pete Aljian Chevron (Aljian) and Shaw & 99 Chevron (Shaw) remitted to the DOE pursuant to a May 3, 1982 Remedial Order Decision. Aljian has remitted $8,190.51 and Shaw has remitted $6,722.07 pursuant to the Order. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

I. Background

During the periods relevant to this proceeding, Aljian and Shaw operated Chevron-branded retail service stations located in Castro Valley, and Fresno, California, respectively. In 1980, the ERA audited the pricing practices of the two retailers and, as a result of those audits, issued Proposed Remedial Orders (PROs) to the two firms. The PROs alleged that Aljian, during the period December 15, 1979 through May 28, 1980, and Shaw, during the period December 15, 1979 through July 7, 1980, sold motor gasoline at prices in excess of their maximum lawful selling prices, in violation of the Federal petroleum price regulations at 10 CFR 212.93(a)(2). After considering the firms' objections to the PROs, the DOE amended the remedial provisions of the PROs and issued a final consolidated Remedial Order Decision on May 3, 1982, to five retailers, including Aljian and Shaw. *Allen Union*, 9 DOE ¶ 83,028 (1982). On November 22, 1982, the Federal Energy Regulatory Commission issued a consolidated Order affirming the Aljian and Shaw Remedial Orders. *Gary Pfister's Mobil Service*, 21 FERC ¶ 61,109 (1982). Aljian and Shaw have remitted to the DOE $8,190.51 and $6,722.07, respectively, in compliance with the Remedial Orders. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE.[1]

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq.; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition that we implement Subpart V proceedings with respect to the Aljian and Shaw Remedial Order funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the Aljian and Shaw Remedial Order funds by which purchasers of gasoline from Aljian or Shaw during the periods covered by the Remedial Orders may submit Applications for Refund in the initial stage. In the first stage, refund monies will be refunded to those customers who purchased motor gasoline from one of the firms during the relevant audit period and who demonstrate that they were injured by the overcharges of the applicable firm. Such purchasers must file claims and document their purchases in order to be eligible for a refund.

A. *Calculation of refunds.* As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the adjudicated overcharges were dispersed equally in all sales of products made by each firm during its audit period. The OHA has referred to this presumption in the past as a volumetric refund amount.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that the overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it

[1] The funds were held in a non-interest bearing DOE suspense account until September 3, 1993, when they were transferred to separate escrow accounts.

suffered a disproportionate share of the overcharges. See, *e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054, at 88,164 (1984).

In each of the cases being considered here, the information available in the ERA audit files is insufficient to base refunds on the amount each individual customer was overcharged.[2] We therefore propose to use the volumetric method to allocate the Remedial Order fund to each case. An applicant's allocable share will be equal to the number of gallons purchased from Aljian or Shaw during the relevant audit period multiplied by the per gallon volumetric refund amount. In the present case, the per gallon refund amount for Aljian is $0.0340. We derived this figure by dividing the amount of the Remedial Order funds remitted by Aljian, $8,190.51, by the 240,777 gallons which the firm sold during the period December 15, 1979 through May 28, 1980. The per gallon refund amount for Shaw is $0.0202, which we derived by dividing the amount it remitted $6,722.07, by the 333,505 gallons that it sold during the period December 15, 1979 through July 7, 1980. Any firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.

The relevant information for the two proceedings is summarized below.

Firm	Amount	Audit period	Volumetric refund amount
Pete Aljian Chevron, Castro Valley, CA	$8,190.51	December 15, 1979–May 28, 1980	$0.0340
Shaw & 99 Chevron, Fresno, CA	6,722.07	December 15, 1979–July 7, 1980	0.0201

B. *Presumption of injury.* Since both firms were small retailers, we presume that all, or virtually all, of their sales were to end-users. In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user (ultimate consumer) of gasoline purchased from Aljian and Shaw whose business is unrelated to the petroleum industry was injured by the overcharges set forth in the Remedial Order Decision. See, *e.g., Texas Oil and Gas Corp.*, 12 ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the periods covered by the Remedial Orders, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of gasoline purchased from Aljian and Shaw need only document their purchase volumes from Aljian and Shaw during the applicable period covered by the Remedial Orders to make a sufficient showing that they were injured by the overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. See, *e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); see also 10 CFR 205.286(b).

Refund applications in these proceedings should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any portion of the Aljian and Shaw Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered, That: The refund amounts remitted to the Department of Energy by Pete Aljian Chevron and Shaw & 99 Chevron will be distributed in accordance with the foregoing Decision.

[FR Doc. 93–31106 Filed 12–20–93; 8:45 am]
BILLING CODE 6450–01–P–M

[2] The ERA audit files do not identify any customers of Aljian or Shaw.

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $17,816.72, plus accrued interest, in crude oil price violation amounts obtained by the DOE pursuant to a Remedial Order issued on April 3, 1980, to Warwick Oil Corporation (Case No. LEF–0117). The OHA has tentatively determined that the funds obtained from the Remedial Order firm, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Accordingly, the OHA proposes that 40 percent of the funds be remitted to the federal government, another 40 percent to the states, and 20 percent be initially reserved for the payment of claims by injured parties.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before January 20, 1994, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments

should display a reference to the case number, LEF–0117.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $17,816.72, plus accrued interest, obtained by the DOE pursuant to a Remedial Order issued to Warwick Oil Corporation (Warwick) on April 3, 1980. In the Remedial Order, the DOE found that, during the period January 1976 through November 1977 Warwick charged prices for crude oil which exceeded the maximum prices that the firm was permitted to charge under Federal petroleum price regulations.

The OHA has tentatively determined to distribute the funds obtained from Warwick in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). In accordance with the MSRP, the OHA proposes that 80 percent of the Warwick crude oil overcharge amounts, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

Also under the terms of the MSRP, we propose that the remaining 20 percent of the Warwick crude oil overcharge funds be initially reserved for the payment of claims by injured parties. The specific requirements which an injured party must meet in order to receive a refund are set out in section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive their share of all available crude oil overcharge funds based on the number of gallons of covered petroleum products which they purchased during the price control period.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address listed at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 15, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 15, 1993.

Name of Firm: Warwick Oil Corporation
Date of Filing: November 16, 1993
Case Number: LEF–0117

On November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds received pursuant to a Remedial Order issued by the DOE to Warwick Oil Corporation (Warwick), a crude oil producer. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations described in the Remedial Order. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

The DOE issued a Remedial Order to Warwick on April 3, 1980, concluding that the firm had violated the Federal petroleum price regulations relating to Warwick's sale of crude oil from the Hanks Company lease at prices that exceeded maximum lawful prices. Warwick has since remitted $17,816.72 in compliance with the Remedial Order, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986,* 15 U.S.C. 4501–4507; *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the Warwick remedial order funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

A. *Crude oil refund policy.* We propose to distribute the funds obtained pursuant to the Warwick Remedial Order in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged

crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973, through January 27, 1981, crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See, *e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) *(Shell); Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. *Refund claims.* We propose to adopt the DOE's standard crude oil refund procedures to distribute the monies in the Warwick Remedial Order fund. We have chosen to initially reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refunds in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, *e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The DOE has established June 30, 1994, as the final deadline for filing an Application for Refund from the crude oil funds. See 58 FR 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that applicants that filed their claims before June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See, *e.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. *Payments to the Federal Government and the States.* Under the terms of the MSRP, we propose that the remaining 80 percent of the crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It is therefore ordered, That: The refund amount remitted to the Department of Energy by Warwick Oil Corporation pursuant to the Remedial Order issued on April 3, 1980, will be distributed in accordance with the foregoing Decision.

[FR Doc. 93–31107 Filed 12–20–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4816–8]

Science Advisory Board Ecological Processes and Effects Committee; Open Meeting

January 10–11, 1994.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board will meet on January 10–11, 1994, at the Washington Information Center (WIC) at EPA Headquarters, 401 M Street, SW., Washington, DC 20460. The meeting is open to the public, and will begin on both days at 8:30 a.m. and end no later than 1 p.m. on January 11. Day one will be held in the WIC Conference Room and day two will be held in Room 13N of the Conference Center adjacent to the WIC. Seating at the meeting will be on a first come basis.

Background

The Science Advisory Board (SAB) has undertaken an Environmental Futures Project at the request of EPA Administrator Carol M. Browner. This project involves a one year study to develop procedures to identify environmental problems of the future and to use the new procedures to prepare a list of those problems to guide EPA's long-range planning. An Environmental Futures Committee (EFC) has been established by the SAB to coordinate the Environmental Futures Project activities of the Standing

Committees of the SAB (including EPEC) and to examine the methods available for environmental scanning, evaluating drivers, and developing future scenarios. At the January 10–11, 1994 meeting, EPEC Members will discuss ecological endpoints of concern at several temporal and spatial scales, use computer simulation software to develop and assess Environmental Futures Scenarios, and begin drafting a report to the EFC on emerging ecological issues in the short and long-term.

Availability of Documents and Information

To obtain a draft agenda or single copies of background materials provided to the Committee for this meeting, please contact Ms. Stephanie Sanzone, Designated Federal Officer, at (202) 260–6557, Ecological Processes and Effects Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Ms. Sanzone and forward twenty-five copies of a written statement to her no later than January 3, 1994. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: December 10, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–31097 Filed 12–20–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4817–2]

Montana; Final Determination of Partial Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of Partial Program Adequacy for Montana's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Montana applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Montana's application and made a tentative determination of adequacy for those portions of Montana's MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today granting final approval to Montana's partial program. All but one element of the Federal Criteria are included in this approval.

EFFECTIVE DATE: The determination of adequacy for Montana shall be effective on December 21, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Wallace, Mail Code 8MO, Montana Office, U.S. EPA Region 8, 301 S. Park, Drawer 10096, Helena, Montana 59526–0026, telephone (406) 449–5414.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258.

As provided in the October 9, 1991, municipal landfill rule, EPA's national Subtitle D standards take effect in October 1993. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 apply directly to the owner/operator. On October 1, 1993, EPA published the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (58 FR 51563). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval will allow the Agency to approve those provisions of the State permit program that meet the requirements and provide the State time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA is also requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to make submission of a schedule mandatory in the STIR.

B. State of Montana

On June 23, 1993, Montana submitted an application for partial program adequacy determination for the State's municipal solid waste landfill permit program. On September 23, 1993, EPA published a tentative determination of adequacy for all but one element of Montana's program. Further background on the tentative determination of adequacy appears at 58 FR 49509 (September 23, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a possible public hearing on the application. No requests were received for a public hearing; therefore the hearing was not held.

On November 15, 1993, the Director of the Montana Department of Health and Environmental Sciences approved State rule changes, effective November 25, 1993, to bring Montana's solid waste program into full Federal compliance, with the exception of the prohibition on field filtering of ground water samples required by 40 CFR 258.53(b).

EPA has reviewed Montana's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria, with the exception of 40 CFR 258.53(b). In its application, Montana demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-water monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of Montana also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal MSWLF regulations, unapproved portions of a partially approved MSWLF permit program may be approved by EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

EPA currently is evaluating methods to ensure representative ground water sampling, including field filtering. The State of Montana may amend its rules to ban the field filtering of ground water samples as required by 40 CFR 258.53(b) pending the outcome of this evaluation.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for Montana's MSWLF permit program.

One commenter supported the award of full, rather than partial, EPA approval of the State of Montana application. The commenter stated that States/Tribes should be allowed to individually determine not to incorporate the Federal prohibition on field filtering of ground water samples into State/Tribal regulations.

The purpose of 40 CFR part 258 is to establish minimum national criteria under RCRA for all MSWLF units to ensure the protection of human health and the environment. For purposes of program approval, EPA must evaluate State/Tribal permit programs against all existing regulatory criteria provided in 40 CFR part 258. For this reason, EPA cannot fully approve a State/Tribal program which does not include the ban on field filtering contained in 40 CFR part 258.53(b).

Two commenters were opposed to State jurisdiction over the municipal solid waste landfill program on fee lands located within exterior boundaries of Indian Reservations. One commenter expressed support for State jurisdiction on fee lands located within exterior boundaries of Indian Reservations. EPA has responded to these comments in the section below entitled "Decision."

D. Decision

After reviewing the public comments, I conclude that Montana's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Montana is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program, with the exception of the State equivalent to 40 CFR part 258.53(b).

Today's decision to approve the Montana MSWLF permitting program does not extend to "Indian Country," as defined in 18 U.S.C. section 1151, including the following Indian reservations in the State of Montana:

1. Blackfeet;
2. Crow;
3. Flathead;
4. Fort Belknap;
5. Fort Peck;
6. Northern Cheyenne; and
7. Rocky Boys.

Before EPA would be able to approve the State of Montana MSWLF permit program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to

believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not satisfied that Montana has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Montana choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the Montana program for Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (See 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permit program for any part of "Indian Country" in Montana, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to "Indian Country". Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program. EPA is not, however, proposing at this time to determine that there is no adequate permit program in place in Indian Country in Montana for the purposes of Section 4005(c)(2)(A) of RCRA.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on December 21, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: December 6, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93-31095 Filed 12-20-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 14, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission 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 this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0539.

Title: Licensing Policies and Procedures for Low Earth Orbit Satellite Operating Below 1 GHz, CC Docket No. 92-76.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion and annual reporting requirements.

Estimated Annual Burden: 4 responses; 1,008 hours average burden per response; 4,032 hours total annual burden.

Needs and Uses: The Commission adopted Report and Order, CC Docket No. 92-76, modifying the rules and requirements which codify the information required to be submitted, in addition to relevant existing part 25 requirements, in an application for authority to construct, launch and operate a domestic mobile-satellite service system. Existing regulations do not require the submission of sufficient, pertinent data necessary to license and regulate this complex new service. The Commission has allocated certain electromagnetic frequencies below 1 GHz to use a new "non-voice, non-geostationary mobile-satellite (NVNG MSS) service".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-30996 Filed 12-20-93; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 15, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission 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 this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0403.

Title: Certification of Completion of Construction Under Part 21.

Form Number: FCC Form 494A.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 5,000 responses; .33 hours average burden per response; 1,666 hours total annual burden.

Needs and Uses: FCC Form 494A, Certification of Completion of Construction Under Part 21, is used by telecommunications entities to notify the Commission that construction of the conditionally licensed facility has been completed and it is operational. FCC Form 494A is used to certify completion of construction in the following part 21 services; Point-to-Point Microwave; Local Television Transmission Service; Multipoint Distribution Service; Digital Electronic Message Service; and Fixed Subsidiary Communications Authorization. In addition to the requirements contained on the form, applications may be subject to other requirements specified in the rules to file a complete submission. Data submitted will be used by the Domestic Radio Branch of the Common Carrier Bureau to verify completion of construction and the obligations in the conditional license. Without such information, the Commission would not be able to determine whether the licensee has fulfilled the construction conditions contained in the authorization or if the licensee has automatically forfeited its authorization. If there is an automatic forfeiture, new initial applications may be filed. The FCC Form 494A was revised to include the Anti-Drug Abuse certification.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-30997 Filed 12-20-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Petition Nos. P105-93; P106-93; and P107-93]

Trans-American Steamship Agency et al.; Petition for Temporary Exemption From Electronic Tariff Filing Requirements

In the Matter of: Petition of Trans-American Steamship Agency on Behalf of Transportacion Maritima Mexicana, S.A. de C.V., Petition of Tropical Shipping & Construction Co., Ltd., Petition of Tropical Shipping, Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic filing requirements of the Commission AFTI System. To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than December 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served as follows:

P105-93—Meiko Geyer, Pricing Supervisor, Trans-American Steamship Agency, 140 W. 6th Street, San Pedro, California 90731

P106-93 & P107-93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036.

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93-31041 Filed 12-20-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Citizens BancShares, Inc., 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 January 14, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Citizens BancShares, Inc., Raleigh, North Carolina; to acquire 100 percent of the voting shares of First Savings Bank of Rockingham County, Inc., SSB, Reidsville, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Waukegan Corp., Glenview, Illinois; to acquire Security Chicago Corp., Chicago, Illinois, and thereby indirectly acquire First Security Bank of Chicago, Chicago, Illinois, and First State Bancorp of Princeton, Illinois, Inc., Princeton, Illinois, and thereby indirectly acquire First State Bank of Princeton, Princeton, Illinois; First State Bank of Ashton-Rochelle, Ashton, Illinois; and First State Bank of Gridley, Gridley, Illinois.

2. Omnibank Corporation, River Rouge, Michigan; to acquire 100 percent of the voting shares of Indecorp, Inc., Chicago, Illinois, and thereby indirectly acquire Independence Bank of Chicago, Chicago, Illinois; and Drexel Holding Company, Chicago, Illinois, and thereby indirectly acquire Drexel National Bank, Chicago, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Brownstown Bancorp, Inc., Brownstown, Illinois; to acquire at least 86.19 percent of the voting shares of First National Bank of Brownstown, Brownstown, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Finlayson Bancshares, Inc., Finlayson, Minnesota; to acquire 14.10 percent of the voting shares of First Integrity Bancorporation, Inc., Staples, Minnesota, and thereby indirectly acquire First Integrity Bank, Staples, Minnesota.

2. First Integrity Bancorporation, Inc., Staples, Minnesota; to merge with Barrett Bancorporation, Inc., Barrett, Minnesota, and thereby indirectly acquire Citizens State Bank of Barrett, Barrett, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Independent Bankshares, Inc., Glenwood Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of

Glenwood Independent Bank, Glenwood Springs, Colorado.

2. SBT Bankshares, Inc., Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank and Trust Company of Colorado Springs, Colorado Springs, Colorado.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. City National Bancshares, Inc., Colorado Springs, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of T M & S Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire The City National Bank of Colorado City, Colorado City, Texas. In connection with this application, T M & S Bancshares, Inc., Dover, Delaware, has applied to become a bank holding company by acquiring 100 percent of the voting shares of The City National Bank of Colorado City, Colorado City, Texas.

2. Kermit State Bancshares, Inc., Kermit, Texas; to acquire 100 percent of the voting shares of Bank of the West, N.A., Odessa, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to acquire 100 percent of the voting shares of Liberty Bank, Honolulu, Hawaii.

2. Capital Bancorp Employee Stock Ownership Plan, Downey, California; to become a bank holding company by acquiring 31.45 percent of the voting shares of Capital Bancorp, Downey, California, and thereby indirectly acquire Capital Bank, Las Vegas, Nevada.

3. Limestone Holding Corporation, Preston, Washington; to become a bank holding company by acquiring not less than 90 percent of the voting shares of State Bank of Concrete, Concrete, Washington.

Board of Governors of the Federal Reserve System, December 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31062 Filed 12-20-93; 8:45 am]

BILLING CODE 6210-01-F

Firstar Corp., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Firstar Home Mortgage Corporation, Milwaukee, Wisconsin, in providing data processing and data transmission services, facilities and data bases to realtors, real estate agents, builders, and financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y. The information to be processed under this proposal includes price, tax, utility, financing and other information regarding real property currently listed or sold within the last two years.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Investor Services, Inc., Salt Lake City, Utah, in buying and selling U.S. Government and state and local obligations on the order of investors as riskless principal pursuant to § 225.25(b)(16) of the Board's Regulation Y.

2. The Tokai Bank, Limited, Nagoya, Japan; to engage *de novo* through its subsidiary, Tokai Securities, Inc., New York, New York, in providing investment and financial advisor services pursuant to § 225.25(b)(4)(vi)(A)(1) and (2) of the Board's Regulation Y. Tokai Securities, Inc. currently conducts the business permitted under §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31063 Filed 12-20-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 11/22/93 AND 12/10/93

Name of Acquiring Person; Name of Acquired Person; Name of Acquired Entity	PMN No.	Date terminated
Cox Enterprises, Inc., QVC Network, Inc., QVC Network, Inc	94-0146	11/22/93
American Telephone and Telegraph Company, GTE Corporation, AG Communication Systems Inc	94-0274	11/22/93
Illinois Central Corporation, Allied Railcar Company, Allied Railcar Company	94-0173	11/23/93
Occidental Petroleum Corporation, The Salk Institute for Biological Studies, B & D Shareholder Corporation	94-0273	11/23/93
Litton Industries, Inc., Halliburton Company, Halliburton Company	94-0160	11/24/93
Mitsubishi Gas and Chemical Co., Ltd., Atlantic Richfield Company, ARCO Chemical Company and ARCO Chemical Trading, Inc	94-0136	11/26/93
Marshall S. Cogan, Foamex International Inc., Foamex International Inc	94-0184	11/26/93
Regie Nationale des Usines Renault S.A., Aktiebolaget Volvo, Renault Vehicules Industriels S.A	94-0186	11/26/93
Clayton & Dubilier Private Equity Fund IV L.P., E. I. du Pont de Nemours and Company, Remington Arms Co., Inc., Remington Licensing Corp (RLC)	94-0195	11/26/93
Phillips Petroleum Company, Enron Corp., Enron Gas Processing Company	94-0214	11/26/93
Unitrin, Inc., Litton Industries, Inc., Western Atlas Inc	94-0254	11/26/93
George L. and Frayda B. Lindemann, Southern Union Company, Southern Union Company	94-0255	11/26/93
Delta Life Corporation, Associated Insurance Companies, Inc., The Shelby Life Insurance Company of Shelby, Ohio	94-0270	11/26/93
Paramount Headwear, Inc., Mobil Corporation, Mobil Corporation	94-0285	11/26/93
The Marks Group, Inc., Steven J. Simmons, Scott Cable Communications, Inc	94-0172	11/29/93
Mark Controls Corporation, Imo Industries Gmbh, Imo Industries Newco	94-0189	11/29/93
Minorco, The Upjohn Company, Asgrow Florida Company, Inc	94-0215	11/29/93
Horizon Healthcare Corporation, Gerard M. Martin, Greenery Rehabilitation Group, Inc	94-0232	11/29/93
Gerard M. Martin, Horizon Healthcare Corporation, Horizon Healthcare Corporation	94-0233	11/29/93
General Electric Company, AAF Industries plc, Diamond Engineered Space, Inc	94-0237	11/29/93
Horizon Healthcare Corporation, Health and Rehabilitation Properties Trust, Health and Rehabilitation Properties Trust	94-0242	11/29/93
Mr. and Mrs. Charles W. Wallis, Mobil Corporation, Mobil Corporation	94-0261	11/29/93
Sears, Roebuck and Co., David S. Lindenbaum, International Automotive Corp	94-0265	11/29/93
Jordan Industries, Inc., Valmark Industries, Inc., Valmark Industries, Inc	94-0269	11/29/93
Corange Limited, Protein Design Labs, Inc., Protein Design Labs, Inc	94-0271	11/29/93
Tide West Oil Company, Pennzoil Company, Pennzoil Company	94-0279	11/29/93
Herbert Simon, Melvin Simon, M.S. Management Associates, Inc	94-0282	11/29/93
Guardian Royal Exchange plc, Allianz Aktiengesellschaft Holding, American Ambassador Casualty Company	94-0283	11/29/93
Park Corporation, General Motors Corporation, General Motors Corporation	94-0286	11/29/93
Oy Sisu-Auto Ab, Valmet Oy, Valmet Transmec Inc. & Valmet Logging America's Inc	94-0287	11/29/93
The Morgan Stanley Real Estate Fund, L.P., Qualified Subchapter S Trust/James R. Trueman 4/8/86, Red Roof Inns, Inc	94-0291	11/29/93
Toufic Aboukhater, Koll Real Estate Group, Inc., Lake Superior Land Company	94-0292	11/29/93
Computer Sciences Corporation, Sequa Corporation, ARC Professional Services Group, Inc	94-0294	11/29/93
Richard E. Rainwater, Caroline Hunt Trust Estate, Crescent Joint Venture and RPI Services, Inc	94-0298	11/29/93
Caroline Hunt Trust Estate, Caroline Hunt Trust Estate, Crescent Joint Venture and RPI Services, Inc	94-0299	11/29/93
BCE Inc., Digital Equipment Corporation, Digital Equipment Corporation	94-0310	11/29/93
Overseas Partners Ltd., KMS II Realty Limited Partnership, KMS II Realty Limited Partnership	94-0318	11/29/93
E.R. Haggar, Jr., Deann Bell Smith, The Hartwell Company	94-0293	11/30/93
The Albert Fisher Group PLC, Fresh Western Marketing, Inc., Fresh Western Marketing, Inc	94-0329	11/30/93
ECI Telecom Ltd., Telematics International, Inc., Telematics International, Inc	94-0197	12/01/93
Wal-Mart Stores, Inc., Kmart Corporation, Pace Membership Warehouse, Inc	94-0211	12/01/93
Martin Marietta Corporation, General Electric Company, General Electric Company	94-0262	12/01/93
SAFECO Corporation, Revenue Properties Company Limited, Pan Pacific Development (Cascade), Inc	94-0301	12/01/93
Main Street and Main Incorporated, Curtis L. Carlson, Friday's of California, Inc	94-0304	12/01/93
GS Capital Partners, L.P., Gander Mountain, Inc., Gander Mountain, Inc	94-0315	12/01/93
Intuit Inc., ChipSoft, Inc., ChipSoft, Inc	93-1740	12/02/93
Green Capital Investors, L.P., Valley Fashions Corp., Valley Fashions Corp	94-0231	12/02/93
BTR plc, The Gates Corporation, Gates Energy Products, Inc	94-0236	12/02/93
The Wiremold Company, Butler Manufacturing Company, Walker Division	94-0225	12/03/93
Connecticut Health Care System, Inc., The Institute of Living Services Corporation, The Institute of Living	94-0230	12/03/93
Hanny Magnetics (Holdings) Limited, Tandy Corporation, TE Electronics Inc., Memtek International Limited	94-0306	12/03/93
3 Rivers Telephone Cooperative, Inc., U S West, Inc., U S West, Communications, Inc	94-0311	12/03/93
Triangle Telephone CooperativeAssociation, Inc., U S West Inc., U S West Communications, Inc	94-0312	12/03/93
Blackfoot Telephone Cooperative, Inc., U S West Inc., U S West Communications, Inc	94-0313	12/03/93
Nemont Telephone Cooperative, Inc., U S West Inc., U S West Communications, Inc	94-0314	12/03/93
Sage Technologies, Inc., Stephen W. Maggs, Mericom Systems, Inc	94-0335	12/03/93
Paul G. Allen, H. Group Holding, Inc., Ticketmaster Holdings Group, Ltd	94-0336	12/03/93
Permian Health Care, Inc., Peter G. Rogan, Edgewater Medical Center, Inc	94-0343	12/03/93
Sheldon B. Lubar and Maryanne Lubar, TLC Group, Inc, TLC Group, Inc	94-0345	12/03/93
Blockbuster Entertainment Corporation, Speed 3882 Limited, Speed 3882 Limited	94-0347	12/03/93
Schroder Real Estate Value-Enhancement Fund B, L.P., Sears, Roebuck & Co., Homart Development Co	94-0348	12/03/93
King Ranch, Inc., The Coca Cola Company, The Coca Cola Company	94-0349	12/03/93
Welsh, Carson, Anderson & Stowe VI, L.P., NYNEX Corporation, Stockholder Systems, Inc. and DISC, Inc	94-0351	12/03/93
First Data Corporation, Credit Systems Incorporated, Credit Systems Incorp./Credit Systems Redevelopment	94-0352	12/03/93
Welsh, Carson, Anderson & Stowe VI, L.P., NewCo, NewCo	94-0357	12/03/93
Allied-Lyons PLC, M. Raubvogel Co., Inc., M. Raubvogel Co., Inc	94-0358	12/03/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 11/22/93 AND 12/10/93—Continued

Name of Acquiring Person; Name of Acquired Person; Name of Acquired Entity	PMN No.	Date terminated
SCEcorp, Texaco Inc., Four Star Oil and Gas Company	94-0360	12/03/93
Hancock Venture Partners III L.P., Transit Communications Atlanta L.P., Transit Communications Corporation	94-0361	12/03/93
Keane, Inc., NYNEX Corporation, AGS Computers, Inc	94-0303	12/06/93
Phillips Petroleum Company, GPM Gas Gathering, LC, GPM Gas Gathering, LC	94-0305	12/06/93
Russell Corporation, W.C. Bradley Co., The Game Inc	94-0327	12/06/93
Haji Awang Bin Kassim, The Palace Company, Helmsley Palace Hotel	94-0359	12/06/93
Astrotech International Corporation, Mr. Irwin Jacobs, Brown Minneapolis Tank and Fabricating Company	94-0378	12/06/93
Helig-Meyers Company, Richard A. McMahan, McMahan Furniture Company	94-0383	12/06/93
M. Francois Pinault, Lamonts Apparel, Inc., Lamonts Apparel, Inc	94-0384	12/06/93
The Scotts Company, Grace-Sierra Horticultural Products Company, Grace-Sierra Horticultural Products Company	94-0235	12/07/93
International Paper Company, Monsanto Company, Monsanto Company	94-0296	12/07/93
Total Energy Services Company, MascoTech, Inc., MASX Energy Services Group, Inc	94-0321	12/07/93
Crane Co., Harbour Group Investments L.P., Burks Pumps, Inc	94-0333	12/07/93
Morton H. Fleischer, Franchise Finance Corporation of America, Franchise Finance Corporation of America	94-0340	12/07/93
Advance Health Care, Inc., Blue Cross and Blue Shield of Maryland, Inc. Paradigm Pharmacy Management, Incorporated	94-0346	12/07/93
Flagstar Companies, Inc., InterAmericans Investments, Inc., Alanza Corporation	94-0371	12/07/93
Heidemij N.V. f/k/a Heidemij Holding N.V., Geraghty & Miller, Inc., Geraghty & Miller, Inc	94-0281	12/08/93
Wellcome plc, Centocor, Inc., Centocor, Inc	94-0309	12/08/93
Charles B. Lebovitz, CBL & Associates Properties, Inc., CBL & Associates Properties, Inc	94-0419	12/08/93
Deltec International S.A., Home Federal Financial Corporation, Home Federal Financial Corporation	94-0251	12/09/93
Tivadar Charitable Lead Trust, dated September 30, 1982, Geotek Industries, Inc., Geotek Industries, Inc	94-0289	12/09/93
Elan Corporation, Dr. Stanley W. Watson, Associates of Cape Cod, Inc	94-0295	12/09/93
Ira Leon Rennert, Cooper Industries, Inc., Baron Drawn Steel Corporation and Baron Drawn	94-0328	12/09/93
Citicrop, H.F. Ahmanson & Company, Home Savings of America, FSB	94-0334	12/09/93
Brynwood Partners II Limited Partnership, SmithKline Beecham plc, an English company, SmithKline Beecham Consumer Brands, L.P	94-0344	12/09/93
Vereniging AEGON, The Mutual Life Insurance Company of New York, The Mutual Life Insurance Company of New York	94-0362	12/09/93
Rowan Companies, Inc., General Cable Corporation, Marathon LeTourneau Company	94-0387	12/09/93
Raytheon Company, ENSERC Corporation, Ebasco Services Incorporated	94-0319	12/10/93
Merrill Corporation, James Scott May, May Printing Company	94-0376	12/10/93
Merrill Corporation, Thomas L. May, May Printing Company	94-0377	12/10/93
Green Bay Packaging Inc., Stone Container Corporation, Atlanta & Saint Andrews Bay Railroad Company	94-0379	12/10/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-31072 Filed 12-20-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC) Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of a newly-formed NVAC Subcommittee on Vaccination Registries.

DATES: Date, Time and Place: January 5, 1994, at 9:30 a.m. to 4 p.m., Cohen Building, Snow Room 5051, 330 Independence Avenue, SW., Washington, DC. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 200 Independence Avenue, SW., Washington, DC (202) 401-8141.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee or on any of the duties and responsibilities of the Subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before January 3, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for such presentations. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion

The Subcommittee shall act as an advisory capacity to the NVAC for the purpose of examining different models for establishing a National Immunization Registry System. The registry systems should be evaluated on their ability to provide immunization records to families and health care providers, notify new parents of the need for immunizing their children, track vaccinations given, identify unvaccinated children, be the basis for a recall system, aid in the monitoring of adverse vaccine events, and provide data useful in clinic and program management.

A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: December 14, 1993.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 93-30998 Filed 12-20-93; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 93N-0223]

Bel-Mar Laboratories, Inc.; Withdrawal of Approval of 24 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 24 abbreviated new drug applications (ANDA's) held by Bel-Mar Laboratories, Inc. (Bel-Mar). The basis for the withdrawal is that Bel-Mar has repeatedly failed to file required annual reports on these ANDA's.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1038.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotic drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of June 29, 1993 (58 FR 34814), FDA offered Bel-Mar an opportunity for a hearing on a proposal to withdraw approval of 24 ANDA's because Bel-Mar had failed to submit the required annual reports for these ANDA's. Bel-Mar did not respond to the opportunity for a hearing. Failure to file a written notice of participation and request for a hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director of the Center for Drug Evaluation and Research is withdrawing approval of the 24 ANDA's listed in the table below.

ANDA no.	Drug
80-710	Lidocaine Hydrochloride Injection, 1%
80-711	Procaine Hydrochloride Injection, 1%
80-712	Thiamine Hydrochloride Injection, 200 milligrams (mg)/ milliliter (mL)
80-718	Thiamine Hydrochloride Injection, 100 mg/mL
80-741	Testosterone Proprionate Injection, 25 mg/mL
80-742	Testosterone Proprionate Injection, 50 mg/mL
80-743	Testosterone Proprionate Injection, 100 mg/mL
80-756	Procaine Hydrochloride Injection, 2%
80-757	Lidocaine Hydrochloride Injection 2% and Epinephrine, 1:100,000
80-758	Procaine Hydrochloride 1% and Epinephrine Injection, 1:50,000
80-759	Procaine Hydrochloride 2% and Epinephrine Injection, 1:50,000
80-760	Lidocaine Hydrochloride Injection, 2%
80-761	Pyridoxine Hydrochloride Injection, 100 mg/mL
80-819	Vitamin A Palmitate Injection, 50,000 units base/mL
80-820	Lidocaine Hydrochloride 1% and Epinephrine Injection, 1:100,000
80-821	Chlorpheniramine Maleate Injection, 10 mg/mL
80-822	Diphenphydramine Hydrochloride Injection, 10 mg/mL
83-733	Chlorpheniramine Maleate Injection, 100 mg/mL
83-738	Prednisolone Acetate Suspension, 25 mg/mL and 50 mg/mL
83-739	Sterile Hydrocortisone Acetate Suspension, 25 mg/mL and 50 mg/mL
84-629	Hydroxocobalamine Injection, 1,000 micrograms/mL
84-752	Dexamethasone Sodium Phosphate Injection, 4 mg/mL
86-666	m-Predrol (Sterile Methylprednisolone Acetate) Suspension, 40 mg/mL
87-135	m-Predrol (Sterile Methylprednisolone Acetate) Suspension, 80 mg/mL

The Director of the Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 5.82), finds that the holder of the applications listed above has repeatedly failed to submit reports required by § 314.81. Therefore, pursuant to this finding, approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective January 20, 1994.

Dated: November 24, 1993.

Roger Williams,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 93-30995 Filed 12-20-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-920-94-4110-03; COC50315]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease COC50315, Weld County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from October 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Dated: December 9, 1993.

Kathleen L. Toth,

Acting Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93-31032 Filed 12-20-93; 8:45 am]

BILLING CODE 4310-JB-M

[NM 010-4210-03; NMNM 68518]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The following public lands in Santa Fe County, New Mexico have

been examined and found suitable for classification for lease or conveyance to the City and County of Santa Fe under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City and County of Santa Fe propose to use the lands for a municipal golf course and recreation center, landfill administrative site, public shooting range, public works facility and County Sheriff's Department training facility.

New Mexico Principal Meridian, New Mexico

T. 17 N., R. 8 E.,
Sec. 21, lot 1;
Sec. 22, all;
Sec. 26, lots 13 to 20, inclusive; lots 45 to 52, inclusive; lots 77 to 84, inclusive; lots 109 to 116, inclusive; lots 141 to 148, inclusive; lots 173 to 180, inclusive; lots 205 to 220, inclusive; lots 225 to 256, inclusive.
Sec. 27, N½.
Sec. 35, lots 1 to 8, inclusive, NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

The area described contains 1,716.38 acres in Santa Fe County.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, Bureau of Land Management, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571 or at (505)–758–8851.

ADDRESSES: Comments should be sent to District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87107.

SUPPLEMENTARY INFORMATION: Lease and/or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Those rights for an access road granted to the New Mexico State Police by right-of-way NMNM 64187.
5. Those rights for a fiber optic toll line granted to Mountain States T&T Company by right-of-way NMNM 57927.
6. Those rights for a pipeline granted to Gas Company of New Mexico by right-of-way NMSF 078788.
7. Those rights for road granted to Santa Fe County by right-of-way NMNM 59177.
8. Those rights for a power transmission line granted to Plains Electric G&T Cooperative Inc. by right-of-way NMNM 011893.
9. Those rights for a power transmission line granted to Public Service Company of New Mexico by right-of-way NMNM 30521.
10. Those rights for a power transmission line granted to Public Service Company of New Mexico by right-of-way NMNM 59262.
11. Those rights for powerline anchor easements granted to Plains Electric G&T Cooperative Inc. by right-of-way NMNM 57913.
12. Mineral material permit NMNM 69774 issued to the Bureau of Land Management for sand and gravel.
13. Those rights to be granted Santa Fe County for roads under pending right-of-way application NMNM 90125.
14. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.
15. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands on or within 45 days of the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a municipal golf course and recreation center, landfill administrative site, public shooting range, public works facility and County Sheriff's Department training facility.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal golf course and recreation center, landfill administrative site, public shooting range, public works facility and County Sheriff's Department training facility.

Adverse comments will be reviewed by the State Director. In the absence of any adverse comments, this classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: December 15, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93–31130 Filed 12–20–93; 8:45 am]

BILLING CODE 4310–FB–M

[MT–070–93–4333–004]

Closure of Lands to Discharge of Firearms; Bear Trap Canyon Recreation Area, MT

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Closure of lands to the discharge of firearms.

SUMMARY: Public notice is hereby given that under the provisions of part 8360 of 43 CFR, and in the interest of public safety, the following described lands, under the jurisdiction of the Bureau of Land Management, are hereby closed effective May 1, 1994, to the discharge of all firearms. The lands are located in:

T. 4 S., R. 1 W.,
Sections 17, 18, 19, 20 and 30.
Madison County, Montana.

The closure includes all public lands described as follows:

Beginning at the bridge crossing the outlet to Ennis Lake in Section 30, north along the South Bear Trap Road to the Montana Power Company (MPC) power house. All lands within ¼ mile of the South Bear Trap Road are affected by this closure including lands along the southwest boundary of the Bear Trap Canyon Wilderness.

The above described public lands total 900 acres more or less. The lands are located in Madison County, Montana and are commonly referred to as the Bear Trap Canyon Recreation Area.

The above described lands receive intensive recreation use as well as

housing four MPC employees. The continued discharge of firearms constitutes a hazard to the public and MPC employee health and safety.

DATES: Effective date: May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, Area Manager, Dillon Resource Area, 1005 Selway Drive, Dillon, Montana 59725; telephone (406) 683-2337.

Dated: December 9, 1993.

James R. Owings,

District Manager.

[FR Doc. 93-31033 Filed 12-20-93; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force; Intentional Introductions Policy Review Committee Meeting

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Intentional Introductions Policy Review Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to review the public comments received during the comment period and discuss the formulation of the final report to Congress.

DATES: The Intentional Introductions Policy Review Committee will meet from 10 a.m. to 4 p.m. on Monday, January 10, 1994.

ADDRESSES: The Intentional Introductions Policy Review Committee meeting will be held in room 200, U.S. Fish and Wildlife Service Building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Intentional Introductions Policy Review Committee Chair, National Marine Fisheries Service, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910 at (301) 713-2322.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, 104 Stat. 4761, 16 U.S.C. 4707*et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 16, 1993.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93-31102 Filed 12-20-93; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to discuss information updates on growth and spread of ruffe in western Lake Superior, review progress of the proposed ruffe control program for release for public review, and discuss the range reduction component of the program in detail.

DATES: The Ruffe Control Committee will meet from 1 p.m. to 5 p.m. on Tuesday, January 4, 1994 and 8 a.m. to 3 p.m. on Wednesday, January 5, 1994.

ADDRESSES: The Ruffe Control Committee meeting will be held at the Holiday Inn Duluth, 200 West First Street, Duluth, MN 55802 (218) 722-1202.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Ruffe Control Committee Chair, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806 at (715) 682-6185.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meeting will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: December 16, 1993.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93-31101 Filed 12-20-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 11, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 5, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Marengo County

Roseland Plantation (Plantations of the Alabama Canebrake MPS) Co. Rd. 54, about 2 mi. SE of Faunsdale, Faunsdale vicinity, 93001476

LOUISIANA

Iberville Parish

Trinity, LA 77, about .3 mi. S of jct. with LA 76, Rosedale, 93001493

Union Parish

Garland House, 701 Cherry St., Bernice, 93001495

Heard, J.W., House, 605 Cherry St., Bernice, 93001494

MASSACHUSETTS

Bristol County

Taunton State Hospital (Massachusetts State Hospitals And State Schools MPS), W bank of the Mill R. at Danforth St., Taunton, 93001484

Hampshire County

Monson Developmental Center (Massachusetts State Hospitals And State Schools MPS), 200 State Ave., Monson, 93001483

Middlesex County

Fernald, Walter E., State School (Massachusetts State Hospitals And State Schools MPS), 200 Trapelo Rd., Waltham, 93001487

Metropolitan State Hospital (Massachusetts State Hospitals And State Schools MPS), 475 Trapelo Rd., Waltham, 93001482

Tewksbury State Hospital (Massachusetts State Hospitals And State Schools MPS),

Jct. of East and Livingston Sts., Tewksbury, 93001486

Norfolk County

Medfield State Hospital (Massachusetts State Hospitals and State Schools), 45 Hospital Rd., Medfield, 93001481

Wrentham State School (Massachusetts State Hospitals And State Schools MPS), Jct. of Emerald and North Sts., Wrentham, 93001490

Suffolk County

Massachusetts Mental Health Center (Massachusetts State Hospitals And State Schools MPS), 74 Fenwood Rd., Boston, 93001489

Worcester County

Templeton Farm Colony (Massachusetts State Hospitals And State Schools MPS), 126 Royalston Rd., Templeton, 93001485

Westborough State Hospital (Massachusetts State Hospitals And State Schools MPS), Along Lyman St. N of Chauncy Lake and jct. of South St. and MA 9, Westborough, 93001488

NORTH DAKOTA

Cass County

Pence Automobile Company Warehouse, 301 N. P Ave., Fargo, 93001478

SOUTH CAROLINA

Beaufort County

Altamaha Town (Yamasee Indian Towns in the South Carolina Low Country MPS), Address Restricted, Bluffton vicinity, 93001479

Pocosobo Town (Yamasee Indian Towns in the South Carolina Low Country MPS), Address Restricted, Sheldon vicinity, 93001480

TENNESSEE

Cumberland County

Palace Theater, 210 N. Main St., Crossville, 93001477

WYOMING

Natrona County

Natrona County High School, 930 S. Elm St., Casper, 93001491

Sweetwater County

Downtown Rock Springs Historic District, Roughly bounded by K, 4th, C, 2nd, A and 5th Sts., Rock Springs, 93001492

[FR Doc. 93-31118 Filed 12-20-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33; Sub-No. 78]

Union Pacific Railroad Co.—Abandonment; in Saline, Ottawa, Lincoln, Russell, Osborne and Rooks Counties, KS

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its 102-mile rail line known as the Plainville Branch, from milepost 0.00 near Salina to milepost 102.00 near Plainville, in Saline, Ottawa, Lincoln, Russell, Osborne and Rooks Counties, KS. The certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicants no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: December 10, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, and Philbin. Chairman McDonald commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-31128 Filed 12-20-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-167 (Sub-No. 1122X)]

Consolidated Rail Corp.—Abandonment Exemption; in Henry and Madison Counties, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its Honey Creek Secondary line. The line extends 10.6 miles± from approximately milepost 110.05± near Honey Creek, in Henry County, to approximately milepost 120.65± in Anderson, Madison County.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 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 January 20, 1994, 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 January 3, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 10, 1994, 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, Two Commerce Square, 2001 Market St., 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 environmental and historic resources. The Section of Energy and Environment

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

(SEE) will issue an environmental assessment (EA) by December 23, 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: December 14, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–31127 Filed 12–20–93; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open hearing.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure has proposed amendments to Bankruptcy Rules 8018, 9029, and 9037. The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1994.

A hearing on the proposed amendments will be held by the Advisory Committee on Rules of Bankruptcy Procedure at the Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC, on March 25, 1994, at 10 a.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31045 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m..

DATES: February 24–25, 1994.

ADDRESSES: The Cloister, Sea Island, Georgia.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31047 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Hearings and Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure has proposed amendments to Civil Rules 26, 43, 50, 52, 59, 83, and 84. The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1994.

In order that persons and organizations wishing to do so may comment orally on the proposed amendments, a hearing will be held by the Advisory Committee on Rules of Civil Procedure at the United States Courthouse, 1100 Commerce Street, Dallas, Texas, on April 6, 1994.

Anyone interested in testifying should write to Mr. Peter G. McCabe. Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

Also, a three-day meeting of the Advisory Committee on Rules of Civil Procedure will be held at the Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC, on April 28–30, 1994. The meeting will be open to public observation but not participation and will begin each day at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31044 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: February 21–23, 1994.

ADDRESSES: The Cloister, Sea Island, Georgia.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 13, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31048 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Hearing and Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Federal Rules of Appellate Procedure has proposed amendments to Appellate

Rules 4, 8, 10, 21, 25, 32, 47, and 49. The Judicial Conference Standing Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them shall be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1994.

A hearing on the proposed amendments will be held by the Advisory Committee on Appellate Rules at the United States Courthouse, 1929 Stout Street, Denver, Colorado, on March 14, 1994, at 2 p.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

Also, a two-day meeting of the Advisory Committee on Appellate Rules will be held at the Hyatt Regency Downtown, 1750 Welton Street, Denver, Colorado, on April 25–26, 1994. The meeting will be open to public observation but not participation and will begin each day at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31042 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Hearings and Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Rules of Evidence has proposed amendments to Evidence Rule 1102. The Judicial Conference Committee on Rules of Practice and Procedure submits this rule for public comment. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1994.

In order that persons and organizations wishing to do so may comment orally on the proposed amendment, a hearing will be held by the Advisory Committee on Rules of Evidence at the United States Courthouse, room 317, 40 Centre Street, Foley Square, New York, New York, on May 9, 1994, at 8:30 a.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

Also, a two-day meeting of the Advisory Committee on Rules of Evidence will be held at the United States Courthouse, in room 315, on May 9–10, 1994. The meeting will be open to public observation but not participation. On May 9, the meeting will begin immediately after the hearing. On May 10, the meeting will begin at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31043 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Hearings and Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure has proposed amendments to Criminal Rules 5, 10, 43, 53, 57, and 59. The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1994.

In order that persons and organizations wishing to do so may comment orally on the proposed amendments, a hearing will be held by the Advisory Committee on Rules of Criminal Procedure at the United States Courthouse, 312 North Spring Street, Los Angeles, California, on April 4, 1994.

Anyone interested in testifying should write to Mr. Peter G. McCabe. Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

Also, a two-day meeting of the Advisory Committee on Rules of Criminal Procedure will be held at the Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle, NE., Washington, DC, on April 18–19, 1994. The meeting will be open to public observation but not participation and will begin each day at 9 a.m.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31046 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a four-day meeting. The meeting will be open to public observation but not participation and will commence each day at 9 a.m., except on Wednesday when it will start at 3 p.m.

DATES: January 12–15, 1994.

ADDRESSES: The Westin La Paloma, 3800 East Sunrise Drive, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 13, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–31049 Filed 12–20–93; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–50]

Norman Alpert, M.D.; Continuation of Registration

On April 15, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to Norman Alpert, M.D. (Respondent), 111 Dedham Street, Norfolk, Massachusetts 02056, seeking to revoke Respondent's DEA Certificate of Registration, AA7635850, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

More specifically, the Order to Show Cause asserted that during a September 1986 administrative inspection of Respondent's registered premises, it was revealed that Respondent had issued prescriptions for controlled substances without a legitimate medical purpose; had listed in his records that he had dispensed over 5,000 dosage units of Schedule II controlled substances to patients who, in fact, never received such drugs; had intentionally falsified records to conceal his unlawful dispensation of controlled substances; and had, in 1984, 1985 and 1986, purchased 90.3 percent, 77.8 percent and 92.3 percent, respectively, of all Dilaudid, a Schedule II controlled substance, purchased by practitioners in the State of Florida. The Order to Show Cause further maintained that Respondent was indicted on four counts of possession with intent to unlawfully distribute Dilaudid in violation of 21 U.S.C. 841(a)(1), conspiring to distribute Dilaudid in violation of 21 U.S.C. 841(a)(1) and 846, failing to maintain accurate records of his controlled substances in violation of 21 U.S.C. 842(a)(5) and knowingly and intentionally omitting material information from records required to be kept pursuant to the Controlled Substances Act in violation of 21 U.S.C. 843(a)(4)(A). The Order to Show Cause indicated that Respondent pled guilty to and was convicted of two counts of violating 21 U.S.C. 842(a)(5) and 843(a)(4)(A).

Respondent, through counsel, requested a hearing on the allegations raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On December 8, 1992, a hearing was held in Boston, Massachusetts. On August 24, 1993, the administrative law judge issued her opinion, recommended ruling, findings of fact and conclusions of law. The Government filed limited exceptions to this ruling on September 13, 1993. On September 27, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Acting Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

The Acting Administrator finds that Respondent issued prescriptions to individuals in the absence of legitimate medical need and falsified his records to conceal this illegal conduct. In February 1987, the Florida Department of Professional Regulation, after initiating a complaint against Respondent, entered into a stipulation whereby Respondent agreed to relinquish his license to practice medicine in Florida and not seek relicensure in that state and to not violate any state or federal law. Respondent moved to Massachusetts in late 1986 and became the medical director of NORCAP, a substance abuse treatment center. In June 1989, in the United States District Court for Massachusetts, Respondent pled guilty to and was convicted of two counts of violating 21 U.S.C. 842 and 843 for his illegal activity in Florida. He was sentenced to two years probation and assessed a $100.00 fine. Respondent's probation ended April 4, 1992, after he had complied with all the conditions imposed. The Massachusetts Board of Registration in Medicine entered a Consent Order in 1990 placing Respondent on probation. This probation was terminated without further action on December 19, 1991.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration or deny any application for registration if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal or local laws relating to controlled substances; and,

(5) Such other conduct which may threaten the public health and safety.

The Administrator may rely on any one or any combination of these factors when determining whether an application should be denied or a registration revoked. See Neveille H. Williams, D.D.S., 51 FR 17556 (1986); Anne L. Hendricks, M.D., 51 FR 41030 (1986). The administrative law judge correctly found that all the factors of 21 U.S.C. 823(f) were relevant to a determination of whether Respondent's continued registration would be in the public interest.

The administrative law judge noted that Respondent admitted to prescribing and dispensing huge quantities of controlled substances to individuals without any legitimate medical purpose and falsifying prescriptions and medical records to disguise this illegal activity. There is no question that these actions constitute serious violation of the Controlled Substances Act. This willful conduct by Respondent was not only a clear violation of the law and regulations, but was a gross failure to live up to the responsibilities of a DEA registrant. Respondent's criminal activity violated not only the law, but the trust placed in him by the DEA as well as his patients.

As was adduced at the hearing, Respondent engaged in this egregious activity during a stressful period in his personal, financial and professional life. As the administrative law judge correctly noted, this fact does not excuse Respondent's illegal conduct. Respondent's conduct cannot be rationalized or justified in any way. The Acting Administrator finds significant, however, Respondent's recognition of the serious abuse of his privileges as a DEA registrant, and his sincere regret for his actions. While this does not minimize the severity of Respondent's conduct, it does provide assurance that Respondent will not again engage in similar behavior.

The Acting Administrator notes that Respondent's illegal activity with respect to controlled substances terminated in May 1986. Had this case been adjudicated at that time, the Acting Administrator would have revoked Respondent's DEA Certificate of Registration. In the subsequent seven years, however, Respondent has maintained his DEA registration and acted in a responsible, trustworthy and competent manner. As the administrative law judge pointed out, while the lapse in time since his criminal activity is not dispositive, it is a factor to be weighed. See Thomas H. McCarthy, D.O., 54 FR 20936 (DEA 1989) affirmed, *Thomas H. McCarthy, D.O.* v. *Drug Enforcement Administration*, No. 89–3496 (6th Cir. Apr. 5, 1990) (unpublished opinion).

The Acting Administrator agrees with the administrative law judge that Respondent's registration should not be revoked and adopts her opinion and recommended ruling, findings of fact, conclusions of law and decision in its entirety. In its exceptions, the Government urged that Respondent be required to obtain prior approval from

the DEA in the event he chose to leave his current position and seek other employment. The Acting Administrator feels that imposition of such a requirement is not necessary.

This decision should in no way be interpreted as an endorsement of Respondent's past illegal behavior. As noted earlier, Respondent's conduct would have resulted in the revocation of his DEA Certificate of Registration had his case been before the Acting Administrator shortly after his illegal activity. Respondent's behavior cannot, and will not, be condoned or excused. Respondent's remorse for his past actions and the fact that he has practiced in an honorable fashion for the past six years provide adequate assurance that Respondent will not repeat his prior actions and lead to the conclusion that revocation would not be appropriate.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Norman Alpert, M.D.'s DEA Certificate of Registration, AA7635850, be, and it hereby is, continued. This order is effective immediately.

Dated: December 9, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93-31075 Filed 12-20-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,981]

Cyprus Sierrita Corp., Green Valley, AZ; Affirmative Determination Regarding Application for Reconsideration

After being granted a filing extension, the company on December 1, 1993 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 7, 1993 and published in the **Federal Register** on October 29, 1993 (58 FR 58187).

The company states that the workers producing copper are not separately identifiable from those who produce molybdenum compounds who were certified earlier under TA-W-28,718.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of December 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-31086 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,598; TA-W-28,607]

Occidental Chemical Corp., Swift Creek and Suwannee River, FL; Negative Determination on Reconsideration

On November 18, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

A company official stated that imports of monammonium phosphate (MAP) in 1992 and 1993 caused decreased sales and production of diammonium phosphate (DAP) by the subject firm.

The company submitted a list of DAP customers that are thought to have purchased the imported MAP.

The Department's denial was based on the fact that the increased import criterion of the Worker Group Eligibility Requirements of the Trade Act was not met. U.S. imports of phosphoric acid, concentrated superphosphates and DAP were negligible relative to U.S. production in the relevant time periods.

In the initial investigation the Department surveyed the major customers of the subject firm. All of the respondents were export brokers who sold to the export market and did not import.

On reconsideration, the Department obtained a list of DAP customers who were thought by the company to have purchased imported MAP in 1992 and 1993. A review of the list shows that all of the customers but one are located off shore. A decline in sales to the export market would not provide a basis for worker group certification. The only domestic customer listed accounted for only a minor percent of the company's sales in 1991, 1992 and 1993 and had increased purchases of DAP from Occidental Chemical in the first 11 months of 1993 compared to the entire year of 1992.

Finally, a decline in price for DAP would not provide a basis for a worker group certification. Price is not one of the criteria for Worker Group Eligibility under the Trade Act.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Occidental Chemical Corporation's Swift Creek, Florida and Suwannee River, Florida facilities.

Signed at Washington, DC, this 6th day of December 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-31085 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; PPG Industries Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,008; PPG Industries, Inc., Ford City, PA

In the following cases, the investigation revealed that the criteria

for eligibility has not been met for the reasons specified.

TA-W-29,158; International Woodworkers of America, Local Shop 33-436, Medford, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,143; Washington Forge, Inc., Englishtown, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,971; Penco of Lyndhurst, Inc., Lyndhurst, NJ

The investigation revealed that sales and production at the subject firm increased in 1992 compared with 1991. There were no employment declines in this period.

TA-W-29,035; Gainco, Inc., Corpus Christi, TX

Customers did not import natural gas during the period under investigation.

TA-W-28,943; Joseph E. Seagram & Sons, Inc., House of Seagram, South San Francisco, CA

In early 1993, there was a corporate decision made by Joseph E. Seagram & Sons, Inc to contract its bottling activity for South San Francisco, CA facility to another domestic firm.

TA-W-29,061; Allied Signal, Inc., Filters & Spark Plugs, Pawtucket Avenue Facility, Rumford, RI

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-29,180; Snow Hill Apparel Co., Snow Hill, NC

A certification was issued covering all workers separated on or after October 13, 1992.

TA-W-29,188; General Automotive Specialty Co., Inc., North Brunswick, NJ

A certification was issued covering all workers separated on or after October 27, 1992.

TA-W-29,167; Variety Knit, North Bergen, NJ

A certification was issued covering all workers separated on or after October 18, 1992.

TA-W-29,009; ABB Power T & D Co., Inc., Muncie, IN

A certification was issued covering all workers separated on or after August 2, 1992.

TA-W-29,081; Airshield Corp., Bridgeport, CT

A certification was issued covering all workers separated on or after September 12, 1992.

TA-W-29,074; Coal Street Mfg., Wilkes Barre, PA

A certification was issued covering all workers separated on or after September 14, 1992.

TA-W-29,089; Pikes Peak Greenshouses, Inc., Lafayette, CO

A certification was issued covering all workers separated on or after September 20, 1992.

TA-W-29,069; Northland, A Scott Fetzer, Co., Watertown, NY

A certification was issued covering all workers separated on or after October 29, 1993.

I hereby certify that the aforementioned determinations were issued during the month of November, 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 7, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-31087 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,038]

Saha-Union International (GA), Inc., Tallapoosa, GA; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA-W-29,038 which was published in the **Federal Register** on October 5, 1993 (58 FR 51883) in FR Document 93-24370. A printing error concerning the name of Saha-Union International, (GA), Inc., (TA-W-29,038) appears in the 5th line of the first column in the appendix table on page 51883. The name should read "Saha-Union International (GA), Inc., (Wkrs)" instead of "Venus Thread, Inc. (Wkrs)".

Signed in Washington, DC, this December 10, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-31083 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Texas Instruments, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 3, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of December 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Texas Instruments, Inc. (Wkrs)	Abilene, TX	12/06/93	11/19/93	29,289	Missile guidance systems.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Stevens Sportswear Co., Inc. (Wkrs)	Taylorsville, MS	12/06/93	11/17/93	29,290	Children's outerwear.
Simpson Timber Co. (IWA)	Korbel, CA	12/06/93	11/19/93	29,291	Timber.
Sandvik Special Metals Corp. (CAWIU)	Kennewick, WA	12/06/93	11/18/93	29,292	Zirconium tubing.
Raytheon (Wkrs)	Waltham, MA	12/06/93	11/24/93	29,293	Communication systems.
Praxair—Linde Div. (OCAW)	Tonawanda, NY	12/06/93	11/26/93	29,294	Air separation equipment.
Nestle Beverage Co. (Co)	Sunbury, OH	12/06/93	11/23/93	29,295	Nestle decaffeinated coffee.
Marathon Oil Co. (OCAW)	Indianapolis, IN	12/06/93	11/16/93	29,296	Refined petroleum products.
L&M Fashions (Wkrs)	Hialeah, FL	12/06/93	11/09/93	29,297	Men's formal pants.
Lear Seating (UAW)	Morristown, TN	12/06/93	11/19/93	29,298	Cab seat frames.
Control Techniques ECS (IUE)	Fairmont, WV	12/06/93	11/16/93	29,299	Electronic control equipment.
Lake Stevens Timber, Inc. (Wkrs)	Lake Stevens, WA	12/06/93	11/01/93	29,300	Cedar lumber.
Hoechst Celanese Corp. (IBT)	Coventry, RI	12/06/93	11/04/93	29,301	Dye solvents.
Emerson Radio (Wkrs)	Princeton, IN	12/06/93	11/23/93	29,302	Parts distribution.
Doe Spun, Inc. (ILGWU)	Emigsville, PA	12/06/93	10/19/93	29,303	Childrenswear.
Digital Equipment Corp. (Wkrs)	Roxbury, MA	12/06/93	11/15/93	29,304	Cable sub-assemblies.
Decision Data Service (Wkrs)	Horsham, PA	12/06/93	11/16/93	29,305	Repairs computers.
Bhalla Lighting, Inc. (Wkrs)	West Caldwell, NJ	12/06/93	11/20/93	29,306	High pressure sodium lamps.
Akers Manufacturing (ILGWU)	Berwick, PA	12/06/93	11/29/93	29,307	Dresses.
Royal Seahorse Development, Inc. (Wkrs)	San Antonio, TX	12/06/93	11/24/93	29,308	Oil, gas drilling.
Bausch & Lomb (Wkrs)	Oakland, MD	12/06/93	11/24/93	29,309	Sunglass lenses.
Century Curtain Co. (Co)	Pinebluff, NC	12/06/93	11/23/93	29,310	Draperies.
Ltv Corporation (Wkrs)	Dallas, TX	12/06/93	11/09/93	29,311	Hot & cold rolled sheet.

[FR Doc. 93-31088 Filed 12-20-93; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-26,999]

Upjohn Co., North Haven, CT; Negative Determination on Remand

Pursuant to the Department's consent motion for a remand in *Communications Workers of America, AFL-CIO,* v. *Secretary of Labor* (USCIT 92-09-00608), the Department is affirming its initial denial of eligibility for workers at the Upjohn Company in New Haven, Connecticut who filed under petition TA-W-26,999 to apply for worker adjustment assistance.

The issue here involves a worker group which was initially certified under petition TA-W-24,041. The worker group produced several industrial chemicals, the largest component of production was dichlorobenzidine dihydro—DCB. As a consequence of the workers at North Haven not being separately identifiable by product, all the workers were certified because of increased imports of DCB.

All production of DCB at North Haven ceased in 1989; all production of industrial chemicals at North Haven ceased in 1990 or very early in 1991. As a consequence, the name of the North Haven facility was changed from the Fine Chemical Division of Upjohn Company to the North Haven Operations of the Upjohn Company.

Plaintiff states continuing worker separations after the expiration (April 11, 1992) of the statutory two-year certification period of TA-W-24,041. Plaintiff claims that the worker group should be re-certified because the conditions are the same that justified the earlier certification. Plaintiff also claims that the Department should have used the same base year as it used in certifying the earlier petition because, but for Federal decommissioning requirements, all of the workers covered by the current petition would have been separated.

Given that section 231(1)(B) of the Trade Act does not permit the certification of workers laid off more than two years from the date of issue of a certification, the remaining more senior workers' only recourse for certification was to file a new petition—TA-W-26,999.

The plaintiff's claims for recertification are not valid for a number of reasons. First, the Department's investigation under petition (TA-W-26,999), shows that the workers were only producing intermediate pharmaceuticals, a different product from that for which the workers were previously certified. Further, these intermediate pharmaceuticals were integrated into the production of steroids at Upjohn's Kalamazoo, Michigan facility which was not under certification. Sales and production of intermediate pharmaceuticals at North Haven increased in 1992 compared to 1991 and remained steady in 1993. Employment on intermediate pharmaceuticals has remained steady in 1992 and in 1993.

Also, the remaining workers at North Haven, not producing intermediate pharmaceuticals, were engaged in decommissioning the plant. These findings would not provide a basis for using the same base year used in the certification of the North Haven worker group because the worker certification was based on increased imports of a different product—DCB, a textile dye, which was last produced in 1989.

Further, with respect to the Federal decommissioning requirements, the Department cannot take into account the layoffs that would have occurred had it not been for the new continued employment conditions created by the Federal decommissioning requirements. The requirements of other Federal laws do not provide a basis for relief under the Trade Act. Furthermore, the fact that the petitioning workers under TA-W-24,041 were retained to decommission the plant represents a management decision not to separate these workers at the time of the original petition Consequently, the base year of the original petition cannot be used.

Certification under the Trade Act is not for everyone who is in some way affected by import competition but only for those whose separations which were caused importantly by increased imports of like or directly competitive articles with articles produced by the workers' firm and which contributed importantly to declines in sales or production and employment at the workers' firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for

adjustment assistance for workers and former workers of the Upjohn Company, North Haven, Connecticut.

Signed at Washington, DC, this 6th day of December 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-31084 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on January 27, 1994, in suite N-3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:30 a.m. is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

I. Introduction of New Council Members
II. Assistant Secretary's Report
  A. PWBA Priorities for 1994
  B. Report to Congress
  C. Miscellaneous Issues
  D. Announcement of Council Chairperson and Vice Chairperson
III. Introduction of PWBA Senior Staff and Orientation of New Members
IV. Report of Advisory Council Working Groups (1992/1993 Term)
V. Determination of Council Working Group/s for 1994
VI. Establish Council and Working Group Meeting Dates
VII. Statements from the General Public
VIII. Adjourn

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before January 10, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before January 10, 1994.

Signed at Washington, DC, this 15th day of December 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93-31076 Filed 12-20-93; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; 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 Expansion Arts Advisory Panel (Dance/Music Section) to the National Council on the Arts will be held on January 10-14, 1994, from 9:15 a.m. to 6 p.m. on January 10, 1994; from 9 a.m. to 6 p.m. on January 11-13, 1994; and from 9 a.m. to 5:30 p.m. on January 14, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 10, 1994 from 9:15 a.m. to 10:30 a.m. for opening remarks and a general overview and on January 14, 1994, from 3 p.m. to 5 p.m. for a policy discussion.

The remaining portions of this meeting from 10:30 a.m. to 6 p.m. on January 10, 1994; from 9 a.m. to 6 p.m. on January 11-13, 1994; and from 9 a.m. to 3 p.m. on January 14, 1994 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)(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 discussion 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: December 15, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 93-31025 Filed 12-20-93; 8:45 am]

BILLING CODE 7537-01-M

Media Arts 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 Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 5, 1994, from 10 a.m. to 4:30 p.m. 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 a.m. to 10:15 a.m. for introductory remarks.

The remaining portions of this meeting from 10:15 a.m. to 4:30 p.m. 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)(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, 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 Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: December 15, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 93-31026 Filed 12-20-93; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Experimental Prescreening Section) to the National Council on the Arts will be held on January 11-13, 1994 from 9 a.m. to 6:30 p.m. on January 11-12, 1994 and from 9 a.m. to 5:30 p.m. on January 13, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 110 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of 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 subsections (c)(4), (6)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: December 15, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-31027 Filed 12-20-93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revised, or extension: Revision.

2. The title of the information collection: "Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL".

3. The form number if applicable: Not applicable.

4. How often is the collection required: The American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) requires that Subsection IWE and Subsection IWL reports be submitted to the regulatory and enforcement authorities having jurisdiction at the plant site. The inservice inspection reports of Subsection IWL must be submitted every five years. The inservice inspection reports of Subsection IWE must be submitted every three and a half years. The modified requirements at 50.55(b)(2)(ix) which are reported in the ISI Summary Report would be submitted with the Subsection IWL report. The ASME Code requires that these records and reports be retained for the service lifetime of the component or system.

5. Who will be required or asked to report: Nuclear power plant licensees.

6. An estimate of the number of respondents: 117.

7. An estimate of the number of hours annually needed to complete the requirement or request: 117,000 hours over the first four years (1,000 hours per plant) for development of the inservice inspection plan, plus 12,000 hours (1,180 per plant) for the periodic update of the plan.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Applicable.

9. Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, "Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants," and Subsection IWL, "Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants," of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with specified modifications and a limitation. Subsection IWE of the ASME Code provides rules for inservice inspection, repair, and replacement of Class MC pressure retaining components and their integral attachments and of metallic shell and penetration liner of Class CC pressure retaining components and their integral attachments in light-water cooled water plants. Subsection IWL of the ASME Code provides rules for inservice inspection and repair of the reinforced concrete and the post-tensioning systems of Class CC components. Provisions have been proposed that would prevent unnecessary duplication of examinations between the expedited examination and the routine 120-month ISI examinations. Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC regulations. This proposed amendment would specify requirements to assure that the critical areas of containments are routinely inspected to detect defects that could compromise a containment's pressure-retaining integrity.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150-0011), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 9th day of December 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 93-31052 Filed 12-20-93; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the 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).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Application for License to Export Nuclear Material and Equipment.

3. The form number of applicable: NRC Form 7.

4. How often the collection is required: On occasion; once for each separate request for a specific export license.

5. Who will be required or asked to report: Any person in the U.S. who wishes to export nuclear material and equipment subject to the requirements of a specific license.

6. An estimate of the number of reporting responses: 150.

7. An estimate of the total number of hours needed to complete the requirement or request: 257 hours (1.7 hours per response).

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization should file an application for a license on NRC Form 7. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0027), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at 202/395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301/492–8132.

Dated at Bethesda, Maryland this 9th day of December 1993.

For the U.S. Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–31053 Filed 12–20–93; 8:45 am]

BILLING CODE 7590–01–M

Millstone Local Public Document Room

Notice is hereby given that the name of the college that houses the Nuclear Regulatory Commission's (NRC) Millstone Local Public Document Room (LPDR) has been changed. The name of the college has been changed from "Thames Valley State Technical College," to "Three Rivers Community-Technical College." The complete address for the Millstone LPDR should read:

Learning Resources Center,
Three Rivers Community-Technical College,
Thames Valley Campus,
574 New London Turnpike,
Norwich, CT 06360.

Questions concerning the NRC's LPDR program or the availability of documents should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 492–4344, or toll-free 1–800–638–8081.

Dated at Bethesda, Maryland, this 15th day of December 1993.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–31051 Filed 12–20–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–30485–EA; ASLBP No. 94–685–02–EA]

Indiana Regional Cancer Center; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Indiana Regional Cancer Center, Indiana, PA

Byproduct Material License No. 37–28179–01

[EA 93–284]

This Board is being established pursuant to the request by the Indiana Regional Cancer Center (the Licensee), dated December 2, 1993, for a hearing regarding an Order issued by the Director, Office of Enforcement, dated November 22, 1993, entitled "Order Modifying and Suspending License (Effective Immediately) and Demand for Information," 58 FR 61932 (1993). The Order suspends, effective immediately, License No. 37–28179–01 pending further Order and modifies the license to remove Dr. James E. Bauer from activities under the license. This suspension precludes the Licensee from receiving any licensed material and using any byproduct material in its possession.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701 (1993). The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 14th day of December 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93–31050 Filed 12–20–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has signed a Decision concerning a request dated May 26, 1993 (Petition), filed pursuant to 10 CFR 2.206 by Mr. Ernest C. Hadley on behalf of We The People, Inc. (Petitioner).

The Petition requested that Pilgrim Nuclear Power Station (PNPS) not be permitted to operate until the licensee completes hardware modifications designed to eliminate errors in reactor water level measurement. The Petitioner contends that the system in place at PNPS does not adequately measure the water level of the reactor vessel and thus constitutes an unacceptable risk to the health and safety of the public. The Petitioner alleges that the NRC staff informed the public in February 1993 that the NRC had based its determination that continued operation of boiling water reactors (BWRs), such as PNPS, did not pose a safety threat on generic studies performed by the Boiling Water Reactor Owners Group (BWROG). These studies showed that water level errors would be measured in inches and would be self-correcting within a short period of time. The Petitioner alleges that these assurances were given despite the fact that on January 21, 1993, Washington Nuclear 2 (WNP–2) reported a significant event in which a water level error lasting for more than

1 hour in duration was observed. It is further alleged that this error was significantly larger than those previously observed.

Additionally, the Petitioner alleges that it requested from the NRC information used by PNPS to make its operability determination for the water-level measurement system, as required by the technical specifications for PNPS. Because the NRC failed to provide this information, the Petitioner concludes that such information either does not exist or would not withstand independent scrutiny.

Finally, the Petitioner refers to a meeting of the Advisory Committee on Reactor Safeguards held on May 12, 1993, which included the BWROG. It is the Petitioner's understanding that during the closed session of that meeting, the BWROG and the NRC staff confirmed that water measurement errors could be on the order of 27 feet and that neither the BWROG nor the NRC staff any longer believes the error will correct itself with the passage of time.

On June 22, 1993, I informed the Petitioner that I was denying the request for immediate action, that the remainder of the Petitioner's request was being treated under 10 CFR 2.206 of the Commission's regulations, and that a final decision would be issued within a reasonable time.

I have determined that the Petition should be denied. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD-93-20), which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim facility at Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 14th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31054 Filed 12-20-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station, License No. DPR-28; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated April 8, 1993, as supplemented by a letter dated April 11, 1993, filed by Michael Daley on behalf of the New England Coalition on Nuclear Pollution, Inc. (Petitioner). The Petitioner requested that the NRC take immediate enforcement action to require that the reactor at the Vermont Yankee Nuclear Power Station remain in cold shutdown until plant management could provide proof that the emergency diesel generators at the plant are able to meet their safety function.

The Petition sought relief on the basis of assertions that (1) diesel generator "A" was damaged by overload conditions suffered during testing in August through October of 1990; (2) the "B" unit also suffered under the same testing regime; (3) one of the causes of the repeated failures of the "A" unit in the summer of 1992 was the damage from this testing; (4) the overloading resulted from inappropriate actions taken in response to an NRC-identified violation indicating that the EDG had for 20 years not been tested at loads consistent with the maximum expected accident load; and (5) the foregoing raises a number of questions that must be answered immediately if VY is going to be allowed to depend on these machines to fulfill the regulatory requirements for adequate onsite emergency backup power systems.

On April 13, 1993, the Regional Administrator for Region I, denied the Petitioner's request. On June 21, 1993, the Director of the Office of Nuclear Reactor Regulation specified the bases for the Regional Administrator's actions and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206. The Director has determined that the Petitioner's request should be denied. The reasons for the denial are given in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-93-19), which is available for inspection and copying in the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room for the Vermont Yankee Nuclear Power Station at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As stated in 10 CFR 2.206(c), the decision will become final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes review of the decision within that time.

Dated at Rockville, Maryland, this 14th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31055 Filed 12-20-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

December 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Banco Frances Del Rio De La Plata S.A.
American Depositary Shares, each representing 3 Ord. Shares, $1.00 Par Value (File No. 7-11687)

Elsag Bailey Process Automation
Common Stock, $1.00 Par Value (File No. 7-11688)

Sofamor Danek Group, Inc.
Common Stock, No Par Value (File No. 7-11689)

Sheffield Medical Technologies, Inc.
Common Stock, No Par Value (File No. 7-11690)

SOI Industries, Inc.
Common Stock, $.000025 Par Value (File No. 7-11691)

TCW/DW Term Trust 2000
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-11692)

Talbots, Inc.
Common Stock, $.01 Par Value (File No. 7-11693)

Irvine Apartment Communities, Inc.
Common Stock, $.01 Par Value (File No. 7-11694)

PaineWebber Premier Income Trust, Inc.
Common Stock, $.001 Par Value (File No. 7-11695)

Pactel Corp.
Common Stock, $.01 Par Value (File No. 7-11696)

Grupo Financiero Serfin S.A. de C.V.
American Dep. Shares (each representing 4 Series L), N Par Value (File No. 7-11697)

Suncor, Inc

Common Stock, No Par Value (File No. 7–11698)
Valley National Bankcorp
Common Stock, No Par Value (File No. 7–11699)
Van Kampen Merritt Advantage Municipal Income Trust II
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11700)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31017 Filed 12–20–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Santander Finance Ltd.
Non-cum Gtd. Pref. Shs., Ser. A, $25.00 Par Value (File No. 7–11701)
Texaco Capitol LLC
6⅞% Cum. Gtd. Monthly Income Pfd. Shrs. (MIP's) Ser. A (File No. 7–11702)
Asia Tigers Fund
Common Stock, $.001 Par Value (File No. 7–11703)
Chateau Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11704)
Elsag Bailey Process Automation NV
Common Shares, NLG, $1.00 Par Value (File No. 7–11705)
Enron Capital LLC
8% Cm. Gtd. Monthly Income Pfd. Shrs. (MIP's) (File No. 7–11706)
Heritage U.S. Government Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7–11707)
Morgan Stanley High Yield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11708)
Smith Barney High Income Opportunity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11709)
Sofamor Danek Group, Inc.
Common Stock, No Par Value (File No. 7–11710)
Talbots, Inc.
Common Stock, $.01 Par Value (File No. 7–11711)
TCW/DW Term Trust 2000
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11712)
Torch Energy Royalty Trust
Trust Units (File No. 7–11713)
Triarc Co.'s, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–11714)
Washington Natural Gas Co.
7.45% Pfd. Stk. Ser. 2, $25.00 Par Value (File No 7–11715)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–31018 Filed 12–20–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Washington Natural Gas Co.
7.45% Pfd Stock Series II Par Value $25 (File No. 7–11666)
Talbots, Inc.
Common Stock, $.01 Per Value (File No. 7–11667)
Sofamor Danek Group, Inc.
Common Stock, No Par Value (File No. 7–11668)
Elsag Bailey Process Automation N.V.
Common Shares NLG $1.00 Par Value (File No. 7–11669)
SOI Industries, Inc.
Common Stock, $.000025 Par Value (File No. 7–11670)
Torch Energy Royalty Trust
Units (File No. 7–11671)
TCW/DW Term Trust 2004
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11672)
Moore Medical Corporation
Common Stock, $.01 Par Value (File No. 7–11673)
Statesman Group, Inc.
Common Stock, $1 Par Value (File No. 7–11674)
Sheffield Medical Technologies, Inc.
Common Stock, No Par Value (File No. 7–11675)
GC Companies, Inc.
When Issued Common Stock, $.01 Par Value (File No. 7–11676)
Franklin Supply Co. Ltd.
Common Stock, No Par Value (File No. 7–11677)
Suncor, Inc.
Common Stock, $.01 Par Value (File No. 7–11678)
Aviall, Inc.
When Issued Common Stock, $.01 Par Value (File No. 7–11679)
Municipal Advantage Fund
Common Stock, $.01 Par Value (File No. 7–11680)
Valley National Bankcorp
Common Stock, No Par Value (File No. 7–11681)
PaineWebber High Income Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11682)
National Westminster Bank Plc
Exch. Capital Securities Series A (File No. 7–11683)
PorTec, Inc.
Common Stock, $.01 Par Value (File No. 7–11684)
Asia Tigers Fund, Inc.

Common Stock, $.001 Par Value (File No. 7-11685)
Van Kampen Merritt Advantage Municipal Trust II
Common Stock, $.01 Par Value (File No. 7-11686)

Interested persons are invited to submit on or before January 7, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-31019 Filed 12-20-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19952; 811-3608]

John Hancock Asset Allocation Fund; Application for Deregistration

December 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: John Hancock Asset Allocation Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 101 Huntington Avenue, Boston, Massachusetts 02199-7603.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272-3030, or Barry D. Miller, Senior Special Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company organized as a Massachusetts business trust under a Declaration of Trust dated November 23, 1982. On November 23, 1982, applicant registered as an investment company under the Act and filed a registration statement pursuant to section 8(a) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest without par value. Applicant's registration statement became effective on March 18, 1983, and applicant's public offering of its shares commenced soon thereafter.

2. On June 15, 1993, applicant's board of trustees, including a majority of the trustees who were not interested persons of applicant, approved the transactions contemplated by an Agreement and Plan of Reorganization dated June 30, 1993 (the "Agreement") that provided for the transfer of all the assets of applicant to the John Hancock Sovereign Balanced Fund ("Sovereign Balanced") (the "Reorganization") in exchange for shares of beneficial interest of Sovereign Balanced, and recommended that applicant's shareholders approve the Agreement. Sovereign Balanced is a series of Sovereign Investors, a Maryland corporation registered as an open-end, management investment company. The Agreement also provided for the assumption by Sovereign Balanced of certain stated liabilities of applicant. The Reorganization was effected pursuant to rule 17a-8 under the Act.

3. A Proxy Statement, dated July 30, 1993, relating to the Reorganization, was distributed to applicant's shareholders. On September 21, 1993, a majority of applicant's shareholders approved the Agreement and the Reorganization.

4. On September 24, 1993, pursuant to the Agreement, applicant transferred all of its assets and liabilities set forth in the Statement of Assets and Liabilities to the Agreement to Sovereign Balanced, in exchange for shares of Sovereign Balanced and the assumption by Sovereign Balanced of all the liabilities of applicant. Immediately thereafter, applicant distributed the shares of Sovereign Balanced received in connection with the Reorganization to applicant's shareholders in complete liquidation. After completion of the Reorganization, each shareholder of applicant owned shares of Sovereign Balanced with the same aggregate net asset value as the shares of applicant they owned immediately prior to the Reorganization.

5. As of September 24, 1993, applicant had outstanding 2,821,231.447 shares of beneficial interest, no par value, representing an aggregate net asset value of $34,316,856.74, or a per share net asset value of $12.1638. In exchange for $34,316,856.74 of assets transferred to Sovereign Balanced, Sovereign Balanced issued 3,186,101.008 shares of beneficial interest at a net asset value per share of $10.7708, determined as of the close of business on September 24, 1993.

6. Applicant and Sovereign Balanced each assumed its own expenses in connection with the Reorganization. Legal, accounting, and printing and mailing expenses in the approximate amounts of $41,500, $4,290, and $15,000, respectively, were borne by applicant. Reorganization expenses of $37,500 and $4,500 for legal and accounting services, respectively, were incurred by Sovereign Balanced.

7. Applicant was terminated as a Massachusetts business trust as of September 27, 1993 pursuant to a Termination of Trust filed with the Secretary of State of the Commonwealth of Massachusetts on that date, having met all the prerequisites for such termination.

8. At the time of filing the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is engaged in only those business activities necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31020 Filed 12-20-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19951; 811-3806]

SunAmerica Capital Appreciation Fund, Inc.; Application for Deregistration

December 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SunAmerica Capital Appreciation Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. On July 22, 1983, applicant (formerly Integrated Capital Appreciation Fund, Inc.) filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on February 27, 1985, and applicant commenced its initial public offering on March 13, 1985.

2. On March 31, 1993, applicant's board of directors approved a plan of reorganization whereby applicant agreed to transfer all of its assets and liabilities to SunAmerica Value Fund (the "Acquiring Fund"), a portfolio of SunAmerica Equity Funds, in exchange for shares of beneficial interest of the Acquiring Fund. In accordance with rule 17a-8 of the Act, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

3. Preliminary and definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC. Proxy materials were distributed to applicant's shareholders of record on or about July 29, 1993. The reorganization was approved, in accordance with Maryland law, by applicant's shareholders at a meeting held on September 23, 1993.

4. Prior to the reorganization, applicant had 4,664,091.071 shares of common stock outstanding, having an aggregate net asset value of $75,325,070.79 and a per share net asset value of $16.15. On September 24, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange, applicant received 4,664,091.071 shares of the Acquiring Fund having an aggregate net asset value of $75,325,070.79 and a net asset value per share of $16.15. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

5. The expenses in connection with the reorganization consisted of legal, accounting, printing, and proxy materials expenses, which are not expected to exceed $50,000. These expenses were borne by applicant and the Acquiring Fund.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31021 Filed 12-20-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

Issuer Delisting; Application to Withdraw From Listing and Registration; (Tee-Comm Electronics, Inc., Common Stock, No Par Value) File No. 1-11358

December 14, 1993.

Tee-Comm Electronics, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on September 24, 1993, to withdraw the Company's Common Stock from listing on the (Amex) and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the

Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 6, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-31022 Filed 12-20-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Pacific Mezzanine Fund, L.P. (Application No. 99000081)

In the matter of Second Notice of Filing of an Application for a License to Operate as a Small Business Investment Company (First Notice was Published on July 26, 1993)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Pacific Mezzanine Fund, L.P., 88 Kearny Street, San Francisco, California 94108, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder. Pacific Mezzanine Fund, L.P. is a California limited partnership.

Pacific Mezzanine Fund, L.P. will be managed by its General Partner, Pacific Private Capital located at the same address as the applicant. David C. Woodward and Nathan W. Bell are the sole beneficial owners of Pacific Private Capital. The following limited partners own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
BBU Mezzanine Fund II, 88 Kearny Street, suite 1850, San Francisco, California 94108	29.4
Palmetto Partners, L.P., 1600 Smith Street, suite 5000, Houston, Texas 77002	41.2

The following investors own 10 percent or more of the applicant through their investments in the entities listed above:

ABN AMRO Holding N.V, Foppingadreef 22, 1102 BS Amsterdam, The Netherlands.

Robert McNair, 1600 Smith Street, suite 5000, Houston, Texas 77002.

The applicant will begin operations with capitalization of approximately $5.0 million and will be a source of debt and equity financings for qualified small business concerns. The applicant will invest primarily in the Western States but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 10, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93-31057 Filed 12-20-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 10, 1993

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49297
Date filed: December 6, 1993
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0617 dated October 19, 1993; Africa-TC3 Tesos r-1 to r-34
Proposed Effective Date: April 1, 1994.

Docket Number: 49298
Date filed: December 6, 1993
Parties: Members of the International Air Transport Association
Subject: TC31 Telex Mail Vote 658; South Asian Subcontinent-North America/Caribbean; Passenger fares r-1 to r-5
Proposed Effective Date: April 1, 1994.

Docket Number: 49299
Date filed: December 6, 1993
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/073 dated November 22, 1993; Finally Adopted Resolutions r-1 to r-63; Minutes—PSC/Minutes/026 dated November 22, 1993
Proposed Effective Date: June 1, 1994/ Jan. 1, 1995.

Docket Number: 49309
Date filed: December 10, 1993
Parties: Members of the International Air Transport Association
Subject: COMP Mail Vote 661; Charge for PTA Services—Malawi
Proposed Effective Date: January 5, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-31109 Filed 12-20-93; 8:45 am]

BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 10, 1993

The following applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or

Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49303
Date filed: December 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 5, 1994
Description: Application of Continental Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for amendment of its certificate for Route 561 to authorize Continental to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas, on the one hand, and Leon and Veracruz, Mexico, on the other hand.

Docket Number: 49307
Date filed : December 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1994
Description: Application of All-America-Airlines, Inc., pursuant to Section 401(d)(1), of the Act and Subpart Q of the Regulations, requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any point in any state in the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 49308
Date filed: December 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1994
Description: Application of Tri Star Airlines Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Act, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation. Applicant proposes to inaugurate service with daily nonstop flights between Las Vegas McCarran International Airport, Las Vegas, Nevada and Grand Canyon National Park Airport, Grand Canyon, Arizona.

Docket Number: 49310
Date filed: December 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1994
Description: Application of Rich International Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize Rich to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: 45723
Date filed: December 8, 1993 Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 5, 1994
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its Air Carrier Permit to engage in the scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination route: The terminal point Guadalajara, Mexico, on the one hand, and the terminal point Detroit, MI, on the other hand.

Docket Number : 49289
Date filed: December 6, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1993
Description: First Amendment to the Application of Great American Airways, Inc., pursuant to Section 401(h) of the act, amends its application to include, in the alternative, a requests for approval of the transfer of Great American's certificates of public convenience and necessity to Target Airways, Ltd., d/b/a Great American Airways.

Phyllis T. Kaylor
Chief, Documentary Services Division.
[FR Doc. 93-31110 Filed 12-20-93; 8:45 am]
BILLING CODE 4910-62-P

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: December 14, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

SUPPLEMENTARY INFORMATION: Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on December 14, 1993:

DOT No: 3844.
OMB No: 2133-0018.
Administration: Maritime Administration.
Title: Title XI Obligation Guarantees—46 CFR part 298.
Need for Information: Under title XI of the Merchant Marine Act of 1936, as amended, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels.
Proposed Use of Information: The information will be used to determine the economic soundness of a project, financial and operating capability of the

applicant and U.S. citizenship of the applicant.

Frequency: On occasion.

Burden Estimate: 800 hours.

Respondents: Vessel owners.

Form(s): MA–163 and attachments.

Average Burden Hours Per Response: 80 hours reporting.

DOT No: 3845.

OMB No: 2125–0025.

Administration: Federal Highway Administration

Title: Highway Safety Improvement Program and Priorities.

Need for Information: Title 23 CFR 924 requires each state to submit an annual report on the progress being made to implement highway safety improvement projects for hazard elimination and grade crossing and the effectiveness of such improvements.

Proposed Use of Information: The information is used by the FHWA to prepare a report to Congress on the effectiveness of highway safety improvement projects, to evaluate its overall highway safety improvement program and to determine whether Federal-aid funds should be used for projects proposed by States.

Frequency: Annually.

Burden Estimate: 96,187 hours.

Respondents: State highway agencies.

Form(s): None.

Average Burden Hours Per Response: 357 hours reporting; 1,367 hours recordkeeping.

DOT No: 3846.

OMB No: 2125–0019.

Administration: Federal Highway Administration.

Title: Federal-aid Highway Construction Equal Employment Opportunity.

Need for Information: Title 23 CFR 230 requires contractors to submit to State Highway Agencies (SHA) an annual report proving employment workforce data. The SHAs must submit a report to FHWA summarizing the data.

Proposed Use of Information: The SHAs use the data to monitor and evaluate the effectiveness of Federal-aid contractors' Equal Employment Opportunity programs. The FHWA uses the information to determine patterns and trends of equal employment in the highway construction industry.

Frequency: Annually.

Burden Estimate: 6,580 hours.

Respondents: State highway agencies.

Form(s): PR–1391 and PR–1392.

Average Burden Hours Per Response: Form PR–1391—1 hour reporting; Form PR–1392—40 hours reporting.

DOT No: 3847.

OMB No: 2125–0519.

Administration: Federal Highway Administration.

Title: Developing and Recording Costs for Utility Adjustments.

Need for Information: Title 23 CFR part 645 requires utility companies to maintain adequate records to support costs incurred for reimbursable utility adjustments on Federal-aid highway projects.

Proposed Use of Information: The information will be used by the FHWA to reimburse State highway agencies for the costs of construction of Federal-aid projects.

Frequency: Recordkeeping (3 year retention period).

Burden Estimate: 360,000 hours.

Respondents: Utility companies.

Form(s): None.

Average Burden Hours Per Response: 120 hours recordkeeping.

DOT No: 3848.

OMB No: 2120–0015.

Administration: Federal Aviation Administration.

Title: FAA Airport Master Record.

Need for Information: The Federal Aviation Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out FAA missions related to safety, forecasting, and airport engineering.

Proposed Use of Information: The information collected is the basic source of data for private, state, Federal and governmental aeronautical charts and publications.

Frequency: On occasion, annually.

Burden Estimate: 87,000 hours.

Respondents: Airport owners/operators.

Form(s): FAA Forms 5010–1, 5010–2, 5010–3, and 5010–5.

Average Burden Hours Per Response: 19 minutes reporting.

DOT No: 3849.

OMB No: 2127–0044.

Administration: National Highway Traffic Safety Administration.

Title: Names and Addresses of First Purchasers of Motor Vehicles.

Need for Information: Title 15 U.S.C. 1418(b) requires every manufacturer of motor vehicles to establish and maintain records of the name and address of the first purchaser of each motor vehicle produced by such manufacturer.

Proposed Use of Information: The vehicle manufacturers use the information to directly notify first purchasers of new motor vehicles in case there is a recall of their vehicle.

Frequency: On occasion.

Burden Estimate: 950,000 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Response: 3 minutes reporting; 238 hours recordkeeping.

DOT No: 3850.

OMB No: 2120–0014.

Administration: Federal Aviation Administration.

Title: Procedures for non-Federal Navigation Facilities, FAR 171.

Need for Information: FAR Part 171 establishes procedures and requirements for sponsors, both private and public, to purchase, install, operate and maintain electronic navaids for use by the flying public in the National Airspace System.

Proposed Use of Information: The information is required by FAA as proof that the facility is maintained within certain specified tolerances. In the event of an aircraft accident, the logs of the maintenance record of the facilities involved must be complete and available as possible evidence in court during litigation.

Frequency: On occasion, monthly.

Burden Estimate: 20,792 hours.

Respondents: State or local governments.

Form(s): FAA Forms 198 (or the replacement version).6030–1, 418, and 6790–4.

Average Burden Hours Per Response: 9 minutes reporting; 13 hours recordkeeping.

DOT No: 3851.

OMB No: 2127–0506.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR 571.125, Warning Devices.

Need for Information: In accordance with Federal Motor Vehicle Safety Standard No. 125, manufacturers are required to provide permanently attached labels on warning devices giving name of manufacturer, and date of manufacture, certifying that it conforms with the applicable standard.

Proposed Use of Information: The information will provide for the proper deployment and use of warning devices and increase their effectiveness in warning approaching traffic of the presence of a stopped vehicle.

Frequency: On occasion.

Burden Estimate: 3,192 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 1 minute reporting.

DOT No: 3852.

OMB No: 2115–0035.

Administration: U.S. Coast Guard.

Title: Defect/Noncompliance Report: Campaign Update Report.

Need for Information: In accordance with 46 U.S.C. 4310, the Coast Guard monitors defect notification and recall campaigns being conducted by boat and engine manufacturers.

Proposed Use of Information: This information will be used by the Coast Guard to: (1) Determine the severity of defects and failures in boats, inboard engines, outboard motors, or stern drive units; (2) determine the degree of danger to the public if continued use of the product is not corrected; (3) determine if the manufacturer's proposed method of correction is appropriate; and (4) monitor the progress of the manufacturer's notification to the owner for correction of the affected units.

Frequency: Annually.

Burden Estimate: 540 hours.

Respondents: Manufacturers of boats and equipment.

Form(s): CG 4917 and CG 4918.

Average Burden Hours Per Response: 45 minutes reporting; 2 hours and 30 minutes recordkeeping.

DOT No: 3853.

OMB No: New.

Administration: Federal Transit Administration.

Title: State Responsibility for Rail Fixed Guideway System Safety.

Need for Information: Section 28 of the Federal Transit Act, as amended, directs FTA to issue a rule requiring States to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration.

Proposed Use of Information: The information will be used to monitor a State's compliance with Section 28. FTA will use the information in exercising its authority to withhold Federal funding to a State or an urbanized area in the State.

Frequency: Annually, biennially, triennially.

Burden Estimate: 53,794 hours.

Respondents: State oversight agencies and rail fixed guideway systems.

Form(s): None.

Average Burden Hours Per Response: 166 hours reporting.

DOT No: 3854.

OMB No: 2133–0509.

Administration: Maritime Administration.

Title: Service Obligation Compliance Report.

Need for Information: Public Law 96–453 requires a mandatory service obligation for graduates of the U.S. Merchant Marine Academy and State maritime academies.

Proposed Use of Information: The information will be used by MARAD to monitor a graduate's compliance with the service obligation.

Frequency: Annually.

Burden Estimate: 2,090 hours.

Respondents: Graduates of the U.S. Merchant Marine Academy and State maritime academies.

Form(s): MA–935, MA–936 and MA–937.

Average Burden Hours Per Response: 30 minutes reporting.

DOT No: 3855.

OMB No: 2133–0521.

Administration: Maritime Administration.

Title: Procedures; New Subpart B—Application for Designations of Vessels as American Great Lakes Vessels.

Need for Information: Public Law 101–624 directs the Secretary of Transportation to issue regulations that establish requirements for the submission of applications by owners of ocean vessels for designation of vessels as American Great Lakes Vessels.

Proposed Use of Information: MARAD will use the information to determine if a vessel meets statutory criteria for obtaining the benefit of eligibility to carry preference cargoes.

Frequency: On occasion.

Burden Estimate: 1 hour and 15 minutes.

Respondents: Vessel owners.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 15 minutes reporting.

DOT No: 3856.

OMB No: 2133–0510.

Administration: Maritime Administration.

Title: Request for Waiver of Service Obligation; Request for Deferment of Service Obligation; Request for Review of Waiver/Deferment Decisions.

Need for Information: Public Law 96–453 authorizes waivers and deferments of the mandatory service obligation incurred by graduates of the U.S. Merchant Marine Academy and subsidized graduates of State maritime academies.

Proposed Use of Information: The information is used by MARAD to monitor the service obligation, to consider waiver of the service obligation, to decide deferments, and to review decisions.

Frequency: On occasion.

Burden Estimate: 30 hours.

Respondents: Graduates of the U.S. Merchant Marine Academy and State maritime academies.

Form(s): MA–935, MA–936 and MA–937.

Average Burden Hours Per Response: 18 minutes reporting.

DOT No: 3857.

OMB No: New.

Administration: U.S. Coast Guard.

Title: Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls.

Need for Information: This information collection is needed by the Coast Guard to ensure that tank vessels over 5,000 gross tons that carry oil comply with certain structural and operational requirements. These requirements will provide substantial protection to the environment. It will also reduce oil outflow from single hull vessels until they are required to be fitted with a double hull.

Proposed Use of Information: Coast Guard will use this information to determine if a vessel's construction, arrangement and/or equipment meet the standards as required by the regulations.

Frequency: One time.

Burden Estimate: 592,956 hours.

Respondents: Owners/operators of single hull tank vessels over 5,000 gross tons.

Form(s): None.

Average Burden Hours Per Response: 2,534 hours reporting.

DOT No: 3858.

OMB No: 2115–0053.

Administration: U.S. Coast Guard.

Title: Request for Designation and Exemption of Oceanographic Vessels.

Need for Information: Title 46 CFR 3.10 and 46 CFR 14.20, detail the procedures for designation and exemption of oceanographic research vessels.

Proposed Use of Information: This information collection will be used by the Coast Guard to determine if certain oceanographic vessels should be exempted from specific regulatory requirements governing the shipment, discharge, payment, and personal outfitting of merchant seamen.

Frequency: On occasion.

Burden Estimate: 13 hours.

Respondents: Owner/master of oceanographic vessels.

Form(s): None.

Average Burden Hours Per Response: 1 hour reporting; 30 minutes recordkeeping.

DOT No: 3859.

OMB No: 2130–0500.

Administration: Federal Railroad Administration.

Title: Accident/Incident Reporting and Recordkeeping Requirements.

Need for Information: The Rail Safety Act of 1970 and the Rail Safety Improvement Act of 1988 prescribe terms, conditions, and limitations necessary to ensure rail safety.

Proposed Use of Information: FRA uses this information to identify hazardous conditions associated with rail transportation and to assure compliance with the Rail Safety Act of 1970 and the Rail Safety Improvement Act of 1988.

Frequency: On occasion, monthly, annually, recordkeeping.

Burden Estimate: 46,657 hours.
Respondents: Railroads.
Form(s): FRA–F–6180.45; FRA–F–6180.54; FRA–F–6180.55; FRA–F–6180.55A; FRA–F–6180.56; FRA–F–6180.57; FRA–F–6180.78; FRA–F–6180.81.
Average Burden Hours Per Response: 57 hours and 24 minutes reporting; 16 hours and 4 minutes recordkeeping.
DOT No: 3860.
OMB No: 2127–0004.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 573, Defect and Noncompliance Reports.
Need for Information: Title 15 U.S.C 1411–1420 requires the manufacturers of motor vehicles and motor vehicle equipment to recall and remedy their products that do not comply with applicable safety standards or contain a defect related to motor vehicle safety.
Proposed Use of Information: Manufacturers of motor vehicles and equipment are required to report to NHTSA when they determine a recall campaign is needed. This helps NHTSA know the manufacturer's determination. The manufacturer must report the status of the recall campaign, so NHTSA can monitor the recall.
Frequency: On occasion.
Burden Estimate: 6,300 hours.
Respondents: Businesses/small businesses or organizations.
Form(s): None.
Average Burden Hours Per Response: 14 hours reporting; 4 hours recordkeeping.
DOT No: 3861.
OMB No: 2127–0019.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 537, Automotive Fuel Economy Reports.
Need for Information: Section 505 of the Motor Vehicle Information and Cost Savings Act requires each automobile manufacturer to submit reports to NHTSA relating to that manufacturer's efforts to comply with the mandated average fuel economy standards.
Proposed Use of Information: Major domestic and foreign automobile manufacturers provide NHTSA with technical and fuel economy performance information which is examined to see how the manufacturer will comply with applicable average fuel economy standards. The information is reported to Congress and used to respond to inquiries and for evaluation of future standards.
Frequency: Semi-annually.
Burden Estimate: 4,500 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Response: 5 minutes reporting.
DOT No: 3862.
OMB No: 2120–0543.
Administration: Federal Aviation Administration.
Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures.
Need for Information: In accordance with 14 CFR parts 61 and 62, airmen are required to report to FAA all alcohol or drug-related conviction or administrative actions.
Proposed Use of Information: The information is used to identify persons possibly unsuited for pilot certification. The requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight.
Frequency: On occasion.
Burden Estimate: 364 hours.
Respondents: Individual airmen.
Form(s): FAA Form 8500–8.
Average Burden Hours Per Response: 10 minutes reporting.
DOT No: 3863.
OMB No: 2120–0026.
Administration: Federal Aviation Administration.
Title: Flight Plans (Domestic/International).
Need for Information: Title III, section 307(c) of the Federal Aviation Act of 1958, as amended, prescribes air traffic rules and regulations governing the flight of aircraft and property and persons on the ground.
Proposed Use of Information: The information is collected to provide protection to aircraft in flight and persons and property on the ground. The information would be used to keep air traffic control personnel aware of specific flight activity, and if necessary, initiate timely search and rescue actions whenever an aircraft is determined to be overdue at the filed destination location.
Frequency: On occasion.
Burden Estimate: 268,408 hours.
Respondents: All.
Form(s): FAA Forms 7233–1 and 7233–4.
Average Burden Hours Per Response: 2 hours and 30 minutes reporting.
DOT No: 3864.
OMB No: 2115–0506.
Administration: U.S. Coast Guard.
Title: Declaration of Inspection.
Need for Information: This information collection requirement is needed to establish safety procedures, methods and equipment requirements to prevent the discharge of oil and hazardous material from vessels, onshore and offshore facilities.
Proposed Use of Information: This information collection will be used to identify potential or actual violations of the regulations. The Declaration of Inspection will be used to ensure compliance with specific procedures to prevent pollution of U.S. waters or damage to vessels and facilities.
Frequency: Weekly.
Burden Estimate: 78,000 hours.
Respondents: Owners/operators of vessels.
Form(s): None.
Average Burden Hours Per Response: 9 hours and 51 minutes recordkeeping.
DOT No: 3865.
OMB No: 2115–0586.
Administration: U.S. Coast Guard.
Title: Benzene.
Need for Information: This information requirement is needed to ensure that shipowners transporting benzene or products containing benzene in bulk: (1) establish and maintain accurate records of employee exposure to benzene; (2) provide medical surveillance; and (3) train employees about the hazards of benzene.
Proposed Use of Information: This information requirement will be used by Coast Guard personnel to determine the effectiveness of the vessel owner's benzene exposure reduction program on its employees.
Frequency: On occasion.
Burden Estimate: 59,755 hours.
Respondents: Carriers of benzene and products containing benzene.
Form(s): None.
Average Burden Hours Per Response: 298 hours and 45 minutes recordkeeping.
DOT No: 3866.
OMB No: 2137–0051.
Administration: Research and Special Programs Administration.
Title: Rule Making and Exemption Requirements.
Need for Information: In accordance with the Hazardous Materials Transportation Act, the public is required to be informed about the channels available to request amendment to, or deviation from, the hazardous materials regulations and the information necessary to adequately evaluate the safety of their requests.
Proposed Use of Information: The information collection will provide the regulated public with a means to propose new or amended safety standards or to deviate from the hazardous materials regulations to try out new methods of transportation, packaging, etc. The information will be used to ensure that all conditions of an exemption are adhered to, ensuring the safe transportation of the hazardous materials authorized under its terms.
Frequency: On occasion.

Burden Estimate: 4,319 hours.
Respondents: Shippers, carriers and manufacturers of containers for hazardous materials.
Form(s): None.
Average Burden Hours Per Response: 55 hours and 56 minutes reporting; 30 minutes recordkeeping.
DOT No: 3867.
OMB No: 2137–0559.
Administration: Research and Special Programs Administration.
Title: Rail Carrier and Work Car Requirements.
Need for Information: Title 49 CFR parts 174 and 173 prescribe the requirements for rail carriers and owners of tank cars used in transporting hazardous materials.
Proposed Use of Information: The information is required to ensure that the acceptance, transportation and delivery of hazardous materials by railroad carriers does not pose a danger to life or property. The information will provide a means to assure that these materials are being handled, loaded, and transported in a safe and expeditious manner.
Frequency: Annually.
Burden Estimate: 10,159 hours.
Respondents: Rail carriers and tank car owners.
Form(s): None.
Average Burden Hours Per Response: 43 minutes reporting; 75 hours recordkeeping.
DOT No: 3868.
OMB No: 2138–0004.
Administration: Research and Special Programs Administration.
Title: Part 248—Submission of Audit Reports.
Need for Information: In accordance with 14 CFR Part 248, large certificated air carriers are required to submit audit reports.
Proposed Use of Information: The information will be used to monitor carrier fitness, verify Form 41 submissions, and to meet U.S. Treaty obligations.
Frequency: Annually.
Burden Estimate: 19 hours.
Respondents: Large certificated air carriers.
Form(s): None.
Average Burden Hours Per Response: 15 minutes reporting.
DOT No: 3869.
OMB No: 2137–0014.
Administration: Research and Special Programs Administration.
Title: Cargo Tank Specification Requirements.
Need for Information: The information is needed to enhance the construction integrity of cargo tanks and the operation, maintenance, repair, and requalification of all DOT specification cargo tanks to decrease both the probability and actual number of hazardous materials releases due to accident or tank failure.
Proposed Use of Information: The Department uses the requirements to verify that the inspection, testing, and maintenance standards set forth in the regulations are met and that these containers are safe for continued use in hazardous materials service.
Frequency: On occasion.
Burden Estimate: 291,347 hours.
Respondents: Shippers, carriers, owners, manufacturers, inspectors, repair and maintenance persons of cargo tanks.
Form(s): None.
Average Burden Hours Per Response: 1 hour reporting; 3 hours and 58 minutes recordkeeping.
DOT No: 3870.
OMB No: 2120–0535.
Administration: Federal Aviation Administration.
Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.
Need for Information: The FAA needs the information to monitor program compliance, institute program improvements, and anticipate program problem areas.
Proposed Use of Information: The information to be submitted to the FAA will be analyzed for accuracy, timeliness, and compliance with regulatory requirements. It will be studied to identify significant trends that are manifested through program implementation. The information will form the foundation upon which program modifications and improvements will be made.
Frequency: Annually.
Burden Estimate: 100,275 hours.
Respondents: Selected Air Carrier, Air Taxi and Commuter, Part 135.1c, Part 121 Operators, and Part 145 Contractors.
Form(s): FAA form pending.
Average Burden Hours Per Response: MIS portion—1 hour and 54 minutes reporting; plans—50 hours reporting; 10 hours and 9 minutes recordkeeping.
DOT No: 3871.
OMB No: 2137–0579.
Administration: Research and Special Programs Administration.
Title: Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Results.
Need for Information: The drug testing regulations under 49 CFR Part 199 require pipeline operators to submit an annual report which summarizes critical drug data elements of their anti-drug testing program. Statistical data would provide a mechanism for evaluating the overall effectiveness of pipeline operators' drug testing programs.
Proposed Use of Information: The information will be used to monitor implementation and address compliance and enforcement issues.
Frequency: Annually.
Burden Estimate: 12,809 hours.
Respondents: Pipeline operators.
Form(s): RSPA MIS Form.
Average Burden Hours Per Response: 1 hour reporting; 3 hours and 6 minutes recordkeeping.
DOT No: 3872.
OMB No: 2125–0543.
Administration: Federal Highway Administration.
Title: Controlled Substances Test Reporting Requirement.
Need for Information: The information is needed to implement 49 CFR 40.81, which establishes a standard DOT-wide MIS and requires that annual reports be submitted. Title 49 CFR part 391 requires motor carriers to test their employees for controlled substances, and to compile and maintain annual summaries of their testing programs.
Proposed Use of Information: The information provided will allow the FHWA to determine whether motor carriers are complying with the testing program; to ensure a drug-free motor carrier workforce; and to eliminate drug use/abuse in the motor carrier industry.
Frequency: Annually.
Burden Estimate: 1,055,923 hours.
Respondents: Motor carriers.
Form(s): FHWA MIS Form.
Average Burden Hours Per Response: 48 minutes reporting; 3 hours and 47 minutes recordkeeping.
DOT No: 3873.
OMB No: 2130–0526.
Administration: Federal Railroad Administration.
Title: Control of Alcohol and Drug Use in Railroad Operations.
Need for Information: The FRA's Final Rule on Control of Alcohol and Drug Use in Railroad Operations (49 CFR, part 219) dated February 10, 1986, and FRA's NPRM (57 FR 59608), dated December 15, 1992, proposing to amend and expand the current annual reporting requirements, prescribe the terms and conditions necessary to ensure safety in railroad operations.
Proposed Use of Information: The information will be used by FRA and the railroad industry to determine the extent of alcohol and drug problems, and to curtail the widespread use of alcohol and drugs.

Frequency: Recordkeeping, on occasion, annually.

Burden Estimate: 127,621 hours.

Respondents: Railroads.

Form(s): FRA–F–6180.73, FRA–F–6180.74 and FRA–F–6180.91.

Average Burden Hours Per Response: 3 hours and 21 minutes reporting; 549 hours and 28 minutes recordkeeping.

DOT No: 3874.

OMB No: 2115–0003.

Administration: U.S. Coast Guard.

Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel and Commercial Vessel and Personnel Accidents.

Need for Information: This information collection is needed to: (1) improve the Coast Guard's capability to detect or reduce drug use by the commercial mariner; (2) deny the issuance of seaman's papers to users of dangerous drugs; (3) be informed of marine accidents that involve death, serious injury and material damage affecting the seaworthiness of a vessel; and (4) allow a more comprehensive assessment of critical program areas, including the deterrent effect of testing, drug abuse patterns, and effectiveness of employer rehabilitation policies and programs.

Proposed Use of Information: This information will be used by the Coast Guard to identify users of dangerous drugs and alcohol in the merchant marine industry and to determine if certain applicants are qualified to be issued seaman's papers. The marine casualty information will be used to determine the extent of an investigation and the corrective action to be taken. This information will also be used by other Federal, state or local agencies for civil or criminal enforcement actions. The annual information will be used to identify significant trends of drug abuse in the marine industry and to form the basis for program modification and improvement.

Frequency: On occasion.

Burden Estimate: 33,878 hours.

Respondents: Commercial marine industry.

Form(s): CG–2692, CG–2692A, CG–2692B and CG Drug and Alcohol Testing Management Information System Data Collection Form.

Average Burden Hours Per Response: 7 minutes reporting; 20 minutes recordkeeping.

DOT No: 3875.

OMB No: 2125–0196.

Administration: Federal Highway Administration.

Title: Time Records.

Need for Information: Title 49 CFR part 395 authorizes motor carriers to use their time records in lieu of requiring drivers to prepare records of duty status.

Proposed Use of Information: Time records will be used by the FHWA and motor carriers to determine compliance with maximum driving limitations required by 49 CFR part 395.

Frequency: Recordkeeping (6 months).

Burden Estimate: 11,073,333 hours.

Respondents: Motor carriers.

Form(s): None.

Average Burden Hours Per Response: 12 hours and 4 minutes recordkeeping.

DOT No: 3876.

OMB No: 2125–0081.

Administration: Federal Highway Administration.

Title: Qualification Certificate.

Need for Information: In accordance with 49 CFR part 391, when motor carriers use drivers regularly employed by other motor carriers, they must obtain a qualification certificate, in lieu of the complete driver qualification file, from the regularly employing motor carriers, and maintain the certificate for 3 years.

Proposed Use of Information: This information will be used by the FHWA to determine that a driver is qualified.

Frequency: Recordkeeping (3 years).

Burden Estimate: 35,000 hours.

Respondents: Motor carriers, drivers.

Form(s): None.

Average Burden Hours Per Response: 7 minutes recordkeeping.

DOT No: 3877.

OMB No: 2125–0542.

Administration: Federal Highway Administration.

Title: Commercial Driver Licensing and Testing Standards.

Need for Information: Title 49 CFR part 383 provides a mechanism to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

Proposed Use of Information: State officials will use the information to prevent unqualified truck and motorcoach drivers from operating on the nation's highways. The FHWA will use the information to verify State compliance.

Frequency: On occasion.

Burden Estimate: 572,132 hours.

Respondents: Motor carriers.

Form(s): None.

Average Burden Hours Per Response: Notification of violation—10 minutes reporting; employment history—15 minutes reporting.

DOT No: 3878.

OMB No: 2125–0080.

Administration: Federal Highway Administration.

Title: Medical Qualification Requirements.

Need for Information: The provisions of 49 CFR parts 391 and 398 require that each driver regularly employed by a motor carrier have in his or her possession, while driving, a medical examiner's certificate or waiver issued by the FHWA.

Proposed Use of Information: The information collection provides a mechanism for drivers and motor carriers to have the FHWA make a final decision to resolve conflicting medical evaluations when either party does not accept the decision of a medical specialist.

Frequency: Recordkeeping (3 years).

Burden Estimate: 91,744 hours.

Respondents: Motor carriers, drivers.

Form(s): None.

Average Burden Hours Per Response: 2 minutes recordkeeping.

DOT No: 3879.

OMB No: 2106–0001.

Administration: Office of the Secretary.

Title: Free and Reduced Rate Transportation.

Need for Information: Part 223 of the Department's procedural regulations implements that portion of Section 403 of the Federal Aviation Act relating to free and reduced rate transportation.

Proposed Use of Information: The information will be used to monitor carrier compliance with Section 403 requirements, and provide a mechanism for carriers to obtain exemptions.

Frequency: On occasion.

Burden Estimate: 33 hours.

Respondents: U.S. and foreign air carriers.

Form(s): None.

Average Burden Hours Per Response: 15 minutes reporting; 6 minutes recordkeeping.

DOT No: 3880.

OMB No: 2106–0006.

Administration: Office of the Secretary.

Title: Part 323—Terminations, Suspensions, or Reductions of Service.

Need for Information: Section 419 of the Federal Aviation Act of 1958 established a program for insuring the provision of essential air service to specific communities. Carriers are required to give notice before reducing service to these communities below the level defined as essential by DOT.

Proposed Use of Information: The information will be used by DOT, State agencies and affected communities whenever a carrier intends to reduce service. When DOT is alerted by notice,

it issues an order which requests replacement service proposals by carriers, and requires the filing carrier to continue to provide the essential level of service until replacement service is secured.

Frequency: On occasion.

Burden Estimate: 96 hours.

Respondents: Air carriers, State and local governments.

Form(s): None.

Average Burden Hours Per Response: 8 hours reporting.

DOT No: 3881.

OMB No: 2137–0578.

Administration: Research and Special Programs Administration.

Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

Need for Information: The information is needed to ensure operation of low stress pipelines in compliance with regulations.

Proposed Use of Information: The information will be used for monitoring deferred corrective actions on unsafe conditions.

Frequency: On occasion.

Burden Estimate: 1,046 hours.

Respondents: Operators of gas, hazardous liquid, and carbon dioxide pipelines.

Form(s): None.

Average Burden Hours Per Response: 4 hours and 54 minutes reporting.

DOT No: 3882.

OMB No: 2137–0047.

Administration: Research and Special Programs Administration.

Title: Transportation of Hazardous Liquid by Pipelines: Accident Reporting and Recordkeeping.

Need for Information: The information is needed to ensure operation of low stress pipelines in compliance with regulations.

Proposed Use of Information: The information will be used for planning Federal and State safety programs and inspections of individual pipeline units.

Frequency: On occasion.

Burden Estimate: 51,751 hours.

Respondents: Hazardous liquid pipeline operators.

Form(s): DOT Form 7000–1.

Average Burden Hours Per Response: 11 hours and 48 minutes reporting; 139 hours recordkeeping.

DOT No: 3883.

OMB No: 2125–NEW.

Administration: Federal Highway Administration.

Title: Determining Accident Rates for Longer Combination Vehicles (LCVs).

Need for Information: The information is needed to compare the safety of LCVs and conventional tractor semitrailers, using accident data.

Proposed Use of Information: The FHWA will use the information as part of its effort to determine the safety of LCVs.

Frequency: One time.

Burden Estimate: 800 hours.

Respondents: Motor carrier companies operating LCVs.

Form(s): None.

Average Burden Hours Per Response: 4 hours reporting.

Issued in Washington, DC on December 14, 1993.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 93–31111 Filed 12–20–93; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include acetic acid, formic acid, and paraformaldehyde.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On December 13, 1993, the Secretary determined that acetic acid, formic acid, and paraformaldehyde should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective July 1, 1990.

The rate of tax prescribed for acetic acid under section 4671(b)(3), is $1.27 per ton. This is based upon a conversion factor for methane of 0.3709.

The rate of tax prescribed for formic acid under section 4671(b)(3), is $1.89 per ton. This is based upon a conversion factor for butane of 0.3900.

The rate of tax prescribed for paraformaldehyde under section 4671(b)(3), is $2.31 per ton. This is based upon a conversion factor for methane of 0.6716.

The petitioner is Hoechst Celanese, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Acetic Acid

HTS number: 2915.21.00.00

CAS number: 64–19–7

Acetic acid is derived from the taxable chemical methane. Acetic acid is a liquid produced predominantly by methanol carbonylation. Carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for acetic acid is:

$$2\ CH_4\ (\text{methane}) + 2\ H_2O\ (\text{water}) \rightarrow C_2H_4O_2\ (\text{acetic acid}) + 4\ H_2\ (\text{hydrogen})$$

Acetic acid has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 96.7 percent by value of the materials used in its production. The stated cost for methane is $0.0386 per pound and the stated cost for steam is $0.0023 per pound.

Formic Acid

HTS number: 2915.11.00.00

CAS number: 64–18–6

Formic acid is derived from the taxable chemical butane. Formic acid is a liquid produced predominantly as a co-product in the liquid phase oxidation of butane.

The stoichiometric material consumption formula for formic acid is:

$$C_4H_{10}\ (\text{butane}) + 2.5\ O_2\ (\text{oxygen}) \rightarrow CH_2O_2\ (\text{formic acid}) + C_3H_6O_2\ (\text{propionic acid}) + H_2O\ (\text{water})$$

Formic acid has been determined to be a taxable substance because a review

of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 98 percent by value of the materials used in its production. The stated cost for butane is $0.0543 per pound and the stated cost for oxygen is $0.0019 per pound.

Paraformaldehyde

HTS number: 2912.60.00.00
CAS number: 30525–89–4

Paraformaldehyde is derived from the taxable chemical methane. Paraformaldehyde is a solid produced predominantly from aqueous formaldehyde. Formaldehyde is produced by catalytic vapor phase oxidation of methanol. Methanol is produced from methane.

The stoichiometric material consumption formula for paraformaldehyde is:

$10\ CH_4$ (methane)$+5\ O_2$ (oxygen)$+H_2O$ (water) $\rightarrow 10\ H_2$ (hydrogen)$+HO(CH_2O)_{10}H$ (paraformaldehyde)

Paraformaldehyde has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 94.6 percent by value of the materials used in its production. The stated cost for methane is $0.0386 per pound, the stated cost for water (steam) is $0.0023 per pound, and the stated cost for oxygen is $0.0019 per pound.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–31015 Filed 12–20–93; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 58, No. 243
Tuesday, December 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:07 p.m. on Thursday, December 16, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: December 17, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-31274 Filed 12-17-93; 2:41 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 20, 27, 1993 and January 3 and 10, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 20

Monday, December 20

9:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

2:30 p.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202-586-1462)

Tuesday, December 21

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: John Larkins, 301-492-4516)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Modifications to Fitness-for-Duty Program Requirements Concerning the Random Drug Testing Rate (Tentative)
(Contact: Loren Bush, 301-504-2944)
(Postponed from December 14)

3:00 p.m.
Briefing on Results of Fee Study (Public Meeting)
(Contact: James Holloway, 301-492-4301)

Wednesday, December 22

10:00 a.m.
Briefing on Results of License Extension Workshop and Proposed Changes to License Renewal Rule (Public Meeting)
(Contact: Scott Newberry, 301-504-1183)

Week of December 27—Tentative

There are no meetings scheduled for the Week of December 27.

Week of January 3—Tentative

There are no meetings scheduled for the Week of January 3.

Week of January 10—Tentative

Monday, January 10

10:30 a.m.
Briefing on Options for Agreement State Compatibility Policy (Public Meeting)
(Contact: Cardelia Maupin, 301-504-2312)

2:00 p.m.
Briefing on NRC Research Program on Low Level Waste (Public Meeting)
(Contact: Nick Costanzi, 301-492-3760)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: December 16, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-31191 Filed 12-17-93; 11:34 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 243
Tuesday, December 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

10 CFR Part 835

Occupational Radiation Protection

Correction

In rule document 93-27997 beginning on page 65458, in the issue of Tuesday, December 14, 1993, in the first column, in the **EFFECTIVE DATES**, "January 13, 1993." should read "January 13, 1994."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL-4805-1]

Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Correction

In rule document 93-28818 beginning on page 63214 in the issue of Tuesday, November 30, 1993, make the following correction:

§ 93.150 [Corrected]

On page 63253, in the second column, in § 93.150(c)(2)(i), in the first line, "December 30, 1993," should read "January 31, 1994,".

BILLING CODE 1505-01-D

federal register

Tuesday
December 21, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1, et al.
Metric Labeling; Quantity of Contents Labeling Requirements for Foods, Human and Animal Drugs, Animal Foods, Cosmetics, and Medical Devices; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 201, 501, 701, and 801

[Docket Nos. 92N-0406 and 93N-0226]

Metric Labeling; Quantity of Contents Labeling Requirements for Foods, Human and Animal Drugs, Animal Foods, Cosmetics, and Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to require the use of the most appropriate units of both the International System of Units (SI) and the avoirdupois (customary inch-pound) system for the declaration of the net quantity of contents on the label of consumer commodities regulated by the agency. This action is being taken in accordance with amendments issued in 1992 to the Fair Packaging and Labeling Act (the FPLA).

DATES: Written comments by February 22, 1994. The effective date of the 1992 technical amendments to the FPLA is February 14, 1994. After February 14, 1994, products whose labels were printed before that date may continue to be sold or distributed. The agency is proposing that any final rule that they may issue based on this proposal become effective 30 days after its date of publication in the Federal Register, but not before February 14, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the National Institute of Standards and Technology (NIST) handbooks and special publications may be obtained from the National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, MD 20885, 301-975-4004.

FOR FURTHER INFORMATION CONTACT: For general information: Judith W. Riggins, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

For information concerning drugs: Donald Dobbs, Center for Drug Evaluation and Research (HFD-820), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1006.

For information concerning veterinary foods and drugs: John Borders, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1737.

For information concerning cosmetics: John E. Bailey, Center for Food Safety and Applied Nutrition (HFS-100), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4530.

For information concerning medical devices and radiological products: Byron Tart, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4639.

SUPPLEMENTARY INFORMATION:

I. Background

A. Historical

The use of metric units in the United States was first authorized by law in 1866 (the Metric System Act, 14 Stat. 339). In 1875, the United States signed the Treaty of the Meter in Paris, which established the International Bureau of Weights and Measures and recognized the meter as the accepted international unit of measure. However, the customary inch-pound system continued to be the predominant form of measurement in the United States (Ref. 1).

On August 9, 1968, the Metric Study Act (Pub. L. 90-472) was enacted. This act directed the Secretary of Commerce to conduct a study to determine the advantages and disadvantages of increased use of the SI in the United States and to submit a full report to Congress within 3 years. The report, "A Metric America: A Decision Whose Time Has Come," was submitted to Congress in August 1971. The findings of the study were that

> * * * eventually the United States will join the rest of the world in the use of the metric system as the predominant common language of measurement. Rather than drifting to metric with no national plan to help the sectors of our society and guide our relationships abroad, a carefully planned transition in which all sectors participate voluntarily is preferable.

(Ref. 1)

On December 23, 1975, President Gerald Ford signed the Metric Conversion Act of 1975 (15 U.S.C. 205b). The Metric Conversion Act directed the establishment of the U.S. Metric Board to coordinate the nationwide voluntary conversion to the SI. However, no time period was set within which conversion should take place, and no funds were authorized to finance the expenses that would have been incurred in conversion.

B. Recent Developments

On August 23, 1988, Congress passed the Omnibus Trade and Competitiveness Act (Pub. L. 100-418), which was based on a finding that world trade was increasingly geared toward the SI. It further found that U.S. industry was often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and that it was sometimes excluded from these markets when it was unable to deliver goods that were measured in metric terms. Consequently, Congress declared that the SI is the preferred system of weights and measures for U.S. trade and commerce. It also required each Federal agency to use SI units in its procurement, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms, such as when foreign competitors are producing competing products in nonmetric units. Further, it directs Federal agencies to seek out ways to increase public understanding of the SI through educational information and guidance and in government publications, and to permit the continued use of traditional systems of weights and measures in nonbusiness activities.

On July 25, 1991, President George Bush issued Executive Order 12770, "Metric Usage in Federal Government Programs," which designated the Secretary of Commerce to direct and coordinate efforts by Federal departments and agencies to implement Government SI usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Omnibus Trade and Competitiveness Act. In support of these efforts, all Executive Branch departments and agencies of the U.S. Government were specifically directed to use by September 30, 1992, to the extent feasible, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, SI units in Federal Government procurement, grants, and other business-related activities. Other business-related activities included all uses of measurement units in agency programs and functions related to trade, industry, and commerce.

On February 14, 1992, the American Technology Preeminence Act of 1991 (ATPA) (Pub. L. 102-245) was enacted. Section 107 of the ATPA amended the FPLA (15 U.S.C. 1451 *et seq.*) to require, among other things, that the most appropriate units of the SI be used as

the primary system for expressing quantity in the declaration of net quantity of contents on consumer packages. This provision was to take effect on February 14, 1994.

However, it soon became clear that these amendments had the potential to impose a significant economic burden on U.S. industry. Therefore, on August 3, 1992, President Bush signed Public Law 102–329, which repealed section 107 of the ATPA and made technical amendments (the 1992 technical amendments) to the FPLA with respect to its treatment of SI units. As a result of the 1992 technical amendments, the FPLA now: (1) Requires use of the most appropriate units of both the customary inch-pound system and the SI for the declaration of net quantity of contents; (2) permits, in lieu of the term "weight," the use of the term "mass" in the quantity of contents statement; (3) no longer requires declaration of net quantity of contents in two different terms of the customary inch-pound system on packages that contain less than 4 pounds (lb) or 1 gallon (gal) and are labeled in terms of weight or volume, on packages labeled in terms of linear measure, or on packages labeled in terms of the measure of area; (4) permits the net quantity of contents declaration on random weight packages to be expressed in pounds and decimal fractions of a pound carried out to not more than three decimal places and makes SI declaration of the net quantity of contents on such packages optional; and (5) exempts foods packaged at the retail store level from the requirement that the declaration of net quantity of contents include a declaration in terms of SI units.

The 1992 technical amendments did not change the February 14, 1994, effective date established by the ATPA for the SI labeling requirements; however, they did provide that the SI labeling requirements would have no effect on the sale or distribution of products whose labels were printed before the effective date (1992 technical amendments, section 2). Further, nothing in the 1992 technical amendments applies to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information (id.). Finally, the 1992 technical amendments provided that nothing in the amendments shall be construed to require changes in package size or to affect in any way the size of packages (id.).

FDA fully supports initiatives to enhance consumer understanding of the SI and to foster use of the SI by U.S. industries. FDA has adopted a policy to utilize SI units of measure whenever practicable for its procurement, grants, and other business-related activities. In 1987, FDA adopted a policy, compliance policy guide (CPG) 7150.17, to permit the use of SI units, in addition to the customary inch-pound declarations, in net quantity of contents statements on labels of commodities regulated by the agency.

In the **Federal Register** of May 21, 1993 (58 FR 29716) (docket no. 92N–0406), FDA proposed to amend its food labeling regulations to require use of both SI and customary inch-pound units to express net quantity of contents on food labels. The rules proposed herein would revise regulations on net quantity of contents declarations for other consumer commodities regulated by FDA, i.e., over-the-counter (OTC) human and veterinary drugs, animal foods, cosmetics, and medical devices, to require use of both the SI and customary inch-pound units.

FDA is proposing the requirements for declaration of net quantity of contents in SI units in response to the amendments to the FPLA. The proposed requirements, therefore, if adopted, will be applicable only to consumer commodities as defined by that statute. Section 10(a) of the FPLA defines "consumer commodity," in part, as "any food, drug, device, or cosmetic * * * which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use."

Although the proposed rules related to food labeling were published on a different date, FDA intends for all final rules implementing the 1992 technical amendments to reflect a uniform agency policy on quantity of contents labeling. The proposed rules in this document reflect the agency's current thinking regarding implementation of the FPLA as amended by the 1992 amendments. Any final rule on quantity of contents declarations on food labels will be consistent with the final rules resulting from this rulemaking process. For this reason, FDA encourages interested persons affected by the May 21, 1993, food labeling proposed rules on metric labeling, as well as interested persons affected by this proposal, to provide comments on the proposed rules in this document. Comments received on the May 21, 1993, food labeling proposal will be considered along with comments on this proposal when the agency develops final quantity of contents regulations for foods, OTC human and veterinary drugs, animal foods, cosmetics, and medical devices.

FDA recognizes that some provisions of these proposed rules are different, in substance and organization, from the May 21, 1993, food labeling proposal. Many of these differences are based on FDA's preliminary review of comments on the food labeling proposal. Those comments identified technical errors and requested clarifications, revisions, and greater flexibility in the food labeling regulations, which the agency anticipates it will provide in the food labeling final rule. (FDA is continuing to evaluate comments on the May 21, 1993, food labeling proposal and will provide a detailed discussion of the comments in the preamble to the food labeling final rule.)

The proposed rules in this document differ from the May 21, 1993, food labeling proposal as follows:

1. The regulations have been revised and reorganized for clarity;
2. The regulations place references to SI and SI units in the primary position within the text of the regulations to stress that the SI system is the preferred system of weights and measures for U.S. trade and commerce under the 1992 technical amendments;
3. The regulations correct technical errors in SI and customary inch-pound conversion factors and in examples of quantity of contents declarations;
4. The regulations would permit manufacturers to round down calculated quantities to prevent overstating the quantity of the contents of the package;
5. The regulations would permit manufacturers to determine the number of significant digits to use in the quantity of contents declaration;
6. The regulations would permit the use of the symbols "l" and "ml," in addition to "L" and "mL," for liter and milliliter, respectively, in quantity of contents declarations;
7. The regulations are consistent with the NIST Handbooks regarding the use of upper and lower case letters, periods after symbols and abbreviations, and plural forms of symbols and abbreviations;
8. FDA is requesting comments on a possible exemption from the requirement that the quantity of contents of certain packages be expressed in pounds or the largest whole unit, for liquid measure, if these packages are instead labeled in terms of ounces or fluid ounces; and
9. The regulations eliminate the present requirement that all other label information be formed on the surface when the quantity of contents

declaration is blown, embossed, or molded on a glass or plastic surface. The agency believes that it is not practical to require all other mandatory labeling information to be blown, embossed, or molded on the labels in cases where the quantity of contents statement is provided in this manner.

C. Future

In the future, to the extent that it is practicable, FDA will continue to demonstrate its support for the SI by using SI units to express measurements contained in the text of its regulations. FDA invites comments on specific regulations, or other agency activities, for which use of SI units of measure would be appropriate.

II. Provisions of the Proposed Rule

A. Regulations Amended

FDA is proposing in this document to amend the following provisions of Title 21 of the Code of Federal Regulations:

1. The general labeling provisions in § 1.1 (21 CFR 1.1);
2. The OTC human drugs and OTC veterinary drugs labeling provisions in § 201.62 (21 CFR 201.62);
3. The provisions for the information panel of food packaged for animals in § 501.2 (21 CFR 501.2);
4. The animal food labeling provisions in § 501.105, which the agency proposes to renumber as § 501.7;
5. The cosmetic labeling provisions in § 701.13 (21 CFR 701.13); and
6. The OTC device labeling provisions in § 801.62 (21 CFR 801.62).

B. Revised Section Heading and Renumbering

The section heading for current § 501.105 is "Declaration of net quantity of contents when exempt." However, this section primarily establishes requirements for the declaration of net quantity of contents on labels for animal food. Thus, the agency proposes to change the heading to "Declaration of net quantity of contents," which is more appropriate.

FDA also is proposing to redesignate current § 501.105 as § 501.7. This change will place the revised regulation in subpart A of part 501 with other general labeling provisions for animal food. Throughout this document, § 501.7 refers to proposed revised and redesignated § 501.105.

C. Terminology and Standards

FDA is proposing in §§ 201.62, 501.7, 701.13, and 801.62 to provide for use of SI units of mass, volume, and capacity. The proposed revisions would require the net quantity of contents declaration to be stated in units of both the customary inch-pound system and the SI, rather than the customary inch-pound system only. The proposed revisions implement section 4(a)(2) of the FPLA, as amended (15 U.S.C. 1453(a)(2)), which requires that net quantity of contents be separately and accurately stated using the most appropriate units of both the customary inch-pound system and the SI.

The agency is proposing to revise §§ 201.62, 501.7, 701.13, and 801.62 to permit the use of the terms "mass" or "weight" in the quantity of contents declaration. The 1992 technical amendments revised the FPLA by striking the terms "weight" or "weights," wherever they appeared, and by adding in their place the phrase "weight or mass" or "weights or masses." The proposed addition of the term "mass" to the regulations will permit appropriate use of the terms "weight" and "mass" as defined by NIST, Department of Commerce, in NIST Handbook No. 44, 1993 ed., paragraph 3.2.1, appendix B, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (Ref. 2). According to NIST Handbook No. 44, "The weight of a body is a measure of the force exerted on it by gravity or the force needed to support it," and "The mass of a body is a measure of its inertial property or the amount of matter it contains." Thus, the more appropriate term "mass" should be used when referring to the amount of matter an object contains.

FDA also is proposing in §§ 201.62(j), 501.7(j), 701.13(l), and 801.62(j) to provide that use of the terms "net," "net mass," or "net weight" for stating mass or weight and "net" or "net content" for stating fluid measure or numerical count in the quantity of contents declaration is optional. Thus, net quantity of contents statements need not provide any of these qualifying terms or phrases. FDA believes that these terms are no longer necessary to prevent consumer confusion because the required presence of the declaration in SI units will indicate whether the declaration is in terms of weight or mass or in terms of fluid measure. However, the agency cautions that quantity of contents statements must always convey the net quantity of contents, even when such qualifying terms or phrases are not used.

To reduce the possibility for confusion, the agency tentatively finds that §§ 201.62, 501.7, 701.13, and 801.62 should contain a description of the terminology applicable to all units of the SI, their names, symbols, and multiplying factors. This information will permit manufacturers to identify the most appropriate SI units for the declaration of the net quantity of contents of their products. The General Conference on Weights and Measures (CPGM), of which the United States is a member, is the definitive reference on the SI. The CPGM has established base units for the SI, a set of prefixes, the derived and supplementary units, and a comprehensive specification for the units of measurement. Therefore, the agency is proposing to provide this information in §§ 201.62(d)(7)(iii), 501.7(d)(6)(iii), 701.13(d)(6)(iii), and 801.62(d)(5)(iii) as a convenient reference.

This information also is available in the following publications: "The International System of Units (SI)" (Ref. 3); Federal Standard 376B; "Preferred Metric Units for General Use by the Federal Government" (Ref. 4); and "Interpretation of the SI for the United States and Metric Conversion Policy for Federal Agencies" (Ref. 5). FDA has previously provided guidance on use of SI units in the form of CPG 7150.17, dated April 1, 1987. FDA intends that the provisions of the final rule based upon this proposal will supersede the guidance in CPG 7150.17.

FDA is proposing in §§ 201.62(b), 501.7(b), 701.13(b), and 801.62(b) to provide a specific conversion chart for use in calculating the conversion of SI quantities to customary inch-pound quantities and of customary inch-pound quantities to SI quantities. Uniform conversion factors are necessary to ensure that net contents declarations are consistent from product to product. For example, the conversion from ounces to grams must always be performed using the same factor, 28.3495, not 28.00, 28.3, or 28.35. Use of one factor by one manufacturer and a different factor by another manufacturer would result in different SI declarations for the same amount in ounces or vice versa and would lead to consumer confusion. Thus, the proposed change will help to prevent this confusion.

The conversion chart in proposed §§ 201.62(b), 501.7(b), 701.13(b), and 801.62(b) is derived from the "Metric/Inch-Pound Conversion Factors" appearing as appendix A to the "Uniform Packaging and Labeling Regulation" adopted by the National Conference on Weights and Measures (NCWM), which is contained in NIST Handbook 130 (1993) (Ref. 6). FDA is proposing to use conversion factors and other information derived from the NIST chart as the basis for converting SI and customary inch-pound quantities instead of conversion factors established by other entities (both public and

private), because the U.S. Department of Commerce has been designated in Executive Order 12770 to direct and coordinate efforts by Federal departments and agencies to implement Government metric usage in accordance with the Metric Conversion Act of 1975 and the Omnibus Trade and Competitiveness Act of 1991. NIST is that part of the U.S. Department of Commerce most concerned with units of measure, specifically the establishment and maintenance of U.S. standards of weights and measures. FDA advises that if a specific conversion factor is not provided in the conversion charts in final rules resulting from these proposals, other authoritative references, such as Federal Standard 376B or its latest edition, may be used to obtain the conversion factor.

FDA also is proposing in §§ 201.62(c), 501.7(c), 701.13(c), and 801.62(c) to include the acceptable symbols that may be used when stating the net quantity of contents in SI units. This information also is readily available in the publications listed above. Although "L" and "mL" are preferred symbols under the SI system for the units for liter and milliliter, respectively, "l" and "ml" are also acceptable symbols for these units under the SI system. Consequently, the regulations would permit the use of either appropriate symbol in quantity of contents declarations. In addition, periods and plural forms for SI units would not be permitted because they are inappropriate for SI units.

Consistent with the provisions of section 4(a)(3)(A)(ii) of the FPLA, as amended, FDA is proposing in §§ 501.7(m) and 701.13(k) for random packages of animal food and cosmetics, respectively, that the net quantity of contents declaration is not required to, but may, include SI units carried out to not more than three decimal places. For random packages of animal food and cosmetics, the proposal provides that if the net weight exceeds 1 lb, the weight may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places. If the net weight does not exceed 1 lb, the declaration on a random package may be in decimal fractions of the pound in lieu of ounces. These provisions would apply only to animal food and cosmetics, because the agency is not aware of situations where OTC drugs or devices may be appropriately sold in random packages.

D. Use of the "e" Mark

The "e" mark is a special symbol used on packages marketed within the European Community (EC). The EC requires that the "e" mark be at least 3 millimeters (mm) (0.118 inch (in)) high and appear in the same field of vision as the quantity of contents declaration. For example: "Net Wt 100 g e 3.5 oz."

The "e" mark constitutes a guarantee by the packer or importer that the package to which it is applied has been made up in accordance with the "average system of weights and measures," which is the standard in the EC (Ref. 7). A product shipped in the EC without the "e" mark would be subject to customs inspection in each country that it entered. U.S. companies that obtain authorization from an EC member state may market their products in the EC and facilitate shipment of their products by using the "e" mark on their packages.

It has been FDA's policy not to permit any intervening label information within the text of the declaration of net quantity of contents. (See current §§ 201.62(e), 501.105(f), 701.3(f), and 801.62(e).) However, based on information provided by industry to NIST (Ref. 8), FDA tentatively concludes that it is impractical for manufacturers to maintain dual packaging, i.e., one set for U.S. markets and another set for the EC. Consequently, the agency is proposing in §§ 201.62(g), 501.7(g), 701.13(g), and 801.62(g) to permit the voluntary placement of the "e" mark within the declaration of the net quantity of contents by manufacturers that intend to market products in the EC. FDA advises that compliance with these regulations, which deal only with placement of the "e" mark, would not ensure that a package to which the "e" mark is applied has been made up in accordance with the "average system of weights and measures" used in the EC. In addition, compliance with FDA rules does not obviate any EC requirements to obtain EC authorization or approval to use the "e" mark.

E. Examples of the Quantity of Contents Declaration

FDA is proposing to include in §§ 201.62(e), 501.7(e), 701.13(e), and 801.62(e) specific examples of the SI and customary inch-pound declarations of the net quantity of contents. These examples are provided as a guide for formatting net quantity of contents declarations that comply with FPLA requirements to use the most appropriate units of both the customary inch-pound system and the SI. Examples of quantity of contents declarations that include the "e" mark also are included in proposed §§ 201.62(e), 501.7(e), 701.13(e), and 801.62(e).

F. Rounding and Significant Digits

FDA is proposing in §§ 201.62(b)(2), 501.7(b)(2), 701.13(b)(2), and 801.62(b)(2) to permit the expression of decimal fractions in the declaration of the net quantity of contents to be made to not more than three decimal places, rather than to not more than two decimal places as is currently allowed. The proposed revisions respond to amended section 4(a)(3)(A)(ii) of the FPLA (15 U.S.C. 1453(a)(3)(A)(ii)), which permits the use of three decimal places for the expression of the net quantity of contents for random weight packages expressed in pounds and decimal fractions of a pound. The proposed change will make these regulations compatible with other Federal agencies' interpretations concerning the use of decimal fractions in the declaration of the net quantity of contents. The proposed revision represents a change in FDA's policy concerning the declaration of decimal fractions in the declaration of the net quantity of contents.

Manufacturers are responsible for the accuracy of the net quantity of contents declaration, and for ensuring that the package contains at least the stated quantity. FDA is proposing in §§ 201.62(b)(2), 501.7(b)(2), 701.13(b)(2), and 801.62(b)(2) to permit manufacturers to utilize rounding procedures with which they may avoid overstating the quantity of contents. Manufacturers may also determine the appropriate number of significant digits to use in the quantity declaration, except that decimal fractions may not be carried to more than three decimal places. FDA is providing this flexibility in rounding procedures to facilitate conversion to use of SI units.

FDA also encourages, but would not require, manufacturers to use rational numbers to express the contents in SI units and to convert to customary inch-pound units based on the rational SI declaration. For example, manufacturers might use 1 kg, not 1.02 kg; or 4 L, not 4.02 L. FDA would also permit, but not require, the SI portion of the quantity of contents declaration to precede the customary inch-pound portion of the declaration. The agency believes that manufacturers' voluntary use of rational numbers to express SI units and predominant placement of the SI portion of the declaration will facilitate consumer understanding and will enhance consumer acceptance of the SI declaration.

FDA recognizes that, because many of the factors for converting SI units to customary inch-pound units and vice versa are not exact numbers and the

quantities calculated based on the conversion factors are often rounded, resulting SI and customary inch-pound quantities often will not be exact. For consistency in enforcement, FDA is proposing in §§ 201.62(b)(3), 501.7(b)(3), 701.13(b)(3), and 801.62(b)(3) that the largest number used to declare the quantity of contents will be used for enforcement purposes for determining whether the package contains the declared amount of product.

G. SI Equivalents in Text of Regulations

The agency is proposing to revise §§ 201.62, 501.7, 701.13, and 801.62 to express measurements contained in the regulations in terms of SI units and to indicate parenthetically their customary inch-pound equivalents. For example, the regulations currently include a provision for packages having a principal display panel of 5 square inches. The agency is proposing to express this measurement as "32 square centimeters (5 square inches)." The proposed revision will provide interested persons with both SI and customary inch-pound equivalents, calculated using the appropriate conversion factors. The proposed revision conforms to the requirements of Executive Order 12770 to use SI units of measurement in all Federal Government business-related activities. Such activities include the use of such units in agency programs and functions related to trade, industry, and commerce.

H. SI Labeling Provisions

FDA is proposing to remove the provisions in current §§ 201.62(p), 501.105(p), 701.13(r), and 801.62(p) that permit the additional declaration of the net quantity of contents in SI units. Section 4(a)(2) of the FPLA requires the use of the most appropriate units of both the customary inch-pound system and SI units for the declaration of the net quantity of contents. Consequently, the existing provisions of the current regulations are obsolete.

FDA is proposing in § 501.7(o)(1) to exempt all animal foods packaged at the retail store level from the requirement that the declaration of the net quantity of contents include SI units in the quantity of contents statement. This proposed exemption implements new section 4(a)(6) of the FPLA, which specifically exempts foods packaged at the retail store level from the requirement that the declaration of net quantity of contents include a declaration in terms of SI units.

Section 2 of the 1992 technical amendments specifically excludes unit pricing, advertising, recipe programs, nutrition labeling, and other general pricing information from the requirements of the 1992 technical amendments concerning the use of SI units when declaring the net quantity of contents. Accordingly, FDA is proposing to codify the applicable exclusions in new §§ 201.62(m), 501.7(o)(2), 701.13(m), and 801.62(l).

I. Customary Inch-Pound Labeling Provisions and Exemption From the FPLA Labeling Requirements

Among other things, the 1992 technical amendments to the FPLA eliminated the dual customary inch-pound declaration requirement for packages containing less than 4 pounds or 1 gallon and labeled in terms of weight or fluid measure. As amended, the FPLA no longer requires the net quantity of contents of these packages to be expressed both in ounces and in another unit of measurement (e.g., pounds, quarts, pints). Instead, section 4(a)(3)(A)(i), as amended, requires the quantity of contents of a package labeled in terms of weight to be "expressed in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart." Accordingly, the agency is proposing to delete from the regulations the requirement for a dual declaration of the net quantity of contents in customary inch-pound units.

At present, consumers may use the ounce or fluid ounce portion of the dual declaration to help them choose the most economical among several products. For example, consumers may compare prices of 8-oz, 12-oz, 16-oz, and 20-oz packages. The same packages, if labeled in terms of pounds, pounds and ounces, or fractions of a pound, would bear the declarations "0.5 lb," "3/4 lb," "1 lb," and "1 lb 4 oz." FDA expects that the removal of ounce declarations from packages may hinder consumers who are accustomed to using ounces for value comparisons.

Under section 5(b) of the FPLA, FDA may exempt consumer commodities from certain requirements of the FPLA if it finds that, "because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements * * * is impracticable or is not necessary for the adequate protection of consumers." Any exemption should be consistent with the declaration of policy expressed in section 2 of the FPLA, which states, in part, that "[p]ackages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons."

FDA is proposing to find that there is good and sufficient reason to exempt certain commodities from the requirement that the customary inch-pound portion of the quantity of contents statement be expressed in pounds or the largest whole fluid unit, and that full compliance with that aspect of section 4(a)(3)(A)(i) is not necessary for the adequate protection of consumers. Under this approach, FDA will permit products that were previously required to bear a declaration in ounces or fluid ounces to bear such a declaration in place of a declaration in terms of pounds, quarts, or pints. Thus, customers who are used to relying on the ounce declaration for making value comparisons could continue to do so.

FDA believes that such an exemption is consistent with the goals expressed in section 2 of the FPLA, which were not changed by the 1992 technical amendments. Moreover, this exemption is not in conflict with the purpose of the ATPA and the 1992 technical amendments, which is to move the nation toward use of SI. (See, e.g., 138 Congressional Record H5345 (daily ed., June 29, 1992) (statement of Rep. Valentine) ("The intent of the metric provision in current law is to provide a gentle push to simply include metric units on packaging labels. It is not the legislative intent to force the United States industry into abandoning the English units.")).

FDA specifically requests comments on its proposed finding, including information and data on whether or not good and sufficient reason exists for an exemption. Should comments support such a finding, the agency will insert into the regulations provisions permitting the use of ounces or fluid ounces, instead of pounds, quarts, or pints, on packages that contain less than 4 pounds or less than 1 gallon.

The agency is also proposing in §§ 201.62(d)(6)(ii), 501.7(d)(5)(ii), 701.13(d)(5)(ii), and 801.62(d)(4)(ii) to permit dual customary inch-pound declarations for packages that contain more than 1 pound but less than 4 pounds or more than 1 pint but less than 1 gallon. This provision, which would not require an exemption from FPLA requirements, will permit manufacturers to provide the dual customary inch-pound declaration along with the SI declaration. The agency requests comments on this proposed provision. It would be particularly useful to FDA to receive comments on

whether it would best serve the purposes of the FPLA, as amended, to: (1) Incorporate into the final regulations an exemption permitting declarations in ounces or fluid ounces, as discussed above; (2) permit voluntary dual customary inch-pound declarations as described above; (3) take both of these approaches; or (4) adopt neither approach.

J. Editorial Changes

FDA is proposing to revise the authority citations for §§ 201.62, 701.13, and 801.62 to include appropriate references to the FPLA. FPLA references are incomplete or not included in the current authority citations for these sections.

FDA is proposing to reorganize and reletter some of the paragraphs and to make other editorial changes in §§ 201.62, 501.7, 701.13, and 801.62 for uniformity and clarity in the regulations.

FDA also is proposing changes to § 1.1. If amended as proposed, that section would reflect the redesignation of § 501.105 as § 501.7 and the revisions of §§ 201.62, 501.7, 701.13, and 801.62 proposed in this document. As proposed, § 1.1 incorporates amendments that were proposed in the food labeling proposal published in the **Federal Register** of May 21, 1993 (58 FR 29716 at 29721). FDA also is proposing to remove the references in current § 1.1 to dual inch-pound declarations.

FDA is proposing to amend § 501.2(b) and (f) by adding "501.7" after "501.5" and before "501.8" and in the introductory text of paragraph (c) by removing "501.105(h)(1) and (2)" and adding in its place "501.7(i)(1) and (i)(2)."

The agency is proposing in §§ 201.62(f), 501.7(f), 701.13(f), and 801.62(f) to include the word "display" after the words "alternate principal." The proposed revision is an editorial change to clarify that the phrase "display panel" applies to both the principal display panel and the alternate principal display panel. The proposed addition of this word to the revised regulation is only for clarity and does not represent a change in FDA's policy.

K. Reporting Requirements

FDA regulations for approved human and animal drugs (21 CFR 314.70 and 514.8, respectively) require applicants to notify FDA about any change made in any condition established in approved applications. Changes in labeling are among those that must be reported to the agency. FDA advises, however, that a revision to the declaration of net quantity of contents made in compliance with any final rule resulting from this proposal on the label of an OTC human drug covered by a new drug application (NDA) or an animal drug covered by a new animal drug application (NADA) does not require prior FDA approval. For an OTC human drug covered by an NDA, the revised label should be submitted with the firm's next annual report, as provided in 21 CFR 314.70(d). For an OTC animal drug covered by an NADA, the revised label should be submitted with the firm's next periodic report or written communication to FDA, as provided in 21 CFR 514.8(a)(5).

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

As required by the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Orders 12866 and 12612, FDA has examined the economic implications of the proposed rule to amend parts 1, 201, 501, 701, and 801. The Regulatory Flexibility Act requires regulatory relief for small businesses when feasible. Executive Order 12866 compels agencies to use cost-benefit analysis as a component of decisionmaking, where permitted by law, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, FDA has determined that this proposed rule would not have a significant adverse impact on small businesses. Finally, because these regulations apply to products for interstate commerce and individual State regulations would hinder interstate commerce, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

A. Costs

Among the metric labeling requirements initially considered by Congress, several would have imposed substantial costs of compliance on industry. Subsequently, however, the 1992 technical amendments to the FPLA addressed each of these concerns. For example, the 1992 technical amendments precluded any requirements that might be construed to require changes to package sizes. Thus, FDA's proposed regulations impose no requirements for such changes. The 1992 technical amendments also exempted foods packaged at retail stores from the requirement that the declaration of net quantity of contents include SI units. Because FDA proposes to extend this exemption to animal foods packaged at retail stores, this proposed rule eliminates all known burdens attributable to labeling operations at retail stores. Finally, the 1992 technical amendments stated that SI labeling requirements will not affect the distribution of products whose labels were printed before the effective date of February 14, 1994. Because industry may continue to use all of the label stocks printed before February 14, 1994, this wording effectively eliminates the product inventory losses that would otherwise occur.

Discussions with industry trade association officials have underscored the importance of these 1992 technical amendments in ameliorating potential cost burdens and have identified few significant additional costs (Ref. 8). These officials are well aware of forthcoming metric requirements and agree that many product labels already include metric information. One official noted a potential for marketing delay if FDA had to preapprove each new label, but the proposed rule does not require agency preapproval of the new labels. The only establishments that will bear incremental printing costs are those that would have used old, out-of-compliance plates to print new labels after February 14, 1994. The new rule would require that such plates be replaced on an earlier cycle. FDA has little data on the customary term of such printing cycles, but the agency believes that the economic impact of these adjustments will not be large, given the "grandfathering" of labels already printed, and the industries' routine replacement cycle. FDA requests public comment on this view and will consider all suggestions for reducing unnecessary regulatory burdens.

B. Benefits

In this document, as well as in the May 21, 1993 (58 FR 29716), food labeling proposal, the agency was unable to calculate quantifiable benefits for the proposed requirements. However, the agency believes that the proposed requirements would have unquantifiable benefits. The primary unquantifiable benefits of these regulations are related to the competitive gains that the nation will

derive from no longer having to operate in international markets with a nonstandard measurement system. In addition, movement towards implementing the metric system in the United States may simplify FDA's goal of harmonizing international regulatory standards. Moreover, with the 1992 technical amendments to the FPLA, Congress changed the requirements for labeling consumer commodities, requiring use of both the customary inch-pound system and the SI. FDA is now proposing to amend its net quantity of content regulations to establish uniform Federal requirements for labeling in compliance with the FPLA, as amended, for the consumer commodities it regulates. The uniformity provided by these regulations is a benefit that will help industry operate in national and international markets.

V. Comments

Interested persons may, on or before February 22, 1994, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers 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.

VI. Effective Date

FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**, but not before February 14, 1994, which is the effective date of the 1992 technical amendments to the FPLA. The amendments have no effect on the sale or distribution of products whose labels were printed before February 14, 1994. Thus, products bearing labels printed before February 14, 1994, may continue to be sold or distributed.

FDA recognizes that there will be a transition period during which products bearing labels complying with current quantity of contents regulations, as well as those complying with the revised regulations, can legally appear in the marketplace. FDA anticipates that, within 9 months after the effective date of the technical amendments, a substantial amount of labeling printed after February 14, 1994, will be on the market. Before that time, FDA believes that it would be inefficient to commit its limited resources to monitoring for enforcement purposes whether or not marketed products bear labels printed prior to February 14, 1994. Thus, FDA advises that it generally will not commit resources to monitoring compliance with the final rules resulting from this proposal until after November 8, 1994.

VII. References

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

1. Cooper, E.F., "The Metric Conversion Act of 1975, Legislative History and Implementation 1970–1980," Report No. 80–203 SPR, Congressional Research Service, The Library of Congress, Washington, DC, August 31, 1978, Updated October 24, 1980.

2. NIST Handbook 44, 1993 ed., "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1992.

3. NIST Special Publication 330, 1991 ed., "The International System of Units (SI)," U.S. Department of Commerce, NIST, Gaithersburg, MD, August 1991.

4. Federal Standard 376B, "Preferred Metric Units for General Use by the Federal Government," General Services Administration, January 27, 1993.

5. NIST Special Publication 814, "Interpretation of the SI for the United States and Metric Conversion Policy for Federal Agencies," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1991.

6. NIST Handbook 130, 1993, "Uniform Laws and Regulations," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1992.

7. Council Directive of 20 January, The Council of The European Communities, Article 5, Official Journal of the European Communities, 21.2.76, No. L46/2.

8. Braslow, memorandum to the file, November 22, 1993.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 701

Cosmetics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1, 201, 501, 701, and 801 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

2. Section 1.1 is amended by revising paragraph (c) to read as follows:

§ 1.1 General.

* * * * *

(c) The definition of *package* in § 1.20 and of *principal display panel* in §§ 101.1, 201.60, 501.1, 701.10, and 801.60 of this chapter; and the requirements pertaining to uniform location, lack of qualification, and separation of the net quantity declaration in §§ 101.7(f), 201.62(g), 501.7(g), 701.13(g), and 801.62(g) of this chapter, to type size requirements for net quantity declarations in §§ 101.7(i), 201.62(j), 501.7(j), 701.13(j), and 801.62(j) of this chapter, to prohibition of certain supplemental net quantity statements in §§ 101.7(n), 201.62(k), 501.7(k), 701.13(l), and 801.62(k) of this chapter, and to servings representations in §§ 101.8 and 501.8 of this chapter, are provided for solely by the Fair Packaging and Labeling Act. The other requirements of this part are issued under both the Fair Packaging and Labeling Act and the Federal Food, Drug, and Cosmetic Act, or by the latter act solely, and are not limited in their application by section 10 of the Fair Packaging and Labeling Act.

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

4. Section 201.62 is revised to read as follows:

§ 201.62 Declaration of net quantity of contents.

(a) The principal display panel of an over-the-counter drug in package form shall bear a declaration of the net quantity of contents in terms of both the International System of Units (SI) and the customary inch-pound system. This shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass or measure.

(b) (1) For calculating the conversion of customary inch-pound quantities to SI quantities and SI quantities to customary inch-pound quantities, the following conversion chart shall be used:

SI and customary inch—pound conversion factors

Customary inch-pound	SI
Mass or Weight	
1 ounce=28.349 5 g	1 milligram=0.000 035 274 0 oz.
1 pound=453.592 g	=0.015 432 4 gain.
=0.453 592 kg	1 gram=0.035 274 0 oz.
1 grain=64.798 9 mg	1 kilogram=2.204 62 lb.
Volume or capacity	
1 cubic inch=16.387 1 cm^3	1 cubic centimeter=0.061 023 7 $in.^3$
1 cubic foot=0.028 316 8 m^3	1 cubic decimeter=0.035 314 7 $ft.^3$
1 cubic yard=0.764 555 m^3	1 cubic meter=35.314 7 $ft.^3$
1 fluid ounce=29.573 5 mL	=1.307 95 $yd.^3$
1 liquid pint=473.177 mL	1 milliliter=0.033 814 0 fl oz.
=0.473 177 L	1 liter=1.056 69 liq qt.
1 liquid quart=946.353 mL	1 liter=0.264 172 gal.
=0.946 353 L.	
1 dry pint=550.61 mL	
1 dry quart=1.101 22 L	
1 dry peck=8.809 68 L	
1 gallon=3.785 41 L	
1 bushel=35.239 1 L	
Length	
1 inch=2.54 cm*	1 millimeter=0.039 370 1 in.
1 foot=30.48 cm*	1 centimeter=0.393 701 in.
=0.304 8 m*	
1 yard=0.914 m*	
Area	
1 square inch=6.451 6 cm^2*	1 square centimeter=0.155 000 $in.^2$
1 square foot=929.030 cm^2	1 square decimeter=0.107 639 $ft.^2$
1 square yard=0.836 127 m^2	1 square meter=10.763 9 $ft.^2$

Notes: These conversion factors are given to six significant digits to provide such accuracy when necessary; *denotes an exact number; gallon means the U.S. gallon of 231 cubic inches; bushel means the U.S. bushel of 2,150.42 cubic inches.

(2) The conversion factor or the quantity to be converted may not be rounded prior to calculating the converted quantity. Quantities calculated based on these conversion factors may be rounded down to avoid overstating the net contents. The number of significant digits in the quantity declaration may be established by the manufacturer, but shall be such that accuracy is neither sacrificed nor exaggerated. A decimal fraction in the quantity of contents declaration shall not be carried out to more than three decimal places.

(3) When, as a result of rounding SI or customary inch-pound declarations calculated based on the conversion factors in paragraph (b)(1) of this section the resulting declarations are not exact, FDA will use the largest number for enforcement purposes to determine whether a package contains at least the declared amount of product.

(4) The declaration of net quantity of contents shall express an accurate declaration of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in current good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(c) (1) The symbols and abbreviations in the following table, and none other, may be used in net quantity of contents declarations.

SYMBOLS AND ABBREVIATIONS

Unit	Symbol	Unit	Abbreviation
Microgram	µg	Ounce	Oz.
Milligram	mg	Pound	Lb.
Gram	g	Pint	Pt.
Kilogram	kg	Quart	Qt.
Centimeter	cm	Gallon	Gal.

SYMBOLS AND ABBREVIATIONS—Continued

Unit	Symbol	Unit	Abbreviation
Square centimeter	cm^2	Inch	In.
Cubic centimeter	cm^3	Foot	Ft.
Millimeter	mm	Yard	Yd.
Meter	m	Fluid	Fl.
Square meter	m^2	Each	Ea.
Cubic meter	m^3	Piece	Pc.
Milliliter	mL or ml	Square	Sq.
Liter	L or l	Cubic	Cu.

(2) Lower case letters shall be used for SI symbols; except that, for the liter and milliliter, "L" and "mL," respectively, are preferred. Periods shall not be used after the SI symbol. SI symbols shall be written in singular form; i.e., it is not acceptable to add "s" to an SI symbol to express the plural of the symbol.

(3) Both upper and lower case letters may be used for customary inch-pound abbreviations. A period should not be used after the abbreviation. Abbreviations should be written in singular form; an "s" should not be added to express the plural when the abbreviation is used.

(4) The term "weight" may be abbreviated as "wt" in the quantity of contents declaration. Both upper and lower case letters may be used for this abbreviation. A period should not be used after the abbreviation.

(d) (1) The net quantity of contents declaration shall be in terms of weight or mass if the drug is solid, semisolid, or viscous, or a mixture of solid and liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a solid, semisolid, or viscous product by fluid measure, the declaration may be in terms of fluid measure. The weight or mass shall be expressed in both customary inch-pound units (avoirdupois pound or ounce) and SI units (kilogram, gram, or milligram).

(2) The net quantity of contents declaration shall be in terms of fluid measure if the drug is liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, the declaration may be in terms of weight or mass. Fluid measure shall be expressed in both customary inch-pound units (U.S. gallon of 231 cubic inches, and quart, pint, or fluid ounce subdivisions thereof) and SI units (liter or milliliter). The declaration of fluid measure shall be based on the volume at 20 °C (68 °F).

(3) The net quantity of contents declaration of drugs in tablet, capsule, ampule, or other unit form and the quantity of devices shall be in terms of numerical count.

(4) (i) If there is a firmly established, general consumer usage and trade custom of declaring the net quantity of a drug by numerical count, linear measure, or measure of area, such respective term may be used. Linear measure shall be expressed in both customary inch-pound units (yard, foot, or inch) and SI units (meter, centimeter, or millimeter). Area measure shall be expressed in both customary inch-pound units (square yard, square foot, or square inch) and SI units (square meter, square centimeter, or square millimeter). However, when the declaration of quantity of contents by numerical count, linear measure, or measure of area does not give adequate information as to the quantity of drug in the package, it shall be augmented by such declaration of weight or mass, measure, or size of the individual units of the drug as will provide such information.

(ii) Whenever the agency determines for a specific packaged drug that an existing practice of declaring net quantity of contents by measure or count, or a combination of these, does not facilitate value comparisons by consumers or offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such article.

(5) The net quantity of contents declaration shall be augmented when necessary to give accurate information about the strength of the drug in the package; for example, to differentiate between several strengths of the same drug, "100 tablets, 125 milligrams each" or "100 capsules, 250 milligrams each."

(6) (i) The customary inch-pound declaration of net quantity of contents shall be in terms of the largest whole customary inch-pound unit, with the remainder expressed as a common or decimal fraction of the largest whole unit or with the remainder in terms of the next smaller whole unit and any common or decimal fraction of that unit.

(ii) Packages that contain more than 1 pound but less than 4 pounds or more than 1 pint but less than 1 gallon may bear a dual customary inch-pound declaration. The dual declaration, when provided, shall include a declaration of total ounces or fluid ounces, as appropriate, followed by a parenthetical declaration of the largest whole unit, as required in paragraph (d)(6)(i) of this section. The dual declaration shall appear on one line and may precede or follow the SI declaration.

(iii) A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if a firmly established general consumer usage and trade custom of using different common fractions in the net quantity declaration of a particular commodity exists, they may be used. A common fraction shall be reduced to its lowest terms.

(7) (i) The SI declaration of net quantity of contents shall be in terms of the appropriate multiple or submultiple that will result in a numerical value between 1 and 1,000. For example: 500 g, not 0.5 kg; 1.96 kg, not 1,960 g; 750 mL, not 0.75 L; or 750 mm or 75 cm, not 0.75 meter.

(ii) The SI declaration of net quantity of contents shall not be expressed in mixed units. For example: 1.5 kg, not 1 kg 500 g.

(iii) Prefixes that may be used to form multiples and submultiples of SI units are as follows:

SI PREFIXES

Prefix	Symbol	Multiplying factor [1]
Centi [2]	c	$\times 10^{-2}$
Milli	m	$\times 10^{-3}$
Micro	μ	$\times 10^{-6}$

[1] e.g., $10^2=100$; $10^3=1{,}000$; $10^{-1}=0.1$; $10^{-2}=0.01$; thus, 2 kg=2×1,000 g=2,000 g; 3 cm=3×0.01 m=0.03 m.

[2] The prefix "centi" should be used only with "meter."

(e) (1) Examples of net quantity of contents declarations in which the SI declaration precedes the customary inch-pound declaration:

(i) "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1.5 lb)" or "Net Mass 99 g e (3.5 oz)";

(ii) "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1 qt 1.8 fl oz)";

(iii) "500 mL (1.05 pt)" or "1 L (1 qt 1.8 fl oz)."

(2) Examples of net quantity of contents declarations in which the customary inch-pound declaration precedes the SI declaration:

(i) "Net Wt 15 oz (425 g)" or "Net Wt 1.5 lb (680 g)" or "Net Wt 3.5 oz (99 g) e";

(ii) "Net 12 fl oz (355 mL)" or "Net Contents 1 gal (3.7 L)";

(iii) "15 oz (425 g)" or "1.5 lb (680 g)" or "3.5 oz (99 g) e."

(f) The net quantity of contents declaration shall be located on the principal display panel of the label and, with respect to packages bearing alternate principal display panels, it shall be duplicated on each principal display panel.

(g) (1) The net quantity of contents declaration shall appear as a distinct item on the principal display panel and shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents declaration) from other printed label information appearing to the left or right of the declaration.

(2) The "e" mark, a symbol used to facilitate trade in and among members of the European Community (EC), may be used as part of the declaration of the net quantity of contents. When used, the "e" mark shall be at least 3 millimeters (0.118 inch) in height and shall appear in the same field of vision as the SI portion of the quantity of contents declaration, as required by the EC. Compliance with the provisions of this paragraph for size and placement of the "e" mark does not constitute satisfaction of all EC requirements. Manufacturers shall independently satisfy EC requirements for use of the "e" mark.

(3) The net quantity of contents declaration shall not include any term qualifying a unit of weight or mass, measure, or count (such as "giant pint" and "full quart") that tends to exaggerate the amount of the drug in the container.

(4) The net quantity of contents declaration shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed; except that:

(i) On packages having a principal display panel of 32 square centimeters (5 square inches) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part;

(ii) For a drug that is marketed with both outer and inner retail containers bearing the label information required by this part, the net quantity of contents placement requirement of this section applicable to the inner container is waived, if the inner container is not intended to be sold separately; and

(iii) The principal display panel of a drug marketed on a display card to which the immediate container is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents declaration is governed by the dimensions of the display card.

(h) The net quantity of contents declaration shall accurately reveal the quantity of drug or device in the package exclusive of wrappers and other material packed therewith; provided that for drugs packed in containers designed to deliver the drug under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant shall be included in the net quantity of contents declaration.

(i) The net quantity of contents declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible. Requirements of conspicuousness and legibility include the specifications that:

(1) The ratio of height to width of the letter, except for the "e" mark, shall not exceed a differential of three units to one unit (no more than three times as high as it is wide).

(2) Letter heights pertain to upper case or capital letters, except for the "e" mark. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent in the print or type used that shall meet the minimum height requirement. Other letters and exponents shall be presented in the same type style and in proportion to the type size used.

(3) When common fractions are used, each component numeral shall meet one-half the minimum height standards.

(j) The net quantity of contents declaration shall be in letters and numbers in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the specifications in the following table:

MINIMUM HEIGHT OF NUMBERS AND LETTERS

Area of principal display panel	Minimum height of numbers and letters	Minimum height if label information is blown, formed, or molded on surface of container
≤ 32 cm^2 (5 in^2)	1.6 mm (1/16 in)	3.2 mm (1/8 in).
> 32 cm^2 (5 in^2), ≤ 161 cm^2 (25 in^2)	3.2 mm (1/8 in)	4.8 mm (3/16 in).
> 161 cm^2 (25 in^2) ≤ 645 cm^2 (100 in^2)	4.8 mm (3/16 in)	6.4 mm (1/4 in).
> 645 cm^2 (100 in^2) ≤ 2581 cm^2 (400 in^2)	6.4 mm (1/4 in)	7.9 mm (5/16 in).
> 2581 cm^2 (400 in^2)	12.7 mm (1/2 in)	14.3 mm (9/16 in).

Symbols: ≤ means less than or equal to; > means greater than

(1) The net quantity of contents declaration may appear on more than one line, with the entire SI declaration on the line immediately above or immediately below the entire customary inch-pound declaration.

(2) Use of the terms "net," "net mass," or "net weight" when stating the net quantity of contents in terms of mass or weight is optional. When used, the terms may either precede or follow the declaration of quantity. For example: "Net Wt 1 lb (453 g)" or "453 g (1 lb) Net" or "453 g (1 lb)" or "1 lb (453 g)."

(3) Use of the terms "net" or "net contents" when stating the quantity of contents in terms of fluid measure or numerical count is optional. When

used, the terms may either precede or follow the declaration of quantity.

(4) It is sufficient to distinguish ounces used as an expression of weight from fluid ounces used as an expression of fluid measure through association of terms. For example: "Net wt 6 oz" or "6 fl oz" or "Net contents 6 fl oz."

(5) The quantity of contents declaration shall always declare the net quantity of contents, even when terms specified in paragraphs (j)(2) and (j)(3) of this section are not used.

(k) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents, provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the drug contained in the package; for example, "jumbo quart" and "full gallon." Dual or combination declarations of net quantity of contents, including those provided for in paragraphs (a), (d)(4)(i), and (d)(6)(ii) of this section (for example, a combination of net weight or mass plus numerical count, net contents plus dilution directions of a concentrate, etc.) are not regarded as supplemental net quantity statements and may be located on the principal display panel.

(l) A drug shall be exempt from compliance with the net quantity of contents declaration required by this section if it is an ointment labeled "sample," "physician's sample," or a substantially similar declaration and the contents of the package do not exceed 8 grams (0.282 oz).

(m) None of the requirements of this section concerning the declaration of the net quantity of contents in SI units shall apply to package size, unit pricing, advertising, or other general pricing information.

PART 501—ANIMAL FOOD LABELING

5. The authority citation for 21 CFR part 501 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 501.2 [Amended]

6. Section 501.2 *Information panel of package for animal food* is amended in paragraphs (b) and (f) by adding "501.7," after "501.5," and in the introductory text of paragraph (c) by removing "501.105(h)(1) and (2)" and adding in its place "501.7(i)(1) and (i)(2)".

7. Section 501.105 is redesignated as § 501.7 and revised to read as follows:

§ 501.7 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents in terms of both the International System of Units (SI) and the customary inch-pound system. This shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass or measure.

(b)(1) For calculating the conversion of customary inch-pound quantities to SI quantities and SI quantities to customary inch-pound quantities, the following conversion chart shall be used:

SI and customary inch-pound conversion factors

Customary inch-pound	SI
Mass or Weight	
1 ounce=28.349 5 g	1 milligram = 0.000 035 274 0 oz
1 pound=453.592 g	=0.015 432 4 grain
=0.453 592 kg	1 gram=0.035 274 0 oz
1 grain=64.798 9 mg	1 kilogram=2.204 62 lb
Volume or Capacity	
1 cubic inch=16.387 1 cm^3	1 cubic centimeter=0.061 023 7 in^3
1 cubic foot=0.028 316 8 m^3	1 cubic decimeter=0.035 314 7 ft^3
1 cubic yard=0.764 555 m^3	1 cubic meter=35.314 7 ft^3
1 fluid ounce=29.573 5 mL	=1.307 95 yd^3
1 liquid pint=473.177 mL	1 milliliter=0.033 814 0 fl oz
=0.473 177 L	1 liter=1.056 69 liq qt
1 liquid quart=946.353 mL	1 liter=0.264 172 gal
=0.946 353 L.	
1 dry pint=550.61 mL.	
1 dry quart=1.101 22 L.	
1 dry peck=8.809 68 L.	
1 gallon=3.785 41 L.	
1 bushel=35.239 1 L.	
Length	
1 inch=2.54 cm*	1 millimeter=0.039 370 1 in
1 foot=30.48 cm*	1 centimeter=0.393 701 in
=0.304 8 m*.	
1 yard=0.914 4 m*.	
Area	
1 square inch=6.451 6 cm^2*	1 square centimeter=0.155 000 in^2
1 square foot=929.030 cm^2	1 square decimeter=0.107 639 ft^2

SI and customary inch-pound conversion factors

Customary inch-pound	SI
1 square yard=0.836 127 m^2	1 square meter=10.763 9 ft^2

Notes: These conversion factors are given to six significant digits to provide such accuracy when necessary; * denotes an exact number; gallon means the U.S. gallon of 231 cubic inches; bushel means the U.S. bushel of 2,150.42 cubic inches.

(2) The conversion factor or the quantity to be converted may not be rounded prior to calculating the converted quantity. Quantities calculated based on these conversion factors may be rounded down to avoid overstating the net contents. The number of significant digits in the quantity declaration may be established by the manufacturer, but shall be such that accuracy is neither sacrificed nor exaggerated. A decimal fraction in the quantity of contents declaration shall not be carried out to more than three decimal places.

(3) When, as a result of rounding SI or customary inch-pound declarations calculated based on the conversion factors in paragraph (b)(1) of this section the resulting declarations are not exact, FDA will use the largest number for enforcement purposes to determine whether a package contains at least the declared amount of product.

(4) The declaration of net quantity of contents shall express an accurate declaration of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in current good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(c)(1) The symbols and abbreviations in the following table, and none other, may be used in net quantity of contents declarations:

SYMBOLS AND ABBREVIATIONS

Unit	Symbol	Unit	Abbreviation
Microgram	µg	Ounce	Oz.
Milligram	mg	Pound	Lb.
Gram	g	Pint	Pt.
Kilogram	kg	Quart	Qt.
Centimeter	cm	Gallon	Gal.
Square centimeter	cm^2	Inch	In.
Cubic centimeter	cm^3	Foot	Ft.
Millimeter	mm	Yard	Yd.
Meter	m	Fluid	Fl.
Square meter	m^2	Each	Ea.
Cubic meter	m^3	Piece	Pc.
Milliliter	mL or ml	Square	Sq.
Liter	L or l	Cubic	Cu.

(2) Lower case letters shall be used for SI symbols; except that, for the liter and milliliter, "L" and "mL," respectively, are preferred. Periods shall not be used after the SI symbol. SI symbols shall be written in singular form; i.e., it is not acceptable to add "s" to an SI symbol to express the plural of the symbol.

(3) Both upper and lower case letters may be used for customary inch-pound abbreviations. A period should not be used after the abbreviation. Abbreviations should be written in singular form; an "s" should not be added to express the plural when the abbreviation is used.

(4) The term "weight" may be abbreviated as "wt" in the quantity of contents declaration. Both upper and lower case letters may be used for this abbreviation. A period should not be used after the abbreviation.

(d)(1) The net quantity of contents declaration shall be in terms of weight or mass if the food is solid, semisolid, or viscous, or a mixture of solid and liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a solid, semisolid, or viscous product by fluid measure, the declaration may be in terms of fluid measure. The weight or mass shall be expressed in both customary inch-pound units (avoirdupois pound or ounce) and SI units (kilogram, gram, or milligram).

(2) The net quantity of contents declaration shall be in terms of fluid measure if the food is liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, the declaration may be in terms of weight or mass. Fluid measure shall be expressed in both customary inch-pound units (U.S. gallon of 231 cubic inches, and quart, pint, or fluid ounce subdivisions thereof) and SI units (liter or milliliter).

(i) For frozen food that is sold and consumed in a frozen state, the declaration of fluid measure shall be based on the volume of the food at the frozen temperature;

(ii) For refrigerated food that is sold in a refrigerated state, the declaration of fluid measure shall be based on the volume of the food at 4 °C (40 °F); and

(iii) For other foods, the declaration of fluid measure shall be based on the volume at 20 °C (68 °F).

(3) The net quantity of contents declaration may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure. Dry measure shall be expressed in both customary inch-pound units (U.S. bushel of 2,150.42 cubic inches and peck, dry quart, or dry pint subdivisions thereof) and SI units (liter or milliliter).

(4)(i) If there is a firmly established, general consumer usage and trade custom of declaring the net quantity of a food by numerical count, linear measure, or measure of area, such respective term may be used. Linear measure shall be expressed in both customary inch-pound units (yard, foot, or inch) and SI units (meter, centimeter, or millimeter). Area measure shall be expressed in both customary inch-pound units (square yard, square foot, square inch) and SI units (square meter,

square centimeter, or square millimeter). However, when the declaration of quantity of contents by numerical count, linear measure, or measure of area does not give adequate information as to the quantity of food in the package, it shall be augmented by such declaration of weight or mass, measure, or size of the individual units of the food as will provide such information.

(ii) Whenever the agency determines for a specific packaged food that an existing practice of declaring net quantity of contents by measure or count, or a combination of these, does not facilitate value comparisons by consumers or offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.

(5)(i) The customary inch-pound declaration of net quantity of contents shall be in terms of the largest whole customary inch-pound unit, with the remainder expressed as a common or decimal fraction of the largest whole unit or with the remainder in terms of the next smaller whole unit and any common or decimal fraction of that unit.

(ii) Packages that contain more than 1 pound but less than 4 pounds or more than 1 pint but less than 1 gallon may bear a dual customary inch-pound declaration. The dual declaration, when provided, shall include a declaration of total ounces or fluid ounces, as appropriate, followed by a parenthetical declaration of the largest whole unit, as required in paragraph (d)(5)(i) of this section. The dual declaration shall appear on one line and may precede or follow the SI declaration.

(iii) A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if a firmly established general consumer usage and trade custom of using different common fractions in the next quantity declaration of a particular commodity exists, they may be used. A common fraction shall be reduced to its lowest terms.

(6)(i) The SI declaration of net quantity of contents shall be in terms of the appropriate multiple or submultiple that will result in a numerical value between 1 and 1,000. For example: 500 g, not 0.5 kg; 1.96 kg, not 1,960 g; 750 mL, not 0.75 L; or 750 mm or 75 cm, not 0.75 meter.

(ii) The SI declaration of net quantity of contents shall not be expressed in mixed units. For example: 1.5 kg, not 1 kg 500 g.

(iii) Prefixes that may be used to form multiples and submultiples of SI units are as follows:

SI PREFIXES

Prefix	Symbol	Multiplying factor [1]
Kilo	k	$\times 10^{3}$
Centi [2]	c	$\times 10^{-2}$
Milli	m	$\times 10^{-3}$
Micro	μ	$\times 10^{-6}$

[1] e.g., $10^{2}=100$; $10^{3}=1{,}000$; $10^{1}=0.1$; $10^{-2}=0.01$; thus, 2 kg=2×1,000 g=2,000 g; 3 cm=3×0.01 m=0.03 m.

[2] The prefix "centi" should be used only with "meter."

(e)(1) Examples of net quantity of contents declarations in which the SI declaration precedes the customary inch-pound declaration:

(i) "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1.5 lb)" or "Net Mass 99 g e (3.5 oz)";

(ii) "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1 qt 1.8 fl oz)";

(iii) "500 mL (1.05 pt)" or "1 L (1 qt 1.8 fl oz)."

(2) Examples of net quantity of contents declarations in which the customary inch-pound declaration precedes the SI declaration:

(i) "Net Wt 15 oz (425 g)" or "Net Wt 1.5 lb (680 g)" or "Net Wt 3.5 oz (99 g) e";

(ii) "Net 12 fl oz (355 mL)" or "Net Contents 1 gal (3.7 L)";

(iii) "15 oz (425 g)" or "1.5 lb 8 oz (680 g)" or "3.5 oz (99 g) e."

(f) The net quantity of contents declaration shall be located on the principal display panel of the label and, with respect to packages bearing alternate principal display panels, it shall be duplicated on each principal display panel.

(g)(1) The net quantity of contents declaration shall appear as a distinct item on the principal display panel and shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents declaration) from other printed label information appearing to the left or right of the declaration.

(2) The "e" mark, a symbol used to facilitate trade in and among members of the European Community (EC), may be used as part of the declaration of the net quantity of contents. When used, the "e" mark shall be at least 3 millimeters (0.118 inch) in height and shall appear in the same field of vision as the SI portion of the quantity of contents declaration, as required by the EC. Compliance with the provisions of this paragraph for size and placement of the "e" mark does not constitute satisfaction of all EC requirements. Manufacturers shall independently satisfy EC requirements for use of the "e" mark.

(3) The net quantity of contents declaration shall not include any term qualifying a unit of weight or mass, measure, or count (such as "giant pint" and "full quart") that tends to exaggerate the amount of the food in the container.

(4) The net quantity of contents declaration shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed; except that on packages having a principal display panel of 5 square inches (32 cm^2) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part.

(h) The net quantity of contents declaration shall accurately reveal the quantity of food in the package exclusive of wrappers and other material packed therewith; provided that for foods packed in containers designed to deliver the food under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant shall be included in the net quantity of contents declaration.

(i) The net quantity of contents declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible. Requirements of conspicuousness and legibility include the specifications that:

(1) The ratio of height to width of the letter, except for the "e" mark, shall not exceed a differential of three units to one unit (no more than three times as high as it is wide).

(2) Letter heights pertain to upper case or capital letters, except for the "e" mark. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent in the print or type used that shall meet the minimum height requirement. Other letters and exponents shall be presented in the same type style and in proportion to the type size used.

(3) When common fractions are used, each component numeral shall meet one-half the minimum height standards.

(j) The net quantity of contents declaration shall be in letters and numbers in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the specifications in the following table:

MINIMUM HEIGHT OF NUMBERS AND LETTERS

Area of principal display panel	Minimum height of numbers and letters	Minimum height if label information is blown, formed, or molded on surface of container
≤32 cm² (5 in²)	1.6 mm (1/16 in)	3.2 mm (1/8 in).
>32 cm² (5 in²), ≤161 cm² (25 in²)	3.2 mm (1/8 in)	4.8 mm (3/16 in).
>161 cm² (25 in²), ≤645 cm² (100 in²)	4.8 mm (3/16 in)	6.4 mm (1/4 in).
>645 cm² (100 in²), ≤2581 cm² (400 in²)	6.4 mm (1/4 in)	7.9 mm (5/16 in).
>2581 cm² (400 in²)	12.7 mm (1/2 in)	14.3 mm (9/16 in).

Symbols: ≤ means less than or equal to; > means greater than.

(1) The net quantity of contents declaration may appear on more than one line, with the entire SI declaration on the line immediately above or immediately below the entire customary inch-pound declaration.

(2) Use of the terms "net," "net mass," or "net weight" when stating the net quantity of contents in terms of mass or weight is optional. When used, the terms may either precede or follow the declaration of quantity. For example: "Net Wt 1 lb (453 g)" or "453 g (1 lb) Net" or "453 g (1 lb)" or "1 lb (453 g)."

(3) Use of the terms "net" or "net contents" when stating the quantity of contents in terms of fluid measure or numerical count is optional. When used, the terms may either precede or follow the declaration of quantity.

(4) It is sufficient to distinguish ounces used as an expression of weight from fluid ounces used as an expression of fluid measure through association of terms. For example: "Net wt 6 oz" or "6 fl oz" or "Net contents 6 fl oz."

(5) The quantity of contents declaration shall always declare the net quantity of contents, even when terms specified in paragraphs (j)(2) and (j)(3) of this section are not used.

(k) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents, provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the food contained in the package; for example, "jumbo quart" and "full gallon." Dual or combination declarations of net quantity of contents, including those provided for in paragraphs (a), (d)(4)(i), and (d)(5)(ii) of this section (for example, a combination of net weight or mass plus numerical count, net contents plus dilution directions of a concentrate, etc.), are not regarded as supplemental net quantity statements and may be located on the principal display panel.

(l) On a multiunit retail package, the declaration of quantity of contents shall appear on the outside of the package and shall include the number of individual units, the quantity of each individual unit, and, in parentheses, the total quantity of contents of the multiunit package. The declaration of total quantity may be preceded by the term "total" or the phrase "total contents." The declaration shall appear in both customary inch-pound units and SI units. A multiunit retail package may thus be properly labeled: "3 X 1 L (1 QT 1.8 oz) BOTTLES (TOTAL 3 L (3 QT 5.4 oz))"; or "6 X 1 pt (473 mL) bottles (3 qt (2.83 L))." For the purposes of this section, "multiunit retail package" means a package containing two or more individually packaged units of the identical commodity and in the same quantity, intended to be sold as part of the multiunit retail package but capable of being individually sold in full compliance with all requirements of the regulations in this part. Open multiunit retail packages that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not subject to this paragraph if the labeling of each individual unit complies with the requirements of paragraphs (g) and (j) of this section.

(m) If the net quantity of contents declaration appears on a random package, that is, a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights and with no fixed weight pattern, it may, if the net weight exceeds 0.453 kilogram (1 pound), be in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places. If the net weight does not exceed 0.453 kilogram (1 pound), the declaration on the random package may be in decimal fractions of the pound in lieu of ounces. The net quantity of contents declaration on a random package is not required to, but may, include SI units carried out to not more than three decimal places.

(n) When the declaration of net quantity of contents is in terms of net weight and/or drained weight or volume and does not accurately reflect the actual quantity of the contents or the product falls below the applicable standard of fill of container because of equipment malfunction or otherwise unintentional product variation, and the label conforms in all other respects to the requirements of this chapter (except the requirement that food falling below the applicable standard of fill of container shall bear the general statement of substandard fill specified in § 564.14(b) of this chapter), the mislabeled food product, including any food product that fails to bear the general statement of substandard fill specified in § 564.14(b) of this chapter, may be sold by the manufacturer or processor directly to institutions operated by Federal, State, or local governments, *Provided* That:

(1) The purchaser shall sign a statement at the time of sale stating that he is aware that the product is mislabeled to include acknowledgment of the nature and extent of the mislabeling, e.g., "Actual net weight may be as low as ———— % below labeled quantity" and that any subsequent distribution by him of said product except for his own institutional use is unlawful. This statement shall be kept on file at the principal place of business of the manufacturer or processor for 2 years subsequent to the date of shipment of the product and shall be available to the Food and Drug Administration upon request.

(2) The product shall be labeled on the outside of its shipping container with the statement(s):

(i) When the variation concerns net weight and/or drained weight of volume—"Product Mislabeled. Actual net weight (drained weight or volume where appropriate) may be as low as _____% below labeled quantity. This Product Not for Retail Distribution", the

blank to be filled in with the maximum percentage variance between the labeled and actual weight or volume of contents of the individual packages in the shipping container, and

(ii) When the variation is in regard to a fill of container standard—"Product Mislabeled. Actual fill may be as low as _____% below standard of fill. This Product Not for Retail Distribution."

(3) The statements required by paragraphs (n)(2)(i) and (n)(2)(ii) of this section, which may be consolidated where appropriate, shall appear prominently and conspicuously as compared to other printed matter on the shipping container and in boldface print or type on a clear, contrasting background in order to render them likely to be read and understood by the purchaser under ordinary conditions of purchase.

(o)(1) All foods packaged at the retail store level for direct sale to consumers are exempt from the provisions of this section that require that the net quantity of contents include SI units.

(2) None of the requirements of this section concerning the declaration of the net quantity of contents in SI units shall apply to package sizes, unit pricing, advertising, nutrition labeling, or other general pricing information.

PART 701—COSMETIC LABELING

8. The authority citation for 21 CFR part 701 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 502, 601, 602, 603, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 361, 362, 363, 371, 374).

9. Section 701.13 is revised to read as follows:

§ 701.13 Declaration of net quantity of contents.

(a) The principal display panel of a cosmetic in package form shall bear a declaration of the net quantity of contents in terms of both the International System of Units (SI) and the customary inch-pound system. This shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass or measure.

(b)(1) For calculating the conversion of customary inch-pound quantities to SI quantities and SI quantities to customary inch-pound quantities, the following conversion chart shall be used:

SI and customary inch-pound conversion factors

Inch-pound	SI
Mass or Weight	
1 ounce=28.349 5 g	1 milligram=0.000 035 274 0 oz.
1 pound=453.592 g	=0.015 432 4 grain.
=0.453 592 kg	1 gram=0.035 274 0 oz.
1 grain=64.798 9 mg	1 kilogram=2.204 62 lb.
Volume or Capacity	
1 cubic inch=16.387 1 cm^3	1 cubic centimeter=0.061 023 7 in^3.
1 cubic foot=0.028 316 8 m^3	1 cubic decimeter=0.035 314 7 ft^3.
1 cubic yard=0.764 555 m^3	1 cubic meter=35.314 7 ft^3.
1 fluid ounce=29.573 5 mL	=1.307 95 yd^3.
1 liquid pint=473.177 mL	1 milliliter=0.033 814 0 fl oz.
=0.473 177 L	1 liter=1.056 69 liq qt.
1 liquid quart=946.353 mL	1 liter=0.264 172 gal.
=0.946 353 L.	
1 dry pint=550.61 mL.	
1 dry quart=1.101 22 L.	
1 dry peck=8.809 68 L.	
1 gallon=3.785 41 L.	
1 bushel=35.239 1 L.	
Length	
1 inch=2.54 cm*	1 millimeter=0.039 370 1 in.
1 foot=30.48 cm*	1 centimeter=0.393 701 in.
=0.304 8 m*.	
1 yard=0.914 4 m*.	
Area	
1 square inch=6.451 6 cm^2*	1 square centimeter=0.155 000 in^2.
1 square foot=929.030 cm^2	1 square decimeter=0.107 639 ft^2.
1 square yard=0.836 127 m^2	1 square meter=10.763 9 ft^2.

Notes: These conversion factors are given to six significant digits to provide such accuracy when necessary; * denotes an exact number; gallon means the U.S. gallon of 231 cubic inches; bushel means the U.S. bushel of 2,150.42 cubic inches.

(2) The conversion factor or the quantity to be converted may not be rounded prior to calculating the converted quantity. Quantities calculated based on these conversion factors may be rounded down to avoid overstating the net contents. The number of significant digits in the quantity declaration may be established by the manufacturer, but shall be such that accuracy is neither sacrificed nor exaggerated. A decimal fraction in the quantity of contents declaration shall not be carried out to more than three decimal places.

(3) When, as a result of rounding SI or customary inch-pound declarations calculated based on the conversion

factors in (b)(1) of this section the resulting declarations are not exact, FDA will use the largest number for enforcement purposes to determine whether a package contains at least the declared amount of product.

(4) The declaration of net quantity of contents shall express an accurate declaration of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in current good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(c) (1) The symbols and abbreviations in the following table, and none other, may be used in net quantity of contents declarations.

SYMBOLS AND ABBREVIATIONS

Unit	Symbol	Unit	Abbreviation
Microgram	µg	Ounce	Oz.
Milligram	mg	Pound	Lb.
Gram	g	Pint	Pt.
Kilogram	kg	Quart	Qt.
Centimeter	cm	Gallon	Gal.
Square centimeter	cm^2	Inch	In.
Cubic centimeter	cm^3	Foot	Ft.
Millimeter	mm	Yard	Yd.
Meter	m	Fluid	Fl.
Square meter	m^2	Each	Ea.
Cubic meter	m^3	Piece	Pc.
Milliliter	mL or ml	Square	Sq.
Liter	L or l	Cubic	Cu.

(2) Lower case letters shall be used for SI symbols; except that, for the liter and milliliter, "L" and "mL," respectively, are preferred. Periods shall not be used after the SI symbol. SI symbols shall be written in singular form; i.e., it is not acceptable to add "s" to an SI symbol to express the plural of the symbol.

(3) Both upper and lower case letters may be used for customary inch-pound abbreviations. A period should not be used after the abbreviation. Abbreviations should be written in singular form; an "s" should not be added to express the plural when the abbreviation is used.

(4) The term "weight" may be abbreviated as "wt" in the quantity of contents declaration. Both upper and lower case letters may be used for this abbreviation. A period should not be used after the abbreviation.

(d) (1) The net quantity of contents declaration shall be in terms of weight or mass if the cosmetic is solid, semisolid, or viscous, or a mixture of solid and liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a solid, semisolid, or viscous product by fluid measure, the declaration may be in terms of fluid measure. The weight or mass shall be expressed in both customary inch-pound units (avoirdupois pound or ounce) and SI units (kilogram, gram, or milligram).

(2) The net quantity of contents declaration shall be in terms of fluid measure if the cosmetic is liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, the declaration may be in terms of weight or mass. Fluid measure shall be expressed in both customary inch-pound units (U.S. gallon of 231 cubic inches, and quart, pint, or fluid ounce subdivisions thereof) and SI units (liter or milliliter). The declaration of fluid measure shall be based on the volume at 20 °C (68 °F).

(3) If there is a firmly established, general consumer usage and trade custom of declaring the net quantity of a cosmetic by numerical count, linear measure, or measure of area, such respective term may be used. Linear measure shall be expressed in both customary inch-pound units (yard, foot, or inch) and SI units (meter, centimeter, or millimeter). Area measure shall be expressed in both customary inch-pound units (square yard, square foot, or square inch) and SI units (square meter, square centimeter, or square millimeter). However, when the declaration of quantity of contents by numerical count, linear measure, or measure of area does not give adequate information as to the quantity of cosmetic in the package, it shall be augmented by such declaration of weight or mass, measure, or size of the individual units or of the entire cosmetic as will give such information.

(4) Whenever the agency determines for a specific packaged cosmetic that an existing practice of declaring net quantity of contents by measure or count, or a combination of these, does not facilitate value comparisons by consumers or offers opportunity for consumer confusion, it shall by regulation designate the appropriate term or terms to be used for such cosmetic.

(5) (i) The customary inch-pound declaration of net quantity of contents shall be in terms of the largest whole inch-pound unit, with the remainder expressed as a common or decimal fraction of the largest whole unit or with the remainder in terms of the next smaller whole unit and any common or decimal fraction of that unit.

(ii) Packages that contain more than 1 pound but less than 4 pounds or more than 1 pint but less than 1 gallon may bear a dual customary inch-pound declaration. The dual declaration, when provided, shall include a declaration of total ounces or fluid ounces, as appropriate, followed by a parenthetical declaration of the largest whole unit, as required in paragraph (d)(5)(i) of this section. The dual declaration shall appear on one line and may precede or follow the SI declaration.

(iii) A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if a firmly established general consumer usage and trade custom of using different common fractions in the net quantity declaration of a particular commodity exists, they may be used. A common fraction shall be reduced to its lowest terms.

(6) (i) The SI declaration of net quantity of contents shall be in terms of the appropriate multiple or submultiple that will result in a numerical value between 1 and 1,000. For example: 500 g, not 0.5 kg; 1.96 kg, not 1,960 g; 750 mL, not 0.75 L; or 750 mm or 75 cm, not 0.75 meter.

(ii) The SI declaration of net quantity of contents shall not be expressed in mixed units. For example: 1.5 kg, not 1 kg 500 g.

(iii) Prefixes that may be used to form multiples and submultiples of SI units are as follows:

SI PREFIXES

Prefix	Symbol	Multiplying factor [1]
Kilo	k	$\times 10^3$
Centi [2]	c	$\times 10^{-2}$
Milli	m	$\times 10^{-3}$
Micro	μ	$\times 10^{-6}$

[1] e.g., $10^2=100$; $10^3=1{,}000$; $10^{-1}=0.1$; $10^{-2}=0.01$; thus, 2 kg=2×1,000 g=2,000 g; 3 cm=3×0.01 m=0.03 m.

[2] The prefix "centi" should be used only with "meter."

(e) (1) Examples of net quantity of contents declarations in which the SI declaration precedes the customary inch-pound declaration:

(i) "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1.5 lb)" or "Net Mass 99 g e (3.5 oz)";

(ii) "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1 qt 1.8 fl oz)";

(iii) "500 mL (1.05 pt)" or "1 L (1 qt 1.8 fl oz)."

(2) Examples of net quantity of contents declarations in which the customary inch-pound declaration precedes the SI declaration:

(i) "Net Wt 15 oz (425 g)" or "Net Wt 1.5 lb (680 g)" or "Net Wt 3.5 oz (99 g) e";

(ii) "Net 12 fl oz (355 mL)" or "Net Contents 1 gal (3.7 L)";

(iii) "15 oz (425 g)" or "1.5 lb (680 g)" or "3.5 oz (99 g) e."

(f) The net quantity of contents declaration shall be located on the principal display panel of the label and, with respect to packages bearing alternate principal display panels, it shall be duplicated on each principal display panel; except that:

(1) The principal display panel of a cosmetic marketed in a "boudoir-type" container, including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of ¼ ounce or less, may be considered to be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by this part, but the type size of the net quantity of contents declaration shall be governed by the dimensions of the decorative container; and

(2) The principal display panel of a cosmetic marketed on a display card to which the immediate container is affixed may be considered to be the display panel of the card, but the type size of the net quantity of contents declaration shall be governed by the dimensions of the display card.

(g) (1) The net quantity of contents declaration shall appear as a distinct item on the principal display panel and shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents declaration) from other printed label information appearing to the left or right of the declaration.

(2) The "e" mark, a symbol used to facilitate trade in and among members of the European Community (EC), may be used as part of the declaration of the net quantity of contents. When used, the "e" mark shall be at least 3 millimeters (0.118 inch) in height and shall appear in the same field of vision as the SI portion of the quantity of contents declaration, as required by the EC. Compliance with the provisions of this paragraph for size and placement of the "e" mark does not constitute satisfaction of all EC requirements. Manufacturers shall independently satisfy EC requirements for use of the "e" mark.

(3) The net quantity of contents declaration shall not include any term qualifying a unit of weight or mass, measure, or count, such as "giant pint" and "full quart," that tends to exaggerate the amount of the cosmetic in the container.

(4) The net quantity of contents declaration shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed; except that:

(i) On packages having a principal display panel of 32 square centimeters (5 square inches) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part; and

(ii) For a cosmetic that is marketed with both outer and inner retail containers bearing the label information required by this part, the net quantity of contents placement requirement of this section applicable to the inner container is waived, if the inner container is not intended to be sold separately.

(h) The net quantity of contents declaration shall accurately reveal the quantity of cosmetic in the package exclusive of wrappers and other material packed therewith; provided that:

(1) For cosmetics packed in containers designed to deliver the cosmetic under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant shall be included in the net quantity of contents declaration; and

(2) For a package that contains the integral components making up a complete kit, and designed to deliver the components in the manner of an application (for example, a home permanent wave kit), the declaration may state the net quantity of the contents in nondeceptive terms of the number of applications available in the kit when the instructions for use as shown on the container are followed.

(i) The net quantity of contents declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible. Requirements of conspicuousness and legibility include the specifications that:

(1) The ratio of height to width of the letter, except for the "e" mark, shall not exceed a differential of three units to one unit (no more than three times as high as it is wide).

(2) Letter heights pertain to upper case or capital letters, except for the "e" mark. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent in the print or type used that shall meet the minimum standards. Other letters and exponents shall be presented in the same type style and in proportion to the type size used.

(3) When common fractions are used, each component numeral shall meet one-half the minimum height standards.

(j) The declaration shall be in letters and numbers in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the specifications in the following table:

MINIMUM HEIGHT OF NUMBERS AND LETTERS

Area of principal display panel	Minimum height of numbers and letters	Minimum height if label information is blown, formed, or molded on surface of container
≤32 cm² (5 in²)	1.6 mm (1/16 in)	3.2 mm (1/8 in).
>32 cm² (5 in²), ≤161 cm² (25 in²)	3.2 mm (1/8 in)	4.8 mm (3/16 in).
>161 cm² (25 in²), ≤645 cm² (100 in²)	4.8 mm (3/16 in)	6.4 mm (1/4 in).
>645 cm² (100 in²), ≤2581 cm² (400 in²)	6.4 mm (1/4 in)	7.9 mm (5/16 in).
>2581 cm² (400 in²)	12.7 mm (1/2 in)	14.3 mm (9/16 in).

Symbols: ≤ means less than or equal to; > means greater than.

(1) The net quantity of contents declaration may appear on more than one line, with the entire SI declaration on the line immediately above or immediately below the entire customary inch-pound declaration.

(2) Use of the terms "net," "net mass," or "net weight" when stating the net quantity of contents in terms of mass or weight is optional. When used, the terms or phrases may either precede or follow the declaration of quantity. For example: "Net Wt 1 lb (453 g)" or "453 g (1 lb) Net" or "453 g (1 lb)" or "1 lb (453 g)."

(3) Use of the terms "net" or "net contents" when stating the quantity of contents in terms of fluid measure or numerical count is optional. When used, the terms may either precede or follow the declaration of quantity.

(4) It is sufficient to distinguish ounces used as an expression of weight from fluid ounces used as an expression of fluid measure through association of terms. For example: "Net wt 6 oz" or "6 fl oz" or "Net contents 6 fl oz."

(5) The quantity of contents declaration shall always declare the net quantity of contents, even when terms specified in paragraphs (j)(2) and (j)(3) of this section are not used.

(k) If the net quantity of contents declaration appears on a random package, that is, a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights and with no fixed weight pattern, it may, if the net weight exceeds 0.453 kilogram (1 pound), be in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places. If the net weight does not exceed 0.453 kilogram (1 pound), the declaration on the random package may be in decimal fractions of the pound in lieu of ounces. The net quantity of contents declaration on a random package is not required to, but may, include SI units carried out to not more than three decimal places.

(l) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents, provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the cosmetic contained in the package; for example, "jumbo quart" and "full gallon." Dual or combination declarations of net quantity of contents, including those provided for in paragraphs (a), (d)(3), and (d)(5)(ii) of this section (for example, a combination of net weight or mass plus numerical count, net contents plus dilution directions of a concentrate, etc.) are not regarded as supplemental net quantity statements and may be located on the principal display panel.

(m) None of the requirements of this section concerning the declaration of the net quantity of contents in SI units shall apply to package sizes, unit pricing, advertising, or other general pricing information.

PART 801—LABELING

10. The authority citation for 21 CFR part 801 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

11. Section 801.62 is revised to read as follows:

§ 801.62 Declaration of net quantity of contents.

(a) The principal display panel of an over-the-counter device in package form shall bear a declaration of the net quantity of contents in terms of both the International System of Units (SI) and the customary inch-pound system. This shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass or measure.

(b)(1) For calculating the conversion of customary inch-pound quantities to SI quantities and SI quantities to customary inch-pound quantities, the following conversion chart shall be used:

SI and customary inch-pound conversion factors

Inch-pound	SI
Mass or Weight	
1 ounce=28.349 5 g	1 milligram=0.000 035 274 0 oz.
1 pound=453.592 g	=0.015 432 4 grain.
=0.453 592 kg	1 gram=0.035 274 0 oz.
1 grain=64.798 9 mg	1 kilogram=2.204 62 lb.
Volume or Capacity	
1 cubic inch=16.387 1 cm³	1 cubic centimeter=0.061 023 7 in³.
1 cubic foot=0.028 316 8 m³	1 cubic decimeter=0.035 314 7 ft³.
1 cubic yard=0.764 555 m³	1 cubic meter=35.314 7 ft³.
1 fluid ounce=29.573 5 mL	=1.307 95 yd³.
1 liquid pint=473.177 mL	1 milliliter=0.033 814 0 fl oz.
=0.473 177 L	1 liter=1.056 69 liq qt.

SI and customary inch-pound conversion factors

Inch-pound	SI
1 liquid quart=946.353 mL =0.946 353 L. 1 dry pint=550.61 mL. 1 dry quart=1.101 22 L. 1 dry peck=8.809 68 L. 1 gallon=3.785 41 L. 1 bushel=35.239 1 L.	1 liter=0.264 172 gal.
Length	
1 inch=2.54 cm* 1 foot=30.48 cm* =0.304 8 m*. 1 yard=0.914 4 m*.	1 millimeter=0.039 370 1 in. 1 centimeter=0.393 701 in.
Area	
1 square inch=6.451 6 cm^2* 1 square foot=929.030 cm^2 1 square yard=0.836 127 m^2	1 square centimeter=0.155 000 in^2. 1 square decimeter=0.107 639 ft^2. 1 square meter=10.763 9 ft^2.

Notes: These conversion factors are given to six significant digits to provide such accuracy when necessary; * denotes an exact number; gallon means the U.S. gallon of 231 cubic inches; bushel means the U.S. bushel of 2,150.42 cubic inches.

(2) The conversion factor or the quantity to be converted may not be rounded prior to calculating the converted quantity. Quantities calculated based on these conversion factors may be rounded down to avoid overstating the net contents. The number of significant digits in the quantity declaration may be established by the manufacturer, but shall be such that accuracy is neither sacrificed nor exaggerated. A decimal fraction in the quantity of contents declaration shall not be carried out to more than three decimal places.

(3) When, as a result of rounding SI or customary inch-pound declarations calculated based on the conversion factors in paragraph (b)(1) of this section the resulting declarations are not exact, FDA will use the largest number for enforcement purposes to determine whether a package contains at least the declared amount of product.

(4) The declaration of net quantity of contents shall express an accurate declaration of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in current good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(c) (1) The symbols and abbreviations in the following table, and none other, may be used in net quantity of contents declarations.

SYMBOLS AND ABBREVIATIONS

Unit	Symbol	Unit	Abbreviation
Microgram	µg	Ounce	Oz.
Milligram	mg	Pound	Lb
Gram	g	Pint	Pt.
Kilogram	kg	Quart	Qt.
Centimeter	cm	Gallon	Gal.
Square centimeter	cm^2	Inch	In.
Cubic centimeter	cm^3	Foot	Ft.
Millimeter	mm	Yard	Yd.
Meter	m	Fluid	Fl.
Square meter	m^2	Each	Ea.
Cubic meter	m^3	Piece	Pc.
Milliliter	mL or ml	Square	Sq.
Liter	L or l	Cubic	Cu.

(2) Lower case letters shall be used for SI symbols; except that, for the liter and milliliter, "L" and "mL," respectively, are preferred. Periods shall not be used after the SI symbol. SI symbols shall be written in singular form; i.e., it is not acceptable to add "s" to an SI symbol to express the plural of the symbol.

(3) Both upper and lower case letters may be used for customary inch-pound abbreviations. A period should not be used after the abbreviation. Abbreviations should be written in singular form; an "s" should not be added to express the plural when the abbreviation is used.

(4) The term "weight" may be abbreviated as "wt" in the quantity of contents declaration. Both upper and lower case letters may be used for this abbreviation. A period should not be used after the abbreviation.

(d) (1) The net quantity of contents declaration shall be in terms of weight or mass if the device is solid, semisolid, or viscous, or a mixture of solid and liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a solid, semisolid, or viscous product by fluid measure, the declaration may be in terms of fluid measure. The weight

or mass shall be expressed in both customary inch-pound units (avoirdupois pound or ounce) and SI units (kilogram, gram, or milligram).

(2) The net quantity of contents declaration shall be in terms of fluid measure if the device is liquid, except that if there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, the declaration may be in terms of weight or mass. Fluid measure shall be expressed in both customary inch-pound units (U.S. gallon of 231 cubic inches, and quart, pint, or fluid ounce subdivisions thereof) and SI units (liter or milliliter). The declaration of fluid measure shall be based on the volume at 20 °C (68 °F).

(3) (i) If there is a firmly established, general consumer usage and trade custom of declaring the net quantity of a device by numerical count, linear measure, or measure of area, such respective term may be used. Linear measure shall be expressed in both customary inch-pound units (yard, foot, or inch) and SI units (meter, centimeter, or millimeter). Area measure shall be expressed in both customary inch-pound units (square yard, square foot, square inch) and SI units (square meter, square centimeter, or square millimeter). However, when the declaration of quantity of contents by numerical count, linear measure, or measure of area does not give adequate information as to the quantity of device in the package, it shall be augmented by such declaration of weight or mass, measure, or size of the individual units or the total weight or mass, measure, or size of the device as will give such information.

(ii) Whenever the agency determines for a specific packaged device that an existing practice of declaring net quantity of contents by measure or count, or a combination of these, does not facilitate value comparisons by consumers and offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such article.

(4) (i) The customary inch-pound declaration of net quantity of contents declaration shall be in terms of the largest whole inch-pound unit, with the remainder expressed as a common or decimal fraction of the largest whole unit or with the remainder in terms of the next smaller whole unit and any common or decimal fraction of that unit.

(ii) Packages that contain more than 1 pound but less than 4 pounds or more than 1 pint but less than 1 gallon may bear a dual customary inch-pound declaration. The dual declaration, when provided, shall include a declaration of total ounces or fluid ounces, as appropriate, followed by a parenthetical declaration of the largest whole unit, as required in paragraph (d)(4)(i) of this section. The dual declaration shall appear on one line and may precede or follow the SI declaration.

(iii) A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if a firmly established general consumer usage and trade custom of using different common fractions in the net quantity declaration of a particular commodity exists, they may be used. A common fraction shall be reduced to its lowest terms.

(5)(i) The SI declaration of net quantity of contents declaration shall be in terms of the appropriate multiple or submultiple that will result in a numerical value between 1 and 1,000. For example: 500 g, not 0.5 kg; 1.96 kg, not 1,960 g; 750 mL, not 0.75 L; or 750 mm or 75 cm, not 0.75 meter.

(ii) The SI declaration of net quantity of contents shall not be expressed in mixed units. For example: 1.5 kg, not 1 kg 500 g.

(iii) Prefixes that may be used to form multiples and submultiples of SI units are as follows:

SI PREFIXES

Prefix	Symbol	Multiplying factor[1]
Kilo	k	$\times 10^3$
Centi[2]	c	$\times 10^{-2}$
Milli	m	$\times 10^{-3}$
Micro	μ	$\times 10^{-6}$

[1] e.g., $10^2=100$; $10^3=1,000$; $10^{-1}=0.1$; $10^{-2}=0.01$; thus, 2 kg=2 × 1,000 g=2,000 g; 3 cm=3 × 0.01 m=0.03 m.

[2] The prefix "centi" should be used only with "meter."

(e) (1) Examples of net quantity of contents declarations in which the SI declaration precedes the customary inch-pound declaration:

(i) "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1 lb 8 oz)" or "Net Mass 99 g e (3.5 oz)";

(ii) "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1 qt 1.8 fl oz)";

(iii) "500 mL (1.05 pt)" or "1 L (1 qt 1.8 fl oz)."

(2) Examples of net quantity of contents declaration in which the customary inch-pound declaration precedes the SI declaration:

(i) "Net Wt 15 oz (425 g)" or "Net Wt 1 lb 8 oz (680 g)" or "Net Wt 3.5 oz (99 g) e";

(ii) "Net 12 fl oz (355 mL)" or "Net Contents 1 gal (3.7 L)";

(iii) "15 oz (425 g)" or "1 lb 8 oz (680 g)" or "3.5 oz (99 g) e."

(f) The net quantity of contents declaration shall be located on the principal display panel of the label and, with respect to packages bearing alternate principal display panels, it shall be duplicated on each principal display panel.

(g) (1) The net quantity of contents declaration shall appear as a distinct item on the principal display panel and shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents declaration) from other printed label information appearing to the left or right of the declaration.

(2) The "e" mark, a symbol used to facilitate trade in and among members of the European Community (EC), may be used as part of the declaration of the net quantity of contents when warranted. When used, the "e" mark shall be at least 3 millimeters (0.118 inch) in height and shall appear in the same field of vision as the SI portion of the quantity of contents declaration, as required by the EC. Compliance with the provisions of this paragraph for size and placement of the "e" mark does not constitute satisfaction of all EC requirements. Manufacturers shall independently satisfy EC requirements for use of the "e" mark.

(3) The net quantity of contents declaration shall not include any term qualifying a unit of weight or mass, measure, or count (such as "giant pint" and "full quart") that tends to exaggerate the amount of the device in the container.

(4) The net quantity of contents declaration shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed; except that:

(i) On packages having a principal display panel of 32 square centimeters (5 square inches) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part.

(ii) For a device that is marketed with both outer and inner retail containers bearing the label information required by this part, the net quantity of contents placement requirement of this section applicable to the inner container is waived, if the inner container is not intended to be sold separately.

(iii) The principal display panel of a device marketed on a display card to which the immediate container is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents declaration is governed by the dimensions of the display card.

(h) The net quantity of contents declaration shall accurately reveal the quantity of device in the package exclusive of wrappers and other material packed therewith; provided that:

(1) For devices packed in containers designed to deliver the device under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant shall be included in the net quantity of contents declaration.

(2) For a package that contains the integral components making up a complete kit, and designed to deliver the components in the manner of an application (for example, a home test kit), the declaration may state the net quantity of the contents in nondeceptive terms of the number of applications available in the kit when the instructions for use as shown on the container are followed.

(i) The net quantity of contents declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible. Requirements of conspicuousness and legibility include the specifications that:

(1) The ratio of height to width of the letter, except for the "e" mark, shall not exceed a differential of three units to one unit (no more than three times as high as it is wide).

(2) Letter heights pertain to upper case or capital letters, except for the "e" mark. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent in the print or type used that shall meet the minimum height requirements. Other letters and exponents shall be printed in the same type style and in proportion to the type size used.

(3) When common fractions are used, each component numeral shall meet one-half the minimum height standards.

(j) The net quantity of contents declaration shall be in letters and numbers in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the specifications in the following table:

MINIMUM HEIGHT OF NUMBERS AND LETTERS

Area of principal display panel	Minimum height of numbers and letters	Minimum height if label information is blown, formed, or molded on surface of container
≤ 32 cm² (5 in²)	1.6 mm (1/16 in)	3.2 mm (1/8 in).
> 32 cm² (5 in²), ≤ 161 cm² (25 in²)	3.2 mm (1/8 in)	4.8 mm (3/16 in).
> 161 cm² (25 in²), ≤ 645 cm² (100 in²)	4.8 mm (3/16 in)	6.4 mm (1/4 in).
> 645 cm² (100 in²), ≤ 2581 cm² (400 in²)	6.4 mm (1/4 in)	7.9 mm (5/16 in).
> 2581 cm² (400 in²)	12.7 mm (1/2 in)	14.3 mm (9/16 in).

Symbols: ≤ means less than or equal to; > means greater than.

(1) The net quantity of contents declaration may appear on more than one line, with the entire SI declaration on the line immediately above or immediately below the entire customary inch-pound declaration.

(2) Use of the terms "net," "net mass," or "net weight" when stating the net quantity of contents in terms of mass or weight is optional. When used, the terms may either precede or follow the declaration of quantity. For example: "Net Wt 1 lb (453 g)" or "453 g (1 lb) Net" or "453 g (1 lb)" or "1 lb (453 g)."

(3) Use of the terms "net" or "net contents" when stating the quantity of contents in terms of fluid measure or numerical count is optional. When used, the terms may either precede or follow the declaration of quantity.

(4) It is sufficient to distinguish ounces used as an expression of weight from fluid ounces used as an expression of fluid measure through association of terms. For example: "Net wt 6 oz" or "6 fl oz" or "Net contents 6 fl oz."

(5) The quantity of contents declaration shall always declare the net quantity of contents, even when the terms specified in paragraphs (j)(2) and (j)(3) of this section are not used.

(k) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondeceptive terms the net quantity of contents, provided that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the device contained in the package; for example, "giant pint" and "full quart." Dual or combination declarations of net quantity of contents, including those provided for in paragraphs (a), (d)(3)(i), and (d)(4)(ii) of this section (for example, a combination of net weight or mass plus numerical count, net contents plus dilution directions of a concentrate, etc.) are not regarded as supplemental net quantity statements and may be located on the principal display panel.

(l) None of the requirements of this section concerning the declaration of the net quantity of contents in SI units shall apply to package sizes, unit pricing, advertising, or other general pricing information.

Dated: December 10, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-30801 Filed 12-20-93; 8:45 am]

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federal register

Tuesday
December 21, 1993

Part III

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 25
Federal Reserve System
12 CFR Part 228
Federal Deposit Insurance Corporation
12 CFR Part 345
Office of Thrift Supervision
12 CFR Part 563e

Community Reinvestment Act Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 93–19]

RIN 1557–AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 93–234]

RIN 1550–AA69

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the Federal financial supervisory agencies) are proposing to revise their regulations concerning the Community Reinvestment Act (CRA). The purpose of the CRA regulations is to implement the continuing and affirmative obligation of regulated financial institutions to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations and to provide guidance on how the agencies assess the performance of institutions in meeting that obligation.

The proposed new regulations are designed to provide clearer guidance to financial institutions on the nature and extent of their CRA obligation and the methods by which the obligation will be assessed and enforced. The proposed procedures are designed to emphasize performance rather than process, to promote consistency in assessments, to permit more effective enforcement against institutions with poor performance, and to reduce unnecessary compliance burden while stimulating improved performance.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: *OCC:* Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 93–19. Comments will be available for public inspection and photocopying at the same location.

BOARD: Comments should be directed to: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0822, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FDIC: Comments should be directed to: Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. They may be hand delivered to room 402, 1176 F Street, NW., Washington, DC between 8:30 a.m. and 4:30 p.m. on business days. They may be sent by facsimile transmission to 202–898–3838. Comments will be available for public inspection at the FDIC Reading Room #7118 at 550 17th Street, NW., Washington, DC 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. 93–234. 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 public 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 Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: *OCC:* Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874–5216; and Matthew Roberts, Special Counsel, Chief Counsel's Office, (202) 874–5200.

BOARD: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585, or Scott G. Alvarez, Associate General Counsel, Legal Division, (202) 452–3583.

FDIC: Bobbie Jean Norris, Deputy Director, Office of Consumer Affairs, (202) 898–6760; Valerie Thomas, Review Examiner (Compliance), Division of Supervision, (202) 898–7155; Ann Loikow, Counsel, (202) 898–3796; and Sandy Comenetz, Counsel, (202) 898–3582, Regulation and Legislation Section, Legal Division.

OTS: Timothy R. Burniston, Deputy Assistant Director for Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Specialized Programs, (202) 906–7054; Lewis A. Segall, Senior Attorney, Legal Policy Division, Chief Counsel's Office, (202) 906–6648.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies are jointly proposing new regulations to implement the CRA. The proposed regulations would replace the existing regulations in their entirety.

The CRA is designed to promote affirmative and ongoing efforts by regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income areas, consistent with safe and sound operations. Despite the CRA's notable successes, bank and thrift industry, community, consumer and other groups maintain that its full potential has not been realized, in large part, because compliance efforts have focused on process at the expense of performance.

In accordance with a request by the President, the Federal financial supervisory agencies have undertaken a comprehensive effort to reform their evaluation standards and examination procedures. The proposed regulations implement one part of this reform effort by substituting for the current process-based assessment factors a new evaluation system that would rate institutions based on their actual performance in meeting community credit needs. In particular, the new system would evaluate the degree to which an institution is providing (1)

loans, (2) branches and other services, and (3) investments to low- and moderate-income areas. The proposed regulations also clarify how an institution's CRA performance would be considered in the corporate application process and seek to make the regulations more enforceable.

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement tools. The agencies will also work together to improve public access to data collected pursuant to the Home Mortgage Disclosure Act (HMDA) and the proposed regulations. These efforts should produce a CRA assessment process that is less burdensome for many institutions and yields more results for the local communities the law is intended to benefit.

Background

In 1977, the Congress enacted the CRA to encourage banks and thrifts to help meet the credit needs of low- and moderate-income communities. In the CRA, the Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services.

The CRA requires each of the four Federal financial supervisory agencies to use its authority when examining regulated banks and thrifts to encourage institutions to help meet the credit needs of the communities in which they do business, consistent with safe and sound banking practices. Recently, the CRA has come to play an increasingly important role in improving access to credit among under-served communities—both rural and urban—across this country. Under the impetus of the CRA, many banks and thrifts have opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society. It is estimated that tens of billions of dollars have flowed to low- and moderate-income areas as a result of the CRA.

Despite these successes, the CRA examination and enforcement system has been criticized. Financial institutions have complained that policy guidance from the supervisory agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions have also complained that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments. In surveys of compliance costs, the institutions have often identified the CRA as the most burdensome of consumer protection and community reinvestment statutes.

Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance. Community and consumer groups have also criticized the regulatory agencies for failing to penalize banks and thrifts aggressively for poor performance.

Believing that the CRA examination and enforcement process can be improved, the President requested in July that the Federal financial supervisory agencies reform the CRA examination and enforcement system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that "replace paperwork and uncertainty with greater performance, clarity, and objectivity."

Specifically, the President asked that the agencies refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked that the agencies develop a well-trained corps of examiners who specialize in CRA examinations. The President asked that in undertaking this effort, the regulators seek to promote consistency and even-handedness, to improve public CRA performance evaluations, and to institute more effective sanctions against institutions with consistently poor performance.

Public Hearings

To implement the President's initiative, the four agencies held a series of seven public hearings across the country. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. Individuals, small business men and women, representatives of banks and thrifts and their trade associations, state and local government officials, members of local community-based organizations, and leaders of national community and consumer advocacy groups presented their views. While the oral and written statements submitted by the over 300 witnesses encompassed a variety of views, some common themes emerged.

Most commenters—bankers, state and local government officials, and leaders of community-based organizations—endorsed a more performance-based CRA evaluation system. Most witnesses, however, also rejected a formulaic approach that would be applied on a national basis. They emphasized that examinations should focus on lending, particularly to low- and moderate-income individuals, minorities, small farms, small businesses, and affordable housing and economic development organizations. However, they stressed that the facts and data about an institution's lending record should be evaluated in light of its business strategy, its financial condition, and the credit needs of the community in which it operates. A need to make the evaluations more geographically specific for those institutions that operate in multiple locations was also noted.

A number of respondents, both from the financial service industry and community-based organizations, expressed interest in the idea of financial institutions developing strategic plans for CRA performance in conjunction with the representatives of the communities within which they operate. Some wanted the regulatory agencies to make enforceable agreements between financial institutions and community groups a central focus of the CRA process. Others suggested that the agreements should be between the institutions and the supervisory agencies.

Many of those same respondents criticized the agencies for a lack of consistency in examinations and urged the agencies to develop cooperative training programs for their examiners. All groups stressed the need to improve the training of examiners responsible for CRA evaluations. While most witnesses focused on training for examiners who conduct CRA examinations, a number of the respondents also urged CRA training for commercial examiners so that they can develop a better understanding of community development lending.

Many community-based organizations and local government officials commented on the need for data to be collected on small business and consumer loans similar to that collected for housing loans under the Home Mortgage Disclosure Act. Those witnesses urged that the geographic distribution of those loans be monitored, and many also suggested that data on the race or ethnicity of the borrower be collected as well. They contended that the lack of this data was

a serious impediment to the public's and the regulatory agencies' ability to evaluate an institution's performance in these significant areas. However, other witnesses, particularly those representing smaller lenders, complained about current reporting burdens—citing the Home Mortgage Disclosure Act reporting requirements—and urged that no additional reporting of loans be mandated.

Many smaller financial institutions and some community groups also stated that the present system was too focused on punishing institutions that fail to perform, and the emphasis instead should be on rewards for institutions truly meeting a wide range of community lending and service needs. Witnesses identified a need to recognize that investments in intermediary community development organizations are beneficial for society and should be considered as strengths in evaluating an institution's CRA performance, even though the benefits of the investment may not flow back to the specific service community delineated by the institution. While there was an emphasis on rewards, respondents outside the banking community were overwhelmingly against the adoption of a "safe harbor" for financial institutions from CRA protests on the basis of ratings assigned by the regulatory agencies.

Many small institution respondents also noted the burden imposed by the present regulations. They felt that a different level of documentation and different approaches to reviewing their performance were appropriate. Small bankers stressed the high costs in terms of both time and money required to meet the perceived documentation requirements of the present approach. In many cases they stated that these burdens were actually impeding their institutions' ability to meet credit and service needs.

Finally, a number of respondents from the financial services industry and community-based organizations proposed that non-chartered financial service providers, such as insurance companies, finance companies, and other similar types of credit providers be subject to community reinvestment requirements similar to the CRA.

We have attempted to address many of these concerns within the proposed regulations. Without resorting to fixed formulas, the proposed regulations set forth a different, more objective and more enforceable approach to evaluating performance under the Act. The new regulations would maintain the present regulations' emphasis on evaluating each institution's record in light of its business strategy and community. The new regulations would require additional data reporting for consumer, small business, and home mortgage loans, with provisions for disclosing that information to the public in a timely manner. To provide incentives for strong performance, the new regulations would clarify how CRA performance would be considered in the application process. However, the regulations would not contain a "safe harbor" provision. Under the new assessment system, further incentives would be provided to institutions that show strong performance by reducing the frequency of examinations. Finally, the regulations would provide a different evaluation framework for small institutions.

The Proposed Regulations

In General

In order to promote consistency, to reduce compliance burden and to improve performance, the proposed regulations eliminate the current regulations' twelve assessment factors and substitute a performance-based evaluation system. Under the proposed system, financial institutions would not be assessed on their efforts to meet community credit needs. Such assessments have given rise to unnecessary documentation that has reduced the effectiveness and undermined the credibility of current evaluations. Similarly, the agencies would not evaluate the methods used by an institution to assess credit needs. However, to perform under the proposed performance-based standards, institutions would have to provide loans, investments, and services for which there is a market. Therefore, they would have an incentive to perform needs assessments in their communities.

In assessing an institution's CRA performance, the agencies would recognize that the institution is expected to help meet the credit needs of its entire community. In examinations, however, particular attention would be paid to the institution's record of helping to meet the credit needs in low- and moderate-income areas.

Institutions would be evaluated based on their lending, service, and investment performance. Generally, independent institutions with at least $250 million in assets and members of holding companies with that level of banking and thrift assets would be evaluated based on some combination of lending, service, and investment tests. As a predicate for evaluation under the tests, institutions would have to report to the agencies and make available to the public data on the geographic distribution of their loan applications, denials, originations and purchases. Small banks and thrifts could elect to be evaluated under a streamlined method that would not require them to report this data. Every institution would have the option to choose assessment based on a pre-approved strategic plan that had been subjected to review and comment by community-based organizations and the rest of the public. However, the plan option would not relieve an institution of its data reporting obligations.

The lending test applicable to large institutions would consider the extent to which the institution is making loans in low- and moderate-income portions of its service areas. The test would also give an institution credit for other community development loans and partnerships with community groups to promote credit availability. The service test would consider the extent to which the institution is making branches accessible to low- and moderate-income areas in its service areas and is providing other services that promote credit availability. The investment test would consider investments in community and economic development activities and would also take into account grants to support community and economic development activities, donations or sales on favorable terms of branches to women- or minority-owned institutions, and investment partnerships with community organizations.

The three tests would not apply uniformly to all institutions. As a general rule, institutions would be evaluated on the basis of the product lines offered to their customers in the normal course of business. The lending test would apply to retail institutions, and the investment test would apply to wholesale and limited-purpose institutions. A retail institution would be evaluated under the investment test but its performance would only count to boost its lending test rating. All institutions would be evaluated under the service test, but wholesale and limited-purpose institutions would be evaluated under a different standard than retail institutions.

An institution evaluated under a given test would receive one of five ratings of its performance under that test: Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, or Substantial Noncompliance. The agencies have proposed five ratings rather than four ratings for each test to measure as accurately as possible

variations in performance among institutions. The agencies propose to have only four composite ratings, however, because the four ratings are required by the statute.

Small institutions that choose not to report loan data would be evaluated under a streamlined measure of lending performance that would focus on their loan-to-deposit ratio, the degree to which they make their loans in their service area, their loan mix (across product lines and income levels of borrowers), their fair lending record, and their record of community complaints. Institutions that are currently subject to reporting under the Home Mortgage Disclosure Act (HMDA) would also be evaluated on the reasonableness of the distribution of the loans they have reported. The investment and service records of small institutions would be considered to boost their ratings based on the lending measure.

The regulations would not require institutions to offer specific loan products, to make specific loans or investments or to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound banking practices. However, the regulations would require demonstrated performance by institutions in lending, service, and investments that benefit low- and moderate-income areas and individuals. Institutions would be permitted and encouraged to develop and apply flexible underwriting standards that are consistent with safe and sound operations for loans that benefit low- and moderate-income individuals and areas.

Under the proposal, wholesale and limited purpose institutions are defined as insured depository institutions that are in the business of extending credit to the public but that do not make a significant amount of reportable loans. This would include banks that make primarily large commercial loans, as well as credit card banks, and similar institutions.

The proposed regulations would not apply to institutions that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. The agencies have previously indicated that these institutions are not governed by the CRA because these institutions generally do not perform commercial or retail banking services and do not generally extend credit to the public for their own account.

Community Reinvestment Obligation and Enforcement

The agencies propose to state in the regulations that financial institutions have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations, and that a purpose of the regulations is to implement this obligation. An institution that received a composite rating of Substantial Noncompliance would be subject to enforcement actions under 12 U.S.C. 1818.

The agencies propose these provisions as a method of improving the effectiveness and fairness of CRA. If the consequences for inadequate performance are restricted to the application process, then institutions not contemplating applications may have little incentive to comply. Community reinvestment is an obligation of all institutions, whether or not they are contemplating an application. In the absence of agency enforcement actions, communities in which institutions that do not anticipate filing applications are chartered may not receive the community reinvestment that the statute intends. The proposed provisions on the community reinvestment obligation and the consequent availability of formal enforcement actions would strengthen the agencies' ability to encourage institutions to meet their community reinvestment obligation.

The Lending Test

The lending test would evaluate primarily whether a retail institution is making loans in low- and moderate-income areas as well as in other areas. The test would examine both direct lending by the institution and, if the institution elected, its proportionate share of indirect lending made through lending consortia in which the institution participates, subsidiaries of the institution, funded non-chartered affiliates of the institution, and women- or minority-owned institutions, low-income credit unions, and other lenders in which the institution has made lawful investments. The test would also take into account loans made by an institution to community development organizations and intermediaries.

Under the lending test, an institution would be evaluated on the basis of its performance in making reportable loans in comparison to other lenders subject to CRA in its service area. An institution would also be evaluated independently of how others are performing. The agencies would evaluate the institution's performance relative to other CRA lenders by comparing the institution's share (market share) of reported housing, small business, and consumer loans in low- and moderate-income areas in its service area with its share of such loans in the other parts of its service area. The agencies would evaluate the institution's performance independent of other CRA lenders' performances by examining the ratio of such loans made by the institution in low- and moderate-income areas in its service area to such loans made throughout its service area or by examining the geographic distribution of such loans across the low- and moderate-income areas in the institution's service area. By doing so, the agencies would assure that, in order to achieve a good rating under this test, either the institution has a good distribution of loans in the low- and moderate-income areas in its service areas or has a significant amount of loans to such areas.

The agencies believe that this formulation would allow an institution to target its community development lending to particular areas if doing so is critical to serving as a catalyst to community development lending throughout its service area. The agencies are aware that, in some cases, a concentrated lending effort is more useful and effective than a dispersed effort across a broader geographic area. However, the agencies have attempted to make clear that this standard would not permit institutions unreasonably to exclude low- and moderate-income areas from their lending.

The proposal indicates that the agencies will make all lending test calculations using both volume of loans made and number of loans made. In addition, in evaluating an institution's performance relative to other CRA lenders, the agencies will calculate market shares separately for small business, home mortgage, and consumer lending and weigh the calculations for those categories in reaching an overall judgment of an institution's market share performance. These decisions reflect the belief that, in different communities, one loan type may be more critical than others, and that, for different loan types, one form of measurement (either the number of loans or dollar volume) may be more useful and instructive than another. This proposal would give the agencies the flexibility to make the relevant calculations, weigh the results in reaching an assessment of an institution's performance, and discuss them in the public evaluation in the manner deemed most informative.

At the election of an institution, the agencies would consider indirect loans attributable to the institution under the lending test. Indirect loans would be defined as loans made by third parties, such as lending consortia, subsidiaries of the institution or non-chartered affiliates that it assists in funding, and women- or minority-owned institutions, low-income credit unions, and other lenders that lend to low- and moderate-income individuals or areas and in which the institution has made lawful investments. If an institution reported its attributable indirect loans and chose to have them attributed to it, the agencies would attribute the indirect loans in proportion to the institution's investment taking into account both the total lending by the third party and the lending done by the third party in the institution's service area. The proposal intends that the institution receive credit for a proportionate share of the total loans made by the third party based on the institution's investment, funding or participation. However, in claiming this credit, the loans should not be counted twice and the institution must take a representative geographic distribution of the loans in its service area or areas.

The proposal makes a distinction between the ability of an institution to claim credit under the lending test for indirect loans by its subsidiaries and funded non-chartered affiliates and its ability to claim credit for indirect loans made by other lenders. The institution could claim credit for the lending of subsidiaries or non-chartered affiliates, under the same rules regarding proportionate shares, whether it invests in the entity or makes a loan to it. For other third party lenders, the institution would be required to have made an investment in the entity in order to claim credit under the lending test for its loans. The purpose of this distinction is to recognize the unique relationship between the institution and its subsidiaries and affiliates, and to enhance the ability of institutions and their parent corporations to structure their community development lending flexibly.

The agencies could adjust an institution's rating based on the described factors upward, and, in exceptional cases, downward. Upward adjustment might be warranted if an institution made a substantial amount of loans requiring innovative underwriting or loans for which there is special need, such as loans for multifamily housing construction and rehabilitation, loans to start-up or very small businesses, loans to community development organizations or facilities and loans to very low-income individuals and areas. While the agencies would expect such lending to be made within the confines of safety and soundness, it is understood that lending in low- and moderate-income areas can sometimes require a unique approach to establishing that the loan can be safely underwritten. It is the agencies' purpose to recognize the unique quality of these loans and the special expertise and effort they require on the part of the lender by making clear that such loans will be given particular consideration by the agencies in arriving at a rating under the lending test. Particular consideration will also be given to loans made to community development lending institutions.

An institution could also receive an upward adjustment to its lending rating based on the operation of a program under which the institution would reevaluate applications that, based on an initial evaluation, the institution planned to deny. To the extent that an institution operates such a "second look" program in which applications are reviewed by community organizations, the institution must request applicants to waive any privacy rights under state or federal law in order to share their applications with those organizations. The institutions should also make sure that the participating organizations take appropriate steps to protect applicants' confidentiality.

In exceptional cases, an institution's rating might be adjusted downward. For example, an adjustment might be warranted if the quantitative measures inaccurately portrayed the institution's actual lending to low- or moderate-income geographies or individuals.

Based on these measures, an institution's lending effort would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution if, for example, it believed the presumptive rating did not accurately or adequately reflect its lending record because of particular economic or demographic characteristics.

Investments and Other Factors

Wholesale and limited-purpose institutions would normally be evaluated under the investment test instead of the lending test. Retail institutions would be evaluated under the investment test, but investment performance would not be used to lower the overall rating of a retail institution. However, all institutions would be encouraged to engage in investment activities.

The focus of the investment test would be the ultimate impact of the institution's investment rather than the investment *per se*. Therefore, qualified investments would not be credited under the test unless they had a demonstrable impact, *e.g.* in providing loans or community development projects that benefit low- and moderate-income individuals and areas.

Institutions would be evaluated under the investment test based on the amount of assets compared to their risk-based capital that they have devoted to qualified investments for which they have not already received credit under the lending test. If an institution made a qualified investment that generated some attributable indirect loans but also created non-loan benefits for low- and moderate-income areas or individuals, the institution could receive credit under the lending test for the indirect loans and credit under the investment test for that part of the investment that was not considered as indirect lending.

Qualified investments would include lawful investments that benefit low- and moderate-income geographies or individuals in an institution's service area: in support of local affordable housing and community, economic, or small business development; in community development financial institutions, community development corporations, community development projects, small business investment corporations (including minority small business investment corporations), and minority- and women-owned financial institutions and other community development financial intermediaries; in consortia or other structures serving low- and moderate-income individuals and areas; and in state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income areas and individuals. The CRA does not grant institutions any investment authority, so investments must comply with other statutory and regulatory limitations and requirements.

Eligible grants would be considered qualifying investments. Donation or sale on favorable terms of branches to minority- or women-owned institutions would also count as qualifying investments. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments would be treated as qualified investments for the purposes of the Investment Test. For purposes of the investment test, wholesale and limited-purpose

institutions would be deemed to have nationwide service areas.

The agencies could adjust an institution's rating under the investment test to take into account whether the institution's investments are particularly innovative or meet a special need and whether the institution's activities in connection with the investments are particularly complex or intensive or involve innovative partnerships with community-based organizations. Examples of such activities include helping to establish a new entity to conduct community development activities or providing significant service or assistance in support of a qualified investment. The agencies could also adjust an institution's rating if the institution has made a large amount of investments that would be qualified investments except that they fail to benefit the bank's service area. Downward adjustments would only be justified in exceptional cases.

Based on these measures, an institution's investment effort would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution.

The Service Test

In the CRA, Congress found that regulated financial institutions are required by law to demonstrate that they serve the convenience and needs of their communities and that "the convenience and needs of communities include the need for credit services as well as deposit services." See 12 U.S.C. 2901. The CRA focuses, however, on an institution's effort to help meet the credit needs of its community or communities.

Branch availability in a community is critical to the availability of credit, as well as deposit, services. The loan origination process (including initial contacts, pre-application counseling, application completion and application filing) often occurs at branches. Moreover, accessible branches are critical to the development of the full-service banking relationships that facilitate participation in the credit system.

Therefore, the service test would evaluate a retail institution primarily on the basis of the percentage of its branches that are located in or that are readily accessible to low- and moderate-income areas. Generally, in a densely-populated area, a branch would be considered readily accessible if it was in easy walking distance. In a less populated area, a branch would generally be considered readily accessible if it was in easy or normal driving distance. The percentage of branches that an institution would be expected to have in or readily accessible to low- and moderate-income areas in each service area would depend, in part, on the number of such areas in the service area.

The agencies could adjust a retail institution's service record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals, but downward adjustments would be made only in exceptional cases.

In determining the appropriateness and degree of any adjustment, the agencies might consider the institution's record of opening and closing branches, whether branches wherever located are actually serving low- and moderate-income individuals, any significant differences in the quality, quantity or types of services offered to low- or moderate-income individuals or geographies, and similar factors.

The agencies could also adjust a retail institution's rating upward to reflect a strong record of providing or supporting other services that promote credit availability for low- and moderate-income individuals and areas. Particular weight in this consideration would be given to credit and home-ownership counseling, small and minority-owned business counseling, low-cost check-cashing, and low-cost deposit services.

Appropriate consideration would be given to the limitations faced by institutions with a small number of branches. No institution would be required to expand the size of its branching network or to operate branches at a loss. Because they generally do not have branch systems, wholesale and limited-purpose institutions would be evaluated based on their support for services than promote credit availability rather than their provision of branches.

Based on these measures, an institution's service performance would be assigned a preliminary rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance. Preliminary ratings would be presumptive and could be rebutted by the institution.

Composite Ratings

As required by the statute, there would be four possible composite ratings: outstanding, satisfactory, needs to improve, and substantial noncompliance. For retail institutions, the institution's rating under the lending test would form the basis for its composite rating. For wholesale or limited-purpose institutions, the institution's rating under the investment test would serve as the basis for the composite rating. For retail institutions, the rating would then be increased by two levels in the case of outstanding investment performance or by one level in the case of high satisfactory investment performance. For all institutions, the rating would be increased by one level in the case of outstanding service and decreased by one level in the case of substantial non-compliance in service.

The rating would be converted to the statutorily-required four level rating system, with high satisfactory and low satisfactory both scored as satisfactory. An institution that would otherwise receive a needs to improve rating would be rated in substantial noncompliance if the institution received no better than a needs to improve rating on both of its last two examinations. Finally, the rating would be adjusted, if necessary, to take into account illegal lending discrimination by the institution to arrive at a final composite rating.

Lending Discrimination

A financial institution is not serving its entire community adequately if it is discriminating illegally. Therefore, there would be a rebuttable presumption that an institution would receive a composite rating of less than satisfactory if the institution committed an isolated act of illegal discrimination of which it has knowledge that it has not corrected fully or is not in the process of correcting fully or engaged in a pattern or practice of illegal discrimination that it has not corrected fully. The presumption could be rebutted in the case of technical or *de minimis* violations, for example, if an institution violates the Equal Credit Opportunity Act by offering a preferential credit program for individuals over age 55 (rather than limiting the program to individuals over age 62 as the law requires).

Multiple Service Areas

An institution's CRA rating should reflect its performance in all the local communities in which it does business. If an institution operates in more than one service area, the agencies would evaluate all the institution's loan data and would conduct full lending and service tests in a sample of the service areas in which the institution operates. The agencies would then assign separate composite ratings for each area. The institution's overall rating would reflect the performance of the institution in all service areas studied.

Small Institution Assessment Option

The CRA requires the agencies to assess an institution's record of meeting the credit needs of its entire community, but does not specify the methods by which the assessments are to be made. The agencies believe that the Congress gave the agencies broad discretion to determine the appropriate methods for CRA assessments. The Congress recognized that assessment methods must be appropriate for communities and institutions of different sizes, conditions, needs and attributes.

Many small institutions and their representatives have urged that the agencies exercise their discretion to exempt small institutions from CRA assessments. However, the agencies do not believe that an exemption is permitted by the statute. Moreover, the agencies believe that an exemption would be unwise because it could result in neglect of the credit needs of communities that are served by exempted institutions.

The agencies believe, however, that they may exercise their discretion to create different assessment methods to take into account differences among classes of financial institutions. The agencies further believe that a different assessment method may be warranted to provide appropriate treatment of small banks and thrifts. The proposed regulations therefore generally offer small banks and thrifts the option of choosing evaluation under a streamlined assessment method. Concomitantly, the regulations would not impose upon small institutions the data collection requirements that are necessary for the general assessment method applied to other institutions. This difference in method may be appropriate because the disproportionate burden that would be otherwise imposed on small institutions does not appear to be necessary to achieve the purposes of the regulations. Collection and reporting by small banks and thrifts of data on the geographic distribution of their loans may impose a burden on those institutions disproportionate to larger institutions. In addition, small banks and thrifts often serve geographically compact communities, so the benefits of geographic coding and reporting of loans by such institutions are generally minimal.

Finally, the streamlined examination process proposed by the agencies is designed to measure accurately whether small banks and thrifts are, in fact, serving the needs of their *entire* communities. In this regard, the agencies stress that the examinations for small banks and thrifts will not be implemented as *de facto* exemptions. Examinations will not be formalities or simple reviews in which examiners quickly determine whether institutions have met the items on a "check list." Meaningful examinations, including reviews of the loan files of small institutions, will be conducted, but the burden of the examinations will be shifted largely from the banks being examined to the examiners.

Small banks and thrifts would be defined as independent institutions with assets of less than $250 million or institutions with less than $250 million in assets that are members of holding companies the total banking and thrift assets of which are less than $250 million. Approximately 9% of the combined assets of U.S. commercial banks (including development, industrial and cooperative banks, and State and federally-chartered savings banks) are in banks or in bank holding companies with assets less than $250 million and with a loan-to-deposit ratio of 60% or higher.

The primary basis for a small institution's rating would be an evaluation of its lending record. An institution would be presumed to receive a satisfactory rating if it has a reasonable loan-to-deposit ratio, makes the majority of its loans locally, has a good loan mix (makes a variety of loans to the extent permitted by law and regulation and lends across income levels), has no legitimate, bona-fide complaints from community members, has not committed an isolated act of illegal discrimination of which it has knowledge that it has not corrected fully or is not in the process of correcting fully, and has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully. In addition, if an institution is required to report loans under the HMDA, the institution would also be required to have a reasonable geographic distribution of reported loans.

A small institution that meets each of the standards for a satisfactory rating and exceeds some or all of those standards could receive an overall rating of outstanding. In assessing whether a small institution's CRA record is outstanding, the relevant agency would consider the extent to which the institution's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the institution, the agency would evaluate the institution's record of making qualified investments and its record of providing branches, remote service facilities (RSFs), automated teller machines (ATMs), and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

If a small institution failed to meet or exceed all of the standards for a satisfactory rating, the relevant agency would conduct a more extensive examination of the institution's loan-to-deposit record, its record of lending to its local community, and its loan mix. The agency would also contact members of the community, particularly in response to complaints about the institution, and review the findings of its most recent fair lending examination In addition, at the option of the institution, the agency would assess the institution's record of making qualified investments and its record of providing branches, RSFs, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

If a small institution operates in more than one service area, the relevant agency would evaluate the institution's performance in all of those service areas.

Plan Assessment Option

Any institution, as an alternative to being rated under the lending, service, and investment tests or the assessment method for small institutions, could elect to submit for agency approval a CRA plan with measurable goals against which its subsequent performance would be assessed. This plan would be required to be publicly disclosed and subject to public comment before approval. If the agency approved the plan, it would assess the institution's performance to determine if the institution met or exceeded the plan goals. If the institution failed to meet or exceed the preponderance of the measurable goals set forth in the plan, the institution's performance would be evaluated under the applicable tests or standards described above. Assessment under a plan would not relieve an institution from its obligation to report data on the geographic distribution of its loans.

Definition of Service Area

The geographic areas surrounding each office or group of offices in which a retail institution (including a small institution) makes most of its direct loans would be used to define its service areas. A rebuttable presumption would exist that an institution's service area is acceptable if it is broad enough to include low- and moderate-income areas, and does not arbitrarily exclude

low- and moderate-income areas. For example, service areas defined by the institution to include the areas around branches in which it makes a substantial portion of its loans and all other areas equidistant from the branches would normally be acceptable. Institutions would not be evaluated on the method they use to delineate their service areas. Wholesale and limited-purpose institutions would not have to define service areas.

A retail institution would generally have multiple service areas if it serves significant areas across state or metropolitan boundaries. An institution could have multiple service areas within one metropolitan area, and service areas need not necessarily be coterminous with metropolitan statistical area or state boundaries. However, a service area generally should not include more than one metropolitan statistical area and should not include both a metropolitan statistical area and a rural area.

Data Collection and Reporting

In addition to data already collected under the HMDA and the agencies' fair housing data collection requirements, institutions that do not elect or are not eligible for the small institution streamlined assessment method would be required to collect and report to the agencies data on the geographic distribution of their home mortgage, consumer, small business (including small farm) loan written applications, application denials, originations and purchases. In the case of a retail institution that elected to count its attributable indirect loans for its lending test, data would have to include reports on attributable indirect loans (including loans made outside low- or moderate-income areas). Data on small business loans would be reported in four categories based on the sales volume of the business. Data on the race and gender of borrowers would not be required to be collected and reported, except to the extent such data are required by current law. Data would have to be reported in summary form (see appendix A) and would have to be submitted to the agencies by January 31 of the calendar year following the calendar year for which the data were collected. These data would be used by the agencies to make the calculations under the lending test and would be made available to the public.

Home mortgage loans would be defined to include all mortgage loans reportable under HMDA and its implementing regulations. These include closed-end purchase and improvement loans (including refinancings) for single family, 1–4 family, and multifamily housing. Institutions already covered by HMDA would not be required to collect any additional information on their home mortgage loans but would be required to submit home mortgage data in summary form by the January 31 deadline. Institutions not now covered by HMDA would have to collect and report the summary home mortgage data required by the proposed CRA regulations but would not have to report home mortgage data in the detail required by HMDA. Reporting of open-end home equity lines of credit is not required under HMDA and would not be required under the proposed regulations, because the burdens of collection and reporting appear to outweigh the associated benefits.

Consumer loans are defined to include all closed-end loans, secured and unsecured, extended to a natural person primarily for personal, family, or household purposes, except for credit card loans and motorized vehicle loans and those loans included in the definition of home mortgage loans. Consumer loans also would not include open-end credit lines.

The agencies have not proposed to require collection and reporting of data on open-end credit lines, credit card loans, and motorized vehicle loans because the burdens associated with collection and reporting of the data appear to outweigh the associated benefits. The legislative history of the Community Reinvestment Act reveals that Congress was primarily concerned with the availability of home mortgage loans and small business loans. In addition, collection of data on revolving credit (including credit card loans) and automobile loans is particularly burdensome given the nature of those loans.

Documentation and Disclosure

Every institution would have to make available for public inspection a file with all signed, written comments from the public that it has received for the past 2 years, its performance data for that period, maps of its service areas and lists of the census tracts or block numbering areas that make up each service area, and a copy of the public section of its most recent CRA Performance Evaluation. If an institution elected assessment under the plan option, it would be required to include in the public file a copy of its plan. Copies of information in the public file would be required to be made available at cost to members of the public on request. The public file would be required to be maintained at the institution's main office. Materials relating to a given service area would also be required to be maintained at each branch in that service area. Every institution would have to post in the public lobby of every branch a notice of its CRA obligation and the public's ability to comment on and review data concerning that performance.

Publication of Examination Schedule and Public Comment

The proposed regulation provides that the agencies will publish a list of the institutions which are scheduled to undergo CRA examinations in the next calendar quarter. The list would be published at least 30 days in advance of the quarter and would contain the names of the institutions that have been scheduled for a CRA examination in that quarter. Members of the public would be invited to submit comments to the appropriate agency regarding the CRA performance of any institution whose name appears on the list. If received prior to the start of an examination, those comments would be taken into consideration during the examination in addition to any comments already in the institution's public CRA file. As the precise timing of any particular examination, including the length of time any particular examination takes to complete, cannot always be accurately judged, members of the public would be urged to submit their comments as soon as possible after the list of institutions is published. Additionally, the agencies would urge all interested members of the public to file comments with institutions regarding their CRA performance on an ongoing basis and not to wait until any particular institution has been scheduled for a CRA examination to file comments either with the institution itself or the appropriate agency. This is especially important as from time to time it might be necessary or advisable for the agencies to conduct a CRA examination of an institution which had not been previously scheduled to receive an examination that quarter. In short, the fact that an institution's name does not appear on the published list would in no way preclude the agencies from conducting a CRA examination.

Applications

The CRA requires the agencies to consider the CRA performance record of an insured depository institution in considering applications by the institution for a deposit facility. Applications for a deposit facility include applications to charter a bank or Federal savings association, to obtain Federal deposit insurance, to establish

or relocate a branch office or ATM, and to acquire another insured depository institution or its assets. The agencies propose in the regulation to explain how CRA ratings achieved through performance-based examinations will be considered in these applications.

Under the proposal, the CRA examination rating would continue to be an important and often controlling factor in assessing the CRA aspect of an application, including where appropriate the convenience and needs factor. The CRA examination rating is not conclusive, however, and the proposal recognizes that other information related to CRA performance and the convenience and needs of communities, including information collected through public comment and through periodic and special reports, is also relevant and must be considered.

As proposed, an "outstanding" rating generally would result in a finding that the CRA aspect of the application is consistent with approval of the application and would receive extra weight in reviewing the application. A "satisfactory" rating generally would result in a finding that the CRA aspect of the application is consistent with approval of the application. A "needs to improve" rating generally would be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally would result in denial or conditional approval of the application. A "substantial noncompliance" rating generally would be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

In addition to consideration of CRA performance in the application process and use of their general enforcement powers (which could include issuing cease and desist orders or imposing civil money penalties), the agencies plan to use the frequency of CRA examinations to provide incentives for strong performance. Institutions with outstanding ratings will generally be examined less frequently than the average institution, and institutions with less than satisfactory ratings will generally be examined more frequently. Of course, other factors, such as an institution's financial condition, will also affect the frequency of examinations. The agencies believe that linking examination frequency to performance makes sense not only because it provides an incentive for strong performance but also because it reflects a sensible allocation of the agencies' limited examination resources.

Transition

Under the proposed regulations, the data collection and reporting requirements will go into effect July 1, 1994 for all institutions that are required under the regulations to collect and report data. Data collected from July 1, 1994 through December 31, 1994 would be required to be reported to the agencies no later than January 31, 1995. Thereafter, institutions would be required to collect the data on an annual basis and to report the data no later than January 31 of the following year.

Evaluations based upon the new assessment standards could begin by April 1, 1995, by which time sufficient data will have been collected and analyzed to accommodate the quantitative analyses contemplated by the regulations. However, the agencies anticipate that financial institutions may need time to adjust to the new approach. Therefore, from April 1, 1995 to July 1, 1995, an institution could elect to be evaluated under the standards that were in place under the old system rather than the new standards. After July 1, 1995, the new standards would be mandatory except that, until April 1, 1996, an institution showing good cause could request evaluation under the old standards. An institution could also elect to be evaluated under a strategic plan during the transition period. However, as would be the case whenever an institution elects evaluation under the plan option, the institution would have to submit the strategic plan at least 3 months prior to the plan's proposed effective date. The purpose of this requirement is to allow the agencies sufficient lead time to review, assess, and determine whether to approve the plan.

Finally, the agencies are concerned that some institutions may have difficulty adapting to the new assessment standards and that such institutions may, despite clear efforts to the contrary, find that their first CRA rating under the new standards is substantially below their most recent rating under the old system. The proposed regulations provide a reasonable accommodation for institutions that find themselves in that situation. If an institution's first rating under the new standards is more than one category below the institution's last rating under the old standards, the agencies would not disapprove any corporate application nor take any other enforcement action against the institution based on that lower rating if the agencies determined that the drop in the institution's rating occurred despite the institution's good faith efforts to perform at least satisfactorily under the new standards.

Review

The agencies recognize that the proposed regulations represent a dramatic change in existing practices and that cautious administration is therefore required. Consultation by financial institutions with the agencies on compliance with the new standards and procedures will be encouraged, as will liberal use of agency appeals processes. The supervisory agencies will engage in an internal review of the effectiveness of the new regulations. The agencies contemplate reconsideration of the regulations to improve their effectiveness within the next several years. The agencies intend for the proposed regulations to require demonstrated performance but to impose as little unnecessary compliance burden as possible, and the agencies will review the regulations to determine whether they are advancing these goals.

Other Efforts

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement tools. The agencies will work together to make examinations as short in duration as possible, to minimize unnecessary compliance burden, and to ensure consistency and reliability in the rating process.

The agencies will also work together to improve public access to data collected pursuant to HMDA and the proposed regulations. To that end, the agencies will strive to make the summary data reported under the proposed CRA regulations available to the public as soon as possible. The Federal Reserve Board will also strive to make HMDA data available by May 30 of the year following the year for which the data are submitted.

CRA Loan Data Format

The agencies are proposing a common CRA Loan Data Format, included in each regulation as appendix A. That common format appears at the end of this preamble, but would be published with each agency's regulation if this proposal is adopted as a final rule.

Specific Areas for Public Comment

Comment is invited on all aspects of the proposal. In addition to general comments, the agencies request

comments on the following particular issues:

(1) Are the lending, service, and investment tests meaningful and workable? Is the appropriate weight given to each of the three tests in determining the composite rating? Should numbers or ratios be substituted for the descriptive quantitative terms used in the various rating levels under the three tests? If so, what should they be?

(2) Should "indirect loans", or loans made by entities in which a bank or thrift has made an investment, be included in the lending test as proposed? Is the treatment of "indirect loans" meaningful, workable, and effective?

(3) Should the quantitative measures used in the lending, service, and investment tests be expanded to include a broader array of performance measures? If so, what would those additional measures include?

(4) Should banks and thrifts be permitted to elect to be evaluated on the basis of their performance relative to an approved CRA plan? Is the regulation sufficiently clear about the bases upon which agencies would approve a proposed plan?

(5) Are the provisions of the regulations on the circumstances under which the agencies would use their enforcement authority to promote compliance with the community reinvestment obligation of regulated banks and thrifts appropriate? Is the community reinvestment obligation appropriately stated?

(6) Should the performance of affiliates be considered in CRA examinations of a regulated bank or thrift? Should the performance of affiliates be considered in decisions on corporate applications filed by a bank or thrift?

(7) Does the formulation of the regulation strike an appropriate balance between the need of institutions for certainty in the evaluation system and the need for the flexibility to reflect individual institutions' service capabilities and the credit needs of particular locales? Will this proposal result in a clearer, more objective evaluation scheme? If sufficient certainty and objectivity are not achieved, what adjustments should be made?

(8) Are the data collection provisions under the proposed regulation warranted and are the appropriate data collection elements called for? What adjustments should be made to the data collection provisions? What costs will be imposed and what benefits derived from the data collection provisions?

(9) How would the proposed changes affect the amount of time that financial institutions spend on CRA compliance? If you operate a financial institution, how much time do you now devote to compliance and how much time do you anticipate the proposed regulations would require that you devote? (Please indicate the size of your institution when answering.) How might compliance costs be reduced consistent with the regulatory and statutory objectives?

(10) What analytical or computational problems, if any, result from the fact that this proposal requires calculation of relevant ratios under the lending test using only the loans made by institutions that would be required by the proposal to report their lending, rather than loans made by all lenders in the relevant markets? How should the regulation be adjusted to deal with any such problems?

(11) Are there other approaches to changing the CRA regulations that would be more beneficial and cost effective, and that would achieve the goals of this reform effort? If so, what alternative approach should be considered and what would its elements be?

Text of Proposed Common Appendix

The text of the proposed common appendix appears below:

Appendix A to Part_____—CRA Loan Data Format

PART A.—LOANS TO SMALL BUSINESSES

[Total sales <$250M]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $
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PART B.—LOANS TO SMALL BUSINESSES

[Total sales ≤$250M but <$1MM]

Census tract/ bock numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $
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PART C.—LOANS TO SMALL BUSINESSES

[Total sales ≤$1M but <$10MM]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $

PART D.—LOANS TO SMALL BUSINESSES

[Total sales >$10MM with <500 employees]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $

CONSUMER LOANS

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $

SMALL FARM LOANS

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $

PART A.—HOME PURCHASE LOANS

[Loans on 1-to-4 family dwellings]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $

PART B.—HOME IMPROVEMENT LOANS

[Loans on 1-to-4 family dwellings]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $
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PART C.—REFINANCING

[Home purchase or home improvement 1-to-4 family dwellings]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $
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PART D.—MULTIFAMILY DWELLING LOANS

[Home purchase, home improvement and refinancings]

Census tract/ block numbering area	Total # of apps.		Total # of app. denials		Total # of apps. approved		$ amount approved		Total # & $ purchased		Indirect loans # and $ amount	
	Govt.	Other	Govt.	Other	Govt.	Other	Govt.	Other	Govt. # $	Other # $	Govt. # $	Other # $
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Paperwork Reduction Act

OCC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0160, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0160), Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 25.11, 25.12, 25.13, and 25.14. This information is required to evidence national bank efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess national bank performance in satisfying the credit needs of their communities and in evaluating certain corporate applications. The likely respondents/recordkeepers are for-profit institutions including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, with an estimated average of 18 hours.

There will be an estimated 532 respondents averaging two hours and 3,450 recordkeepers averaging 16 hours.

Board: In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the Federal Reserve Board will review the proposed collection under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period. Comments on the collections of information should be sent to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collections of information in this proposed regulation are in 12 CFR 228.11, 228.12, 228.13, and 228.14. This information would be required to evidence the efforts of banks in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. This information will be used to assess banks' performance in satisfying the credit needs of their communities and in evaluating certain applications.

Approximately 973 banks would be subject to recordkeeping requirements under the proposed regulation; 274 of them (respondents) would also be subject to reporting requirements. It is estimated that the annual burden per bank under these requirements will vary from 6 hours to 250 hours, including time to maintain the public disclosure file under existing rules and to review instructions, gather and maintain the new data needed and complete the information collection under the proposed rules.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 345.11 through 345.14 and concern alternative assessment methods, including the option of being assessed according to a strategic CRA plan; the delineation of the institution's service area; the collection, reporting and disclosure of specified data on the bank's home mortgage, consumer, small business and small farm loans; and the maintenance of a public CRA file.

This information is required to evidence efforts of financial institutions in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. It will be used to assess an institution's performance in satisfying the credit needs of its communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit financial institutions, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, and whether an institution qualifies as a small institution. The estimated average burden is 18 hours. There will be an estimated 645 respondents averaging two hours and 7,300 recordkeepers averaging 16 hours.

OTS: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563e.11, 563e.12, 563e.13 and 563e.14. This information is required to evidence savings association efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess savings association performance in satisfying the credit needs of their communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit savings associations, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from six to 90 hours, depending on individual circumstances, with an estimated average of 18 hours. There will be an estimated 450 respondents averaging two hours and 1,800 recordkeepers averaging 16 hours.

Regulatory Flexibility Act

OCC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. Accordingly, a regulatory flexibility analysis is not required. This proposal would enable most small banks to avoid the data collection requirements in part 25 and will encourage greater small business lending by banks of all sizes.

Board: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in part 228 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

FDIC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in part 345 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

OTS: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small savings associations. This proposal provides an alternative means of evaluating a small savings association's CRA requirements that would enable most such savings associations to avoid the data collection requirements in part 563e and will encourage greater small business lending by savings associations of all sizes.

Executive Order 12866

OCC: It has been determined that this document is a significant regulatory action. The proposal would clarify existing requirements and would exempt small banks from many of the requirements in part 25. Further, the proposal will encourage greater small business lending by banks of all sizes.

OTS: It has been determined that this document is a significant regulatory action. The proposal sets forth a more focused and streamlined method of evaluating savings associations' compliance with existing statutory requirements; moreover it would exempt small savings associations from many of the requirements in part 563e. Further, the proposal will encourage greater small business lending by savings associations of all sizes.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Adoption of Proposed Common Appendix

The agency specific proposals to adopt the common appendix, which appears in the common preamble, are set forth below:

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

For the reasons set out in the preamble, the Office of Comptroller of the Currency proposes to amend 12 CFR chapter I as set forth below:

1. Part 25 is revised to read as follows:

PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS

Sec.
25.1 Authority and OMB control number.
25.2 Community reinvestment obligation.
25.3 Purposes.
25.4 Scope.
25.5 Definitions.
25.6 Assessment standards — summary.
25.7 Lending Test.
25.8 Investment Test.
25.9 Service Test.
25.10 Composite ratings.
25.11 Alternative assessment methods.
25.12 Service area — delineation.
25.13 Loan data — collection, reporting, and disclosure.
25.14 Public file and disclosure.
25.15 Public notice by banks.
25.16 Publication of planned examination schedule.
25.17 Effect of ratings — corporate applications.
25.18 Transition rules.

Appendix A to Part 25—CRA Loan Data Format

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

§ 25.1 Authority and OMB control number.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0160.

§ 25.2 Community reinvestment obligation.

National banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 25.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of national banks; to explain how the Office of the Comptroller of the Currency (OCC) assesses the performance of national banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain corporate applications.

§ 25.4 Scope.

(a) *General.* This part applies to all insured national banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Federal branches and agencies.* As provided in § 28.102 of this chapter, this part does not apply to Federal agencies, limited Federal branches, and uninsured Federal branches. However, this part does apply to insured Federal branches. References in this part to "head office" mean, in the case of insured Federal branches of foreign banks, the principal branch within the United States. The "service area" of an insured Federal branch refers to the community or communities located within the United States served by the branch as described in § 25.12. The phrase "office or group of offices" refers to insured branches located within the United States.

§ 25.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed banking facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2802(1)), and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through participation in a lending consortium in which lenders pool their resources, by subsidiaries of the bank, by non-chartered affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured banks that are in the business of extending credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means—(1) Independent banks with total assets of less than $250 million; or

(2) Banks with total assets of less than $250 million that are subsidiaries of a holding company with total banking and thrift assets of less than $250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than $10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than $500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 25.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 25.11, the OCC assesses a bank's CRA performance as described in this section. The OCC reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the OCC. In assessing a bank's CRA performance, the OCC considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the OCC pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 25.7), the Investment Test (described in § 25.8) and the Service Test (described in § 25.9). Based on these separate assessments, the OCC assigns the bank one of four overall composite ratings as described in § 25.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 25.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 25.7 Lending Test.

(a) *Summary.* The Lending Test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The OCC rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is lending in an outstanding fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High Satisfactory.* Subject to rebuttal, the OCC presumes an institution is lending in a high satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low Satisfactory.* Subject to rebuttal, the OCC presumes a bank is lending in a low satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to Improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record under the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial Noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation*—(1) *General.* For purposes of the Lending Test, the OCC, rather than the bank, is responsible for making the computations. The OCC bases such computations upon the bank's reported loan data required under § 25.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the OCC measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The OCC computes market share for volume and number of loans for each type of reportable loans: Home mortgage loans, consumer loans, and small business and farm loans. The OCC awards an overall market share performance rating after weighing each lending category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The OCC may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The OCC may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The OCC will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the OCC may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the OCC will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 25.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the OCC uses the Investment Test in § 25.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 25.10, the OCC substitutes a wholesale or limited-purpose bank's rating under the Investment Test for a rating under the Lending Test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OCC that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 25.8 Investment test.

(a) *Summary.* The Investment Test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The OCC rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations,

minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the OCC will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments will be treated as qualified investments for the purposes of the Investment Test.

(i) *Adjustments to Investment Test.* The OCC may adjust a bank's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the OCC considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 25.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The Service Test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The OCC evaluates retail banks with multiple branches under the Service Test primarily on the extent to which they offer branches. The OCC evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The OCC rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing service if an insignificant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the OCC adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The OCC may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the OCC may consider the bank's record of opening and closing branches. The OCC may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The OCC may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The OCC may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The OCC rates a wholesale or limited-purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OCC presumes a bank is providing service in an outstanding fashion if it is

providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the OCC presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the OCC presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the OCC presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OCC that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 25.10 Composite ratings.

(a) *Composite rating standards.* OCC assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the Lending Test forms the basis for its composite rating. For wholesale or limited-purpose banks, the bank's rating under the Investment Test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the Investment Test or by one level if the bank has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the Service Test and is decreased by one level if the bank has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the OCC converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the OCC assigns a bank a final composite rating lower than satisfactory if the bank has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the OCC conducts Lending, Investment and Service tests in a sample of all of the service areas in which a bank operates. The OCC assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the performance of the bank in the service areas studied.

§ 25.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 25.5(l)) may choose to have the OCC assess its CRA performance under this section rather than the general standards described in §§ 25.6 through 25.10.

(1) The OCC presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (*i.e.*, makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the OCC will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the OCC will evaluate:

(i) Its record of making qualified investments (as described in § 25.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the OCC conducts a

more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The OCC will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the OCC will assess:

(i) Its record of making qualified investments (as described in § 25.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the OCC evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the OCC for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the OCC has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the OCC for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the OCC in accord with §§ 5.10 and 5.11 of this chapter.

(iii) The OCC assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the OCC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The OCC will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method, as applicable.

§ 25.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low- and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the OCC that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The OCC can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the OCC finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across state boundaries or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 25.13 Loan data—collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 25.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to OCC by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to OCC by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than $250,000, those with average annual gross receipts of $250,000 or more and less than $1 million; those with average annual gross receipts of $1 million or more and less than $10 million; and manufacturing businesses with average annual gross receipts of $10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1–4 family home purchase, 1–4 family home improvement, 1–4 family refinancings, and multi-family loans.

(b) The OCC will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the OCC to apply the Lending Test under § 25.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 25.7(e) for purposes of the Lending Test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 25.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the OCC under § 25.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 25.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices—

(1) Head offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 25.15 Public notice by banks.

A bank shall provide, in the public lobby of its head office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes our CRA performance into account when the Comptroller decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the Comptroller of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our head office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the Deputy Comptroller (address). Your letter, together with any response by us, may be made public.

You may ask the Comptroller to look at any comments received by the Deputy Comptroller. You also may request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 25.16 Publication of planned examination schedule.

The OCC will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the OCC regarding the CRA performance of any bank whose name appears on the list.

§ 25.17 Effect of ratings—corporate applications.

(a) The OCC takes into account the applicant's record of performance in considering applications for—

(1) Establishment of a domestic branch, ATM, or other facility with the ability to accept deposits;

(2) Relocation of the main office, a branch office or ATM;

(3) Merger or consolidation with or the acquisition of assets or assumption of liabilities of a federally-insured depository institution; and

(4) Conversion of a federally-insured depository institution to a national bank charter.

(b) An applicant for a national bank charter (other than a federally-insured depository institution) shall submit a description of its proposed CRA performance when the application is made. In considering the application, the OCC takes into account the bank's proposed CRA performance.

(c) In considering CRA performance in a corporate application, the OCC will take into account any views expressed by State or other Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter or § 25.16.

(d) In the OCC's consideration of the bank's CRA record in a corporate application, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(2) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 25.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of

§ 25.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the OCC no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the OCC to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Corporate applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation], the OCC will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating if the OCC has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

2. Appendix A to part 25 is added as set forth in the common preamble.

Appendix A to Part 25—CRA Loan Data Format

Dated: December 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 chapter II as set forth below:

3. Part 228 is revised to read as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

Sec.
228.1 Authority.
228.2 Community reinvestment obligation.
228.3 Purposes.
228.4 Scope.
228.5 Definitions.
228.6 Assessment standards—summary.
228.7 Lending Test.
228.8 Investment Test.
228.9 Service Test.
228.10 Composite ratings.
228.11 Alternative assessment methods.
228.12 Service area—delineation.
228.13 Loan data collection, reporting, and disclosure.
228.14 Public file and disclosure.
228.15 Public notice by banks.
228.16 Publication of planned examination schedule.
228.17 Effect of ratings—applications.
229.18 Transition rules.
Appendix A to Part 228—CRA Loan Data Format

Authority: 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842, and 2901 *et seq.*

§ 228.1 Authority.

(a) The Board of Governors of the Federal Reserve System issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*). The regulations comprising this part are issued under the authority of the Community Reinvestment Act and under the provisions of the United States Code authorizing the Board to conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325), to conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844), and to consider applications for domestic branches by state member banks (12 U.S.C. 321), for federal deposit insurance in connection with applications for membership in the Federal Reserve System by state banks (12 U.S.C. 321, 1814, 1816), for merger in which the resulting bank would be a state member bank (12 U.S.C. 1828), and for formation of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842).

(b) Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. _____.

§ 228.2 Community reinvestment obligation.

State member banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 228.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of State member banks, to explain how the Board assesses the performance of State member banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

228.4 Scope.

(a) *General.* This part applies to all insured State member banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Applications by bank holding companies.* Section 228.17 applies to applications filed by bank holding companies under section 3 of the Bank Holding Company Act.

§ 228.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed banking facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts, or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(l) of the Home Mortgage Disclosure Act (12 U.S.C. 2802(1), hereinafter HMDA) and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through

participation in a lending consortium in which lenders pool their resources, by subsidiaries of the bank, by affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit the following entities:

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan State-wide median family income for the State in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured banks that are in the business of extending credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means:

(1) Independent banks with total assets of less than $250 million; or

(2) Banks with total assets of less than $250 million that are subsidiaries of a holding company with total banking and thrift assets of less than $250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan:

(1) Average annual gross receipts of less than $10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than $500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 228.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 228.11, the Board assesses a bank's CRA performance as described in this section. The Board reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the Board. In assessing a bank's CRA performance, the Board considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the Board pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 228.7), the Investment Test (described in § 228.8), and the Service Test (described in § 228.9). Based on these separate assessments, the Board assigns the bank one of four overall composite ratings as described in § 228.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 228.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 228.7 Lending test.

(a) *Summary.* The lending test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies, as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The Board rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is lending in an outstanding fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies or persons from its lending).

(2) *High satisfactory.* Subject to rebuttal the Board presumes an institution is lending in a high satisfactory fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank

does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is lending in a low satisfactory fashion if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record under the Lending Test if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Lending Test if:

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation*—(1) *General.* For purposes of the Lending Test, the Board, rather than the bank, is responsible for making the computations. The Board bases such computations upon the bank's reported loan data required under § 228.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the Board measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The Board computes market share for volume and number of loans for each type of reportable loans: home mortgage loans, consumer loans, and small business and farm loans. The Board awards an overall market share performance rating after weighing each lending category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The Board may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The Board may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The Board will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the Board may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the Board will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of an loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 228.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the Board uses the Investment Test in § 228.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 228.10, the Board substitutes a wholesale or limited-purpose bank's rating under the investment test for a rating under the lending test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the Board that the quantitative measures in this section do not accurately present its lending performance because, among other reasons:

(1) The quantitative measures of this section do not reflect the bank's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that

significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 228.8 Investment test.

(a) *Summary.* The investment test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The Board rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In State and local government agency housing bonds or State and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the Board will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the lending test are not counted as qualified investments under this test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the investment test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were they in the form of investments will be treated as qualified investments for the purpose of the Investment Test.

(i) *Adjustments to investment test.* The Board may adjust a bank's rating under the investment test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the Board considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 228.9 Service test.

(a) *Summary.* The service test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The service test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The Board evaluates retail banks with multiple branches under the service test primarily on the extent to which they offer branches. The Board evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The Board rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal the Board presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing

service if an insignificant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the Board adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The Board may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the Board may consider the bank's record of opening and closing branches. The Board may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The Board may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The Board may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The Board rates a wholesale or limited purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the Board presumes a bank is providing service in an outstanding fashion if it is providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the Board presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the Board presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the Board presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the Board that the quantitative measures in this section do not accurately represent its service performance because, among other reasons:

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 228.10 Composite ratings.

(a) *Composite rating standards.* The Board assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the lending test forms the basis for its composite rating. For wholesale or limited-purpose banks, the bank's rating under the investment test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the investment test or by one level if the bank has a high satisfactory rating in the investment test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the service test and is decreased by one level if the bank has a rating of substantial non-compliance in the service test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the Board converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the Board assigns a bank a final composite rating lower than satisfactory if the bank has:

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the Board conducts lending, investment and service tests in a sample of all of the service areas in which a bank operates. The Board assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with

the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the performance of the bank in the service areas studied.

§ 228.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 228.5(l)) may choose to have the Board assess its CRA performance under this section rather than the general standards described in §§ 228.6 through 228.10.

(1) The Board presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (i.e., makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal lending discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA or part 203 of this chapter, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the Board will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the Board will evaluate:

(i) Its record of making qualified investments (as described in § 228.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the Board conducts a more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The Board will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the Board will assess:

(i) Its record of making qualified investments (as described in § 228.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the Board evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the Board for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the Board has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the Board for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the appropriate Federal Reserve Bank.

(iii) The Board assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the Board to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The Board will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method as applicable.

§ 228.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies, and does not arbitrarily exclude low- and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the Board that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The Board can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the Board finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across State boundaries or extend substantially across boundaries of a metropolitan statistical area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 228.13 Loan data collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 228.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to Board by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to Board by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than $250,000, those with average annual gross receipts of $250,000 or more and less than $1 million; those with average annual gross receipts of $1 million or more and less than $10 million; and manufacturing businesses with average annual gross receipts of $10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1–4 family home purchase, 1–4 family home improvement, 1–4 family refinancings, and multi-family loans.

(b) The Board will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the Board to apply the lending test under § 228.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 228.7(e) for purposes of the lending test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 228.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA performance evaluation prepared by the Board. The bank shall place this copy in the public file within 30 business days after its receipt from the Board; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained within.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the Board under § 228.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's loan-to-deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 228.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices:

(1) Head offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 228.15 Public notice by banks.

A bank shall provide, in the public lobby of its head office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Board also takes our CRA performance into account when the Board decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the Board of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our head office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the Community Reinvestment Officer, Federal Reserve Bank of _____ (address). Your letter, together with any response by us, may be made public.

You may look at any comments received by the Federal Reserve Bank of _____. You also may request from the Federal Reserve Bank of _____ an announcement of our applications covered by the CRA filed with the Federal Reserve System. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 228.16 Publication of planned examination schedule.

The Board will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the Board regarding the CRA performance of any bank whose name appears on the list.

§ 228.17 Effect of ratings—applications.

(a) Among other factors, the Board takes into account the record of performance under the CRA of each applicant bank, and, for applications under section 3 of the Bank Holding Company Act, each subsidiary bank of an applicant bank holding company, and each proposed subsidiary bank, in considering any application—

(1) By a state member bank for the establishment of a domestic branch or other facility that would be authorized to receive deposits;

(2) By a state member bank for the relocation of a domestic branch;

(3) For merger, consolidation, acquisition of assets, or assumption of liabilities if the acquiring, assuming, or resulting bank is to be a state member;

(4) To become a bank holding company; and

(5) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

(b) In the Board's consideration of the CRA records under paragraph (a) of this section, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance.

(1) Absent other evidence on performance, CRA ratings generally affect applications as follows:

(i) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(ii) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(iii) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(iv) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

(2) The CRA aspect of an application by a bank holding company under paragraph (a)(4) or (a)(5) of this section will be determined by weighing the CRA ratings assigned to each of the individual banks involved in the proposal to determine the weight that will be given to the CRA performance record in accordance with paragraph (b)(1) of this section.

§ 228.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 228.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the Board no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the Board to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation] the Board will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating provided that the Board has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

4. Appendix A to part 228 is added as set forth in the common preamble.

Appendix A to Part 228—CRA Loan Data Format

Dated: December 13, 1993.

By order of the Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board.

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 chapter III as set forth below:

5. Part 345 is revised to read as follows:

PART 345—COMMUNITY REINVESTMENT ACT REGULATIONS

Sec.

345.1 Authority.
345.2 Community reinvestment obligation.
345.3 Purposes.
345.4 Scope.
345.5 Definitions.
345.6 Assessment standards—summary.
345.7 Lending test.
345.8 Investment test.
345.9 Service test.
345.10 Composite ratings.
345.11 Alternative assessment methods.
345.12 Service area—delineation.
345.13 Loan data—collection, reporting, and disclosure.
345.14 Public file and disclosure.
345.15 Public notice by banks.
345.16 Publication of planned examination schedule.
345.17 Effect of ratings—corporate applications.
345.18 Transition rules.

Appendix A to Part 345—CRA Loan Data Format

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828(c)–(d), 2901–2907, and 3104.

§ 345.1 Authority.

The authority for this part is 12 U.S.C. 1815, 1816, 1818, 1819, 1828(c)–(d), 2901–2907, and 3104.

§ 345.2 Community reinvestment obligation.

Insured State nonmember banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 345.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of insured State nonmember banks; to explain how the Federal Deposit Insurance Corporation (FDIC) assesses the performance of insured State nonmember banks in satisfying the community reinvestment obligation;

and to describe how that performance is taken into account in certain corporate applications.

§ 345.4 Scope.

(a) *General.* This part applies to all insured State nonmember banks that are in the business of extending credit to the public, including wholesale and limited-purpose banks.

(b) *Banks not engaged in lending activities.* This part does not apply to insured State nonmember banks that engage solely in the correspondent banking business, trust company business, or the business of acting as a clearing agent. Such institutions, although they are chartered as banks, do not perform commercial or retail banking services and do not extend credit to the public for their own account.

(c) *Insured State branches.* This part does apply to insured State branches, which are branches of a foreign bank established and operating under the laws of any State. References in this part to "main office" mean, in the case of insured State branches, the principal branch within the United States. The "service area" of an insured State branch refers to the community or communities located within the United States served by the branch as described in § 345.12. Similarly, the phrase "office or group of offices" refers to insured branches located within the United States.

§ 345.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Remote Service Facilities (RSF)* means an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(b) *Branches* means staffed banking facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2802(1)), and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, or the Fair Housing Act, 42 U.S.C. 3601 through 3619.

(g) *Indirect loans* means loans made indirectly by a bank through participation in a lending consortium in which lenders pool their resources, by subsidiaries of the bank, by non-chartered affiliates funded by the bank, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefiting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the MSA or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the MSA or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state wide median family income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Retail banks* means insured State nonmember banks that are in the business of extending credit to the public and that make a significant amount of reportable loans.

(l) *Small banks* means—

(1) Independent insured State nonmember banks with total assets of less than $250 million; or

(2) Insured State nonmember banks with total assets of less than $250 million that are subsidiaries of a holding company with total banking and thrift assets of less than $250 million.

(m) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than $10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(n) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than $500,000 for the calendar or fiscal year preceding the making of the loan.

(o) *Wholesale and limited-purpose banks* means insured State nonmember banks that are in the business of extending credit to the public but make no significant amount of reportable loans.

§ 345.6 Assessment standards—summary.

(a) Except for banks assessed under the special standards of § 345.11, the FDIC assesses a bank's CRA performance as described in this section. The FDIC reviews, among other things, the bank's CRA public file and any signed, written comments about the bank's CRA performance submitted to the bank or the FDIC. In assessing a bank's CRA performance, the FDIC considers whether the bank is helping to meet the credit needs of its entire community. In examinations, however, the FDIC pays particular attention to the bank's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 345.7), the Investment Test (described in § 345.8) and the Service Test (described in § 345.9). Based on these separate assessments, the FDIC assigns the bank one of four overall composite ratings as described in § 345.10. The four composite ratings are

Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligations described in § 345.2. A bank that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any bank to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, banks are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 345.7 Lending test.

(a) *Summary.* The Lending Test evaluates primarily whether a retail bank is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the bank itself and, if the bank elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The FDIC rates a bank's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is lending in an outstanding fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes an institution is lending in a high satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is lending in a low satisfactory fashion if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the bank does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.*—Subject to rebuttal, the FDIC presumes a bank needs to improve its record under the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Lending Test if—

(i) The bank's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation*—(1) *General.* For purposes of the Lending Test, the FDIC, rather than the bank, is responsible for making the computations. The FDIC bases such computations upon the bank's reported loan data required under § 345.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the FDIC measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The FDIC computes market share for volume and number of loans for each type of reportable loans: home mortgage loans, consumer loans, and small business and farm loans. The FDIC awards an overall market share performance rating after weighing each lending category based on such factors as the needs of the community being served, the bank's capabilities and business plans, and the degree to which the bank's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The FDIC may increase a bank's lending rating if the bank participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the bank will consider for credit. The FDIC may also increase the rating if the bank has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The FDIC will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the bank are not reportable under this part, are not made to third parties in the bank's service area, or are made to third parties that serve service areas other than the bank's.

(2) In exceptional cases, the FDIC may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail

to reflect the bank's actual record of lending to low- or moderate-income individuals or geographies.

(e) *Indirect lending.* (1) If the bank elects, the FDIC will attribute to a bank its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a bank equal the bank's percentage share (based on the level of the bank's investment or participation) of each loan made through the entity in which the bank has invested or participated.

(3) At the option of all investing or participating institutions, an alternative method of attributing loans among the investing or participating institutions may be established. In no case, however:

(i) May the indirect loans attributed to any bank exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the institutions invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any bank be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the institutions invested or participated.

(4) If a bank elects, indirect loans attributed to a bank under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a bank reports them under § 345.13.

(f) *Application to wholesale and limited-purpose banks.* The Lending Test of this section does not apply to wholesale or limited-purpose banks. In evaluating the record of wholesale and limited-purpose banks in satisfying their community reinvestment obligation, the FDIC uses the Investment Test in § 345.8 instead of the standards of paragraph (b) of this section. For purposes of assigning a composite rating as described in § 345.10, the FDIC substitutes a wholesale or limited-purpose bank's rating under the Investment Test for a rating under the Lending Test.

(g) *Rebutting presumptions.* A bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the FDIC that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the bank's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the bank or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The bank's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the bank's service area.

§ 345.8 Investment test.

(a) *Summary.* The Investment Test evaluates banks on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The FDIC rates a bank's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in an outstanding fashion if the bank has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in a high satisfactory fashion if the bank has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing qualified investments in a low satisfactory fashion if the bank has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to Improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing qualified investments if the bank has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Investment Test if the bank has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the bank's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the FDIC will evaluate the amount of qualified investments against the amount of the bank's risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the bank's service area. However, the activity or entity supported by the investment must significantly benefit low-and moderate-income geographies or persons in the bank's service area.

(f) *Exclusion of indirect loans.* Investments that a bank has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A bank may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Application to wholesale and limited purpose banks.* For purposes of determining qualified investments under paragraph (c) of this section, the service area of wholesale and limited purpose banks is defined to include all low- and moderate-income geographies or persons within the United States and its territories. Loans by wholesale and limited purpose banks that would constitute qualified investments were

they in the form of investments will be treated as qualified investments for the purposes of the Investment Test.

(i) *Adjustments to investment test.* The FDIC may adjust a bank's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the FDIC considers whether:

(1) The bank's qualified investments are particularly innovative or meet a special need, or if the bank's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a bank of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The bank has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the bank's service area as required by paragraph (e) of this section, provided the bank has not neglected investments that benefit its service area.

§ 345.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a retail bank's branches and the extent to which any bank provides other services that enhance credit availability. The Service Test does not require a bank to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by banks with a small number of branches. The FDIC evaluates retail banks with multiple branches under the Service Test primarily on the extent to which they offer branches. The FDIC evaluates wholesale and limited-purpose banks on the extent to which they provide other services that enhance credit availability.

(b) *Standards for retail banks.* The FDIC rates a retail bank's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing service in an outstanding fashion if a substantial percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a high satisfactory fashion if a very significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a low satisfactory fashion if a significant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing service if an insignificant percentage of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Service Test if very few, if any, of the bank's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments for retail banks.* If necessary, the FDIC adjusts a retail bank's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The FDIC may adjust a bank's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the FDIC may consider the bank's record of opening and closing branches. The FDIC may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The FDIC may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The FDIC may adjust a bank's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of RSFs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Application to wholesale and limited-purpose banks.* The FDIC rates a wholesale or limited-purpose bank's service performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the FDIC presumes a bank is providing service in an outstanding fashion if it is providing a substantial amount of the services described in paragraph (c)(2) of this section or providing substantial support for organizations that furnish such services.

(2) *High satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a high satisfactory fashion if it is providing a very significant amount of the services described in paragraph (c)(2) of this section or providing very significant support for organizations that furnish such services.

(3) *Low satisfactory.* Subject to rebuttal, the FDIC presumes a bank is providing service in a low satisfactory fashion if it is providing a significant amount of the services described in paragraph (c)(2) of this section or providing significant support for organizations that furnish such services.

(4) *Needs to improve.* Subject to rebuttal, the FDIC presumes a bank needs to improve its record of providing service if it is providing an insignificant amount of the services described in paragraph (c)(2) of this section or providing insignificant support for organizations that furnish such services.

(5) *Substantial noncompliance.* Subject to rebuttal, the FDIC presumes a bank is in substantial noncompliance with the Service Test if it provides very few, if any, services described in paragraph (c)(2) of this section or very little, if any, support for organizations that furnish such services.

(e) *Rebutting presumptions.* A Bank can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the FDIC that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the bank's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the bank's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the bank's financial condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 345.10 Composite ratings.

(a) *Composite rating standards.* FDIC assigns composite ratings as follows:

(1) *Base rating.* For retail banks, the bank's rating under the Lending Test forms the basis for its composite rating. For wholesale or limited-purpose banks, the bank's rating under the Investment Test serves as the basis for the composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For retail banks, the base rating is increased by two levels if the bank has an outstanding rating in the Investment Test or by one level if the bank has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the bank has an outstanding rating in the Service Test and is decreased by one level if the bank has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the FDIC converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph. High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A bank that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the bank received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a bank has engaged in illegal discrimination may affect the bank's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the FDIC assigns a bank a final composite rating lower than satisfactory if the bank has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a bank operates in more than one service area, the FDIC conducts Lending, Investment and Service tests in a sample of all of the service areas in which a bank operates. The FDIC assigns separate composite CRA ratings to the bank's performance in each of the service areas studied. A list of the service areas in which the bank's CRA performance was examined, along with the rating assigned to the bank's CRA record in each of the service areas, shall be included in the bank's public performance evaluation. The overall rating for the bank reflects the performance of the bank in the service areas studied.

§ 345.11 Alternative assessment methods.

(a) *Small bank assessment standards.* A small bank (as defined in § 345.5(l)) may choose to have the FDIC assess its CRA performance under this section rather than the general standards described in §§ 345.6 through 345.10.

(1) The FDIC presumes a small bank's overall CRA performance is satisfactory if the bank:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (*i.e.*, makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a bank already subject to reporting home mortgage lending data under HMDA, has a reasonable geographic distribution of such loans.

(2) A small bank that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small bank's CRA record is outstanding, the FDIC will consider the extent to which the bank's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the bank, the FDIC will evaluate:

(i) Its record of making qualified investments (as described in § 345.8(c)); and

(ii) Its record of providing branches, RSFs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small bank that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those banks, the FDIC conducts a more extensive examination of the bank's loan-to-deposit record, its record of lending to its local community, and its loan mix. The FDIC will also contact members of the community, particularly in response to complaints about the bank, and review the findings of its most recent fair lending examination. In addition, at the option of the bank, the FDIC will assess:

(i) Its record of making qualified investments (as described in § 345.8(c)); and

(ii) Its record of providing branches, RSFs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small bank operates in more than one service area, the FDIC evaluates the bank's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small bank assessment method, a bank may submit to the FDIC for approval a strategic plan detailing how the bank proposes to meet its CRA obligation.

(i) The plan must be submitted at least three months prior to the proposed effective date of the plan so that the FDIC has sufficient time to review the plan and to determine whether to approve it.

(ii) A bank submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the FDIC for review, that copies of the plan are available for review at offices of the bank, and that comments on the proposed plan may be sent to the FDIC in accord with § 303.6 of this chapter.

(iii) The FDIC assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the bank may petition the FDIC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The FDIC will assess the performance of a bank operating under an approved plan to determine if the bank has met or exceeded the plan goals. However, if the bank fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small bank assessment method, as applicable.

§ 345.12 Service area—delineation.

(a) The effective lending territory of a retail bank defines the bank's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a bank's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low-and moderate-income geographies.

(c) A bank can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the FDIC that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the bank.

(d) The FDIC can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the FDIC finds that the service area does not accurately reflect the true effective lending territory of the bank or reflects past redlining or illegal discrimination by the bank.

(e) A bank shall delineate more than one service area when the geographies it serves extend substantially across state boundaries or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A wholesale or limited-purpose bank need not delineate a service area.

(h) A bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 345.13 Loan data—collection, reporting, and disclosure.

(a) Every bank, except small banks electing the small bank assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the bank elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A bank choosing to be rated under the strategic plan assessment described in § 345.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the bank's data for the six months shall be submitted to FDIC by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the bank's data collected under this section shall be submitted to FDIC by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: small businesses with average annual gross receipts of less than $250,000, those with average annual gross receipts of $250,000 or more and less than $1 million; those with average annual gross receipts of $1 million or more and less than $10 million; and manufacturing businesses with average annual gross receipts of $10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in paragraph (a) of this section for the following categories: 1–4 family home purchase, 1–4 family home improvement, 1–4 family refinancings, and multi-family loans. (b) The FDIC will make summary data collected pursuant to this section available to the public and to the banks. The data will be used by the FDIC to apply the Lending Test under § 345.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located.

(d) A bank is not required to report under this section indirect loans unless the bank elects to have the indirect loans attributed to it as described in § 345.7(e) for purposes of the Lending Test. If a bank elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 345.14 Public file and disclosure.

(a) Banks shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each bank shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank shall place this copy in the public file within 30 business days after its receipt from the FDIC; and

(3) A list of the bank's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A bank that is not a small bank shall include in its public file the lending data the bank has reported to the FDIC under § 345.13 for the current and past two calendar years.

(d) A small bank shall include in its public file the bank's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A bank that has been approved to be assessed under a strategic plan as described in § 345.11(b) shall include in its public file a copy of that plan.

(f) Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A bank shall maintain its public file or required portions of the file at the following offices—

(1) Main offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A bank shall provide copies of the information in the public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 345.15 Public notice by banks.

A bank shall provide, in the public lobby of its main office and each branch, the public notice set forth in this section. Bracketed material shall be used only by banks having more than one service area. The last two sentences shall be included only if the bank is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the FDIC evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes our CRA performance into account when the FDIC decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the FDIC of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our main office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the FDIC Regional Director (address). Your letter, together with any response by us, may be made public.

You may ask the FDIC to look at any comments received by the Regional Director. You also may request from the Regional Director an announcement of our applications covered by the CRA filed with the FDIC. We are a subsidiary of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address) an announcement of applications covered by the CRA filed by bank holding companies.

§ 345.16 Publication of planned examination schedule.

The FDIC will publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the FDIC regarding the CRA performance of any bank whose name appears on the list.

§ 345.17 Effect of ratings—corporate applications.

(a) The FDIC takes into account a bank's record of performance in meeting its community reinvestment obligation in considering applications for approval of—

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of a bank's main office, a branch office or other facility with the ability to accept deposits;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for an operating non-insured financial institution.

(b) A newly chartered State nonmember bank shall submit a description of its proposed CRA performance when the application for deposit insurance is made. In considering the application, the FDIC takes into account the bank's proposed CRA performance.

(c) In considering the effect of CRA performance on a corporate application, the FDIC will take into account any views expressed by State or Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the FDIC's procedures set forth in § 345.16 or part 303 of this chapter.

(d) In the FDIC's consideration of the effect of a bank's CRA record on a corporate application, the CRA rating assigned to a bank is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in the FDIC's review of the application.

(2) A "satisfactory" rating generally will result in a finding that the bank's CRA performance is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and absent demonstrated improvement in the bank's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 345.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 345.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the FDIC no later than January 31, 1995. Thereafter banks will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that, until April 1, 1996, for good cause, an institution may request the FDIC to evaluate it under the standards in place prior to [effective date of final regulation]. During the time period from April 1, 1995 until July 1, 1995, a bank may, at its option, choose to be evaluated under the new standards or under the standards in place prior to [effective date of final regulation].

(c) *Strategic plan.* If a bank elects to be evaluated under an approved strategic plan during the transition period, a bank may submit a strategic plan anytime after [effective date of final regulation].

(d) *Corporate applications.* If the first rating a bank receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the bank received prior to [effective date of final regulation], the FDIC will not disapprove any corporate application or take any other enforcement action against the bank based on that lower rating if the FDIC has determined that the drop in the bank's rating occurred despite the bank's good faith efforts to perform at least satisfactorily under the new standards.

6. Appendix A to part 345 is added as set forth in the common preamble.

Appendix A to Part 345—CRA Loan Data Format

By Order of the Board of Directors, dated at Washington, DC, this 9th day of December 1993.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

For the reasons outlined in the preamble, the Office of Thrift Supervision hereby proposes to amend 12 CFR chapter V as set forth below:

7. Part 563e is revised to read as follows:

PART 563e—COMMUNITY REINVESTMENT ACT

Sec.
563e.1 Authority.
563e.2 Community reinvestment obligation.
563e.3 Purposes.
563e.4 Scope.
563e.5 Definitions.
563e.6 Assessment standards—summary.
563e.7 Lending Test.
563e.8 Investment Test.
563e.9 Service Test.
563e.10 Composite ratings.
563e.11 Alternative assessment methods.
563e.12 Service area—delineation.
563e.13 Loan data—collection, reporting and disclosure.
563e.14 Public file and disclosure.
563e.15 Public notice by savings associations.
563e.16 Publication of planned examination schedule.
563e.17 Effect of ratings—corporate applications.
563e.18 Transition rules.

Appendix A to Part 563e—CRA Loan Data Format

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

§ 563e.1 Authority.

The provisions of this part are issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a); and sections 4, 6, 8 and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1828(c)).

§ 563e.2 Community reinvestment obligation.

Savings associations have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

§ 563e.3 Purposes.

The purposes of this part are to implement the community reinvestment obligation of savings associations; to explain how the Office of Thrift Supervision (OTS) assesses the performance of savings associations in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain corporate applications.

§ 563e.4 Scope.

This part applies to all savings associations as defined in § 561.43 of this subchapter.

§ 563e.5 Definitions.

For purposes of this part, the following definitions apply:

(a) *Automated Teller Machines (ATMs)* means immobile, automated, unstaffed facilities at which deposits are received, checks paid, or money lent.

(b) *Branches* means staffed facilities (shared or unshared) with a fixed site at which deposits are received or checks paid or money lent, including mini-branches in grocery stores or branches operated in conjunction with any other local businesses, churches, or other non-profit organizations.

(c) *Consumer loans* means closed-end loans extended to a natural person primarily for personal, family, or household purposes, but does not include home mortgage loans as defined in paragraph (e) of this section, credit card loans, or motor vehicle loans.

(d) *Geographies* means census tracts or block numbering areas.

(e) *Home mortgage loans* means closed-end loans that are mortgage loans as defined in section 303(1) of the Home Mortgage Disclosure Act (12 U.S.C. 2802(1), hereinafter referred to as HMDA) and implementing regulations.

(f) *Illegal discrimination* means discrimination on a prohibited basis as set forth in the Equal Credit Opportunity Act, 15 U.S.C. 1691 through 1691f, the Fair Housing Act, 42 U.S.C. 3601 through 3619, and OTS nondiscrimination regulations (12 CFR part 528).

(g) *Indirect loans* means loans made indirectly by a savings association through participation in a lending consortium in which lenders pool their resources, by subsidiaries of the savings association, by non-chartered affiliates funded by the savings association, or by lawful investments in or with community development and affordable housing lenders, women-owned or minority-owned financial institutions, low-income credit unions, and others that lend to low- and moderate-income geographies and individuals.

(h) *Loans or investments benefitting low- and moderate-income geographies or persons* means loans or investments where the proceeds are provided to, invested in, used by or otherwise directly benefit—

(1) Persons that reside in low- or moderate-income geographies or have low or moderate incomes;

(2) Businesses located in low- or moderate-income geographies or employing mostly persons residing in such geographies;

(3) Non-profit organizations located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies; or

(4) Construction or renovation of facilities located in low- or moderate-income geographies or providing services mainly to persons residing in such geographies.

(i) *Low- and moderate-income geographies* means geographies where the median family income is less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(1) *Low-income geographies* means geographies where the median family income is less than 50% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) less than 50% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(2) *Moderate-income geographies* means geographies where the median family income is at least 50% and less than 80% of the median family income for the Metropolitan Statistical Area (MSA) or (in the case of geographies outside a MSA) at least 50% and less than 80% of the non-metropolitan state-wide median family income for the state in which the geography is located.

(j) *Reportable loans* means home mortgage loans, consumer loans, and loans to small businesses and small farms.

(k) *Small savings associations* means—

(1) Independent savings associations with total assets of less than $250 million; or

(2) Savings associations with total assets of less than $250 million that are subsidiaries of a holding company with total banking and thrift assets of less than $250 million.

(l) *Small businesses* means private for-profit organizations that had for the calendar or fiscal year preceding the making of the loan—

(1) Average annual gross receipts of less than $10 million for a concern providing services; or

(2) Up to 500 employees for a manufacturing concern.

(m) *Small farms* means private organizations engaged in farming operations with average annual gross receipts of less than $500,000 for the calendar or fiscal year preceding the making of the loan.

§ 563e.6 Assessment standards—summary.

(a) Except for savings associations assessed under the special standards of § 563e.11, the OTS assesses a savings association's CRA performance as described in this section. The OTS reviews, among other things, the savings association's CRA public file and any signed, written comments about the savings association's CRA performance submitted to the savings association or the OTS. In assessing a savings association's CRA performance, the OTS considers whether the savings association is helping to meet the credit needs of its entire community. In examinations, however, the OTS pays particular attention to the savings association's record of helping to meet the credit needs in low- and moderate-income geographies. That record is primarily evaluated using three measures: the Lending Test (described in § 563e.7), the Investment Test (described in § 563e.8) and the Service Test (described in § 563e.9). Based on these separate assessments, the OTS assigns the savings association one of four overall composite ratings as described in § 563e.10. The four composite ratings are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance.

(b) The composite ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 563e.2. A savings association that receives a composite rating of Substantial Noncompliance shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

(c) This part and the CRA do not require any savings association to make loans or investments that are expected to result in losses or are otherwise inconsistent with safe and sound operations. However, savings associations are permitted and encouraged to develop and apply flexible underwriting standards (that are consistent with safe and sound operations) for loans that benefit low- and moderate-income geographies or individuals.

§ 563e.7 Lending test.

(a) *Summary.* The Lending Test evaluates primarily whether a savings association is making loans in low- and moderate-income geographies as well as to wealthier geographies. The test examines direct lending by the savings association itself and, if the savings association elects, indirect lending to the extent permitted by this part.

(b) *Standards.* The OTS rates a savings association's lending performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is lending in an outstanding fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area significantly exceeds its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in the vast majority of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a substantial percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is lending in a high satisfactory fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in most of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a very significant percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is lending in a low satisfactory fashion if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is at least roughly comparable to its market share of reportable loans in the remainder of its service area; and

(ii) Either:

(A) It has made a significant amount of reportable loans in many of the low- and moderate-income geographies in its service area; or

(B) Its reportable loans to low- and moderate-income geographies in its service area represent a significant percentage of its reportable loans in its service area (provided that the savings association does not unreasonably exclude low- and moderate-income geographies from its lending).

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record under the Lending Test if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is less than, and not roughly comparable to, its market share of reportable loans in the remainder of its service area; or

(ii) It has made reportable loans in only a few of the low- and moderate-income geographies in its service area, and reportable loans to low- and moderate-income geographies in its service area represent an insignificant percentage of its reportable loans in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Lending Test if—

(i) The savings association's market share of reportable loans in low- and moderate-income geographies in its service area is significantly less than its market share of reportable loans in the remainder of its service area; and

(ii) It has made very few, if any, reportable loans in the low- and moderate-income geographies in its service area.

(c) *Method of computation*—(1) *General.* For purposes of the Lending Test, the OTS, rather than the savings association, is responsible for making the computations. The OTS bases such computations upon the savings association's reported loan data required under § 563e.13 and the aggregate reported loan data supplied by the Federal financial supervisory agencies. In making lending test computations, the OTS measures market share, amount of loans, and percentage using both volume of loans and number of loans.

(2) *Market share.* The OTS computes market share for volume and number of loans for each type of reportable loans: Home mortgage loans, consumer loans, and small business and farm loans. The OTS awards an overall market share

performance rating after weighing each lending category based on such factors as the needs of the community being served, the savings association's capabilities and business plans, and the degree to which the savings association's performance with respect to one of the loan categories, in fact, balances or compensates for its performance under another category.

(d) *Adjustments.* (1) The OTS may increase a savings association's lending rating if the savings association participates in a program for giving further reviews to loan applications that would otherwise be denied. More credit will be given for such a program if it is done in conjunction with a community organization in such a way that the organization either participates in the review or offers applications from low- and moderate-income individuals that the savings association will consider for credit. The OTS may also increase the rating if the savings association has made a substantial amount of loans requiring creative or innovative underwriting (while maintaining a safe and sound quality) or loans for which there is particular need, such as loans for multifamily housing construction and rehabilitation, loans to start-ups, very small businesses or community development organizations or facilities and loans to very low-income individuals and areas. The OTS will also consider favorably in reaching a rating loans made to third parties, such as community development organizations and intermediaries, that make loans or facilitate lending in low- and moderate-income geographies, even if the loans by the savings association are not reportable under this part, are not made to third parties in the savings association's service area, or are made to third parties that serve service areas other than the savings association's.

(2) In exceptional cases, the OTS may reduce a rating achieved under this section if it concludes that the quantitative measures in this section fail to reflect the savings association's actual record of lending to low- or moderate-income geographies.

(e) *Indirect lending.* (1) If the savings association elects, the OTS will attribute to a savings association its reported attributable indirect loans.

(2) In the usual case, the indirect loans attributable to a savings association equal the savings association's percentage share (based on the level of the savings association's investment or participation) of each loan made through the entity in which the savings association has invested or participated.

(3) At the option of all investing or participating savings associations, an alternative method of attributing loans among the investing or participating savings associations may be established. In no case, however:

(i) May the indirect loans attributed to any savings association exceed its percentage share of the total loans (measured in both number and volume) made directly by the lending entity in which the savings association invested or participated;

(ii) May the investors or participants claim, in the aggregate, indirect loans (measured in both number and volume) in excess of the loans actually made in any geography by the lending entity in which they invested or participated; or

(iii) May any savings association be assigned a disproportionate share of all loans (measured in both number and volume) made in low- and moderate-income geographies by a lending entity in which the savings association invested or participated.

(4) If a savings association elects, indirect loans attributed to a savings association under this paragraph (e) may be included in "reportable loans" for purposes of the Lending Test if a savings association reports them under § 563e.13.

(f) *Rebutting presumptions.* A savings association can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OTS that the quantitative measures in this section do not accurately present its lending performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the savings association's significant amount of loans benefiting low- and moderate-income geographies or persons;

(2) Other quantitative measures of the savings association's lending performance demonstrate a higher level than that reflected by the measures under this section;

(3) Peculiarities in the demographics of the savings association's service area exist that significantly distort the quantitative measures of this section;

(4) Economic or legal limitations peculiar to the savings association or its service area or unusual general economic conditions have affected its performance and ought to be considered; or

(5) The savings association's performance as measured by the market share component of the Lending Test does not reflect its overall lending performance because of the extraordinarily high level of performance, in the aggregate, by lenders in the savings association's service area.

§ 563e.8 Investment test.

(a) *Summary.* The Investment Test evaluates savings associations on the amount of their investments benefiting low- and moderate-income geographies or persons.

(b) *Standards.* The OTS rates a savings association's investment performance under the following rebuttable presumptions:

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in an outstanding fashion if the savings association has made such investments in an amount that is substantial as compared to its capital.

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in a high satisfactory fashion if the savings association has made such investments in an amount that is very significant as compared to its capital.

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing qualified investments in a low satisfactory fashion if the savings association has made such investments in an amount that is significant as compared to its capital.

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record of providing qualified investments if the savings association has made such investments in an amount that is insignificant as compared to its capital.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Investment Test if the savings association has devoted very little, if any, capital to qualified investments.

(c) *Qualified investments.* Qualified investments are lawful investments that demonstrably benefit low- and moderate-income geographies or persons in the savings association's service area. Qualified investments may include investments:

(1) In support of affordable housing, small business, consumer, and other economic development initiatives;

(2) In community development banks, community development corporations, community development projects, small business investment corporations, minority small business investment corporations and minority- and women-owned financial institutions and other community development financial intermediaries;

(3) In consortia or other structures serving low- and moderate-income individuals and neighborhoods and poor rural areas;

(4) In state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income communities and individuals.

(d) *Capital.* For purposes of the Investment Test, the OTS will evaluate the amount of qualified investments against the amount of the savings association's total risk-based capital.

(e) *Benefit to service area.* In order to be eligible as a qualified investment under paragraph (c) of this section, the activity or entity supported by an investment need not solely benefit the savings association's service area. However, the activity or entity supported by the investment must significantly benefit low- and moderate-income geographies or persons in the savings association's service area.

(f) *Exclusion of indirect loans.* Investments that a savings association has elected to report as indirect lending under the Lending Test are not counted as qualified investments under this Test.

(g) *Grants.* Grants that would constitute qualified investments were they in the form of investments will be treated as qualified investments for purposes of the Investment Test. A savings association may also donate, sell on favorable terms, or make available on a rent-free basis any branch which is located in a predominately minority neighborhood to a minority depository institution or women's depository institution as defined in 12 U.S.C. 2907.

(h) *Adjustments to Investment Test.* The OTS may adjust a savings association's rating under the Investment Test. Adjustments may increase or, in exceptional cases, decrease the rating. In making these adjustments the OTS considers whether:

(1) The savings association's qualified investments are particularly innovative or meet a special need, or if the savings association's activities in connection with its qualified investments have been particularly complex, innovative or intensive for a savings association of its size, or involve innovative partnerships with community organizations (examples include helping to establish an entity to conduct community development activities or providing significant service or assistance in support of a qualified investment); or

(2) The savings association has made a large amount of investments that would be qualified investments but for the fact that they fail to benefit the savings association's service area as required by paragraph (e) of this section, provided the savings association has not neglected investments that benefit its service area.

§ 563e.9 Service test.

(a) *Summary.* The Service Test evaluates the accessibility of a savings association's branches and the extent to which any savings association provides other services that enhance credit availability. The Service Test does not require a savings association to expand the size of its branching network or to operate facilities at a loss. Appropriate consideration is given to the limitations faced by savings associations with a small number of branches. The OTS evaluates savings associations with multiple branches under the Service Test primarily on the extent to which they offer branches.

(b) *Standards for savings associations.* The OTS rates a savings association's service performance in a service area under the following rebuttable presumptions.

(1) *Outstanding.* Subject to rebuttal, the OTS presumes a savings association is providing service in an outstanding fashion if a substantial percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(2) *High satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing service in a high satisfactory fashion if a very significant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(3) *Low satisfactory.* Subject to rebuttal, the OTS presumes a savings association is providing service in a low satisfactory fashion if a significant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(4) *Needs to improve.* Subject to rebuttal, the OTS presumes a savings association needs to improve its record of providing service if an insignificant percentage of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(5) *Substantial noncompliance.* Subject to rebuttal, the OTS presumes a savings association is in substantial noncompliance with the Service Test if very few, if any, of the savings association's branches are located in or readily accessible to low- and moderate-income geographies in its service area.

(c) *Adjustments.* If necessary, the OTS adjusts a savings association's rating to reflect more accurately the service provided to low- and moderate-income geographies and individuals.

(1) *Adjustment to reflect more accurately branch service.* The OTS may adjust a savings association's record upward or downward to reflect more accurately its branch service to low- or moderate-income geographies or individuals. Downward adjustments will occur only in exceptional cases. In determining the appropriateness and degree of any adjustment, the OTS may consider the savings association's record of opening and closing branches. The OTS may also consider whether branches in or readily accessible to low- and moderate-income geographies actually serve low- and moderate-income individuals and whether branches not located in or readily accessible to such geographies are nonetheless serving low- and moderate-income individuals. The OTS may also take into account significant differences in the quantity, quality or types of services offered to low- or moderate-income individuals or geographies and similar considerations.

(2) *Adjustment to reflect other services that promote credit availability.* The OTS may adjust a savings association's rating upward to reflect a strong record of offering or supporting services that promote credit availability for low- and moderate-income geographies or individuals. These services include credit counseling, low-cost check cashing, "lifeline" checking accounts, financial planning, home ownership counseling, loan packaging assisting small and minority businesses, partnerships with community-based organizations to promote credit-related services, extensive provision of ATMs or other non-branch delivery systems that are particularly accessible and convenient to low- and moderate-income geographies or individuals, and similar programs.

(d) *Rebutting presumptions.* A savings association can rebut a presumptive rating under this section by clearly establishing to the satisfaction of the OTS that the quantitative measures in this section do not accurately represent its service performance because, among other reasons—

(1) The quantitative measures of this section do not reflect the savings association's significant degree of services that promote credit availability to low- and moderate-income geographies or persons;

(2) Peculiarities in the demographics of the savings association's service area exist that significantly distort the quantitative measures of this section; or

(3) Limitations imposed by the savings association's financial

condition, economic or legal limitations on branch operation or location, or similar circumstances have affected its performance and ought to be considered.

§ 563e.10 Composite ratings.

(a) *Composite rating standards.* OTS assigns composite ratings as follows:

(1) *Base rating.* For savings associations, the savings association's rating under the Lending Test forms the basis for its composite rating. The base rating under this paragraph is adjusted as described in paragraphs (a)(2) and (a)(3) of this section.

(2) *Effect of investment rating.* For savings associations, the base rating is increased by two levels if the savings association has an outstanding rating in the Investment Test or by one level if the savings association has a high satisfactory rating in the Investment Test.

(3) *Effect of service rating.* The base rating is increased by one level if the savings association has an outstanding rating in the Service Test and is decreased by one level if the savings association has a rating of substantial non-compliance in the Service Test.

(4) *Final composite rating.* Subject to paragraph (b) of this section, the OTS converts the rating resulting from paragraphs (a)(1) through (a)(3) of this section into a final composite rating as described in this paragraph (a)(4). High satisfactory and low satisfactory ratings are both scored as satisfactory in the final composite rating. A savings association that would otherwise receive a composite rating of needs to improve will receive a final composite rating of substantial noncompliance if the savings association received no better than a needs to improve rating on both of its last two examinations.

(b) *Effect of discrimination.* Evidence that a savings association has engaged in illegal lending discrimination may affect the savings association's CRA rating. Notwithstanding paragraph (a) of this section and subject to rebuttal, the OTS assigns a savings association a final composite rating lower than satisfactory if the savings association has—

(1) Engaged in a pattern or practice of illegal discrimination that it has not corrected fully; or

(2) Committed an isolated act of illegal discrimination of which it has knowledge and that it has not corrected fully or is not in the process of correcting fully.

(c) *Multiple service areas.* Where a savings association operates in more than one service area, the OTS conducts Lending, Investment and Service tests in a sample of all of the service areas in which a savings association operates. The OTS assigns separate composite CRA ratings to the savings association's performance in each of the service areas studied. A list of the service areas in which the savings association's CRA performance was examined, along with the rating assigned to the savings association's CRA record in each of the service areas, shall be included in the savings association's public performance evaluation. The overall rating for the savings association reflects the performance of the savings association in the service areas studied.

§ 563e.11 Alternative assessment methods.

(a) *Small savings association assessment standards.* A small savings association (as defined in § 563e.5(k)) may choose to have the OTS assess its CRA performance under this section rather than the general standards described in §§ 563e.6 through 563e.10.

(1) The OTS presumes a small savings association's overall CRA performance is satisfactory if the savings association:

(i) Has a reasonable loan-to-deposit ratio (a ratio of 60 percent, adjusted for seasonal variation, is presumed to be reasonable) given its size, its financial condition, and the credit needs in its service area;

(ii) Makes the majority of its loans in its service area;

(iii) Has a good loan mix (*i.e.*, makes, to the extent permitted by law and regulation, a variety of loans to customers across economic levels);

(iv) Has no legitimate, bona-fide complaints from community members;

(v) Has not engaged in a pattern or practice of illegal discrimination that it has not corrected fully; and has not committed isolated acts of illegal discrimination, of which it has knowledge, that it has not corrected fully or is not in the process of correcting fully; and

(vi) In the case of a savings association already subject to reporting home mortgage lending data under HMDA, 12 U.S.C. 2801 *et seq.*, has a reasonable geographic distribution of such loans.

(2) A small savings association that meets each of the standards for a satisfactory rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of outstanding. In assessing whether a small savings association's CRA record is outstanding, the OTS will consider the extent to which the savings association's loan-to-deposit ratio, its lending to its service area, and its loan mix exceed the standards for a satisfactory rating. In addition, at the option of the savings association, the OTS will evaluate:

(i) Its record of making qualified investments (as described in § 563e.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways meet the convenience and needs of low- and moderate-income persons in its service area.

(3) A small savings association that fails to meet or exceed all of the standards for a satisfactory rating under this paragraph is not presumed to be performing in a less than satisfactory manner. Rather, for those savings associations, the OTS conducts a more extensive examination of the savings association's loan-to-deposit record, its record of lending to its local community, and its loan mix. The OTS will also contact members of the community, particularly in response to complaints about the savings association, and review the findings of its most recent fair lending examination. In addition, at the option of the savings association, the OTS will assess:

(i) Its record of making qualified investments (as described in § 563e.8(c)); and

(ii) Its record of providing branches, ATMs, and other services that enhance credit availability or in other ways serve the convenience and needs of low- and moderate-income persons in its service area.

(4) *Multiple service areas.* If a small savings association operates in more than one service area, the OTS evaluates the savings association's performance in all of those service areas.

(b) *Strategic plan assessment.* (1) As an alternative to being rated after the fact under the lending, service and investment tests or the small savings association assessment method, a savings association may submit to the OTS for approval a strategic plan detailing how the savings association proposes to meet its CRA obligation.

(i) The plan must be submitted at least 3 months prior to the proposed effective date of the plan so that the OTS has sufficient time to review the plan and to determine whether to approve it.

(ii) A savings association submitting a proposed plan for approval must publish notice in a newspaper of general circulation in each of its service areas stating that a plan has been submitted to the OTS for review, that copies of the plan are available for review at offices of the savings association, and that comments on the proposed plan may be sent to the appropriate Regional Director.

(iii) The OTS assesses every plan under the standards of this part and will not approve a plan unless it provides measurable goals against which subsequent performance can be evaluated, and the proposed performance is at least overall satisfactory under the standards of this part.

(iv) No plan may have a term that exceeds two years. Further, during the term of a plan, the savings association may petition the OTS to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate.

(2) The OTS will assess the performance of a savings association operating under an approved plan to determine if the savings association has met or exceeded the plan goals. However, if the savings association fails to meet or exceed the preponderance of the measurable goals set forth in the plan, its performance will be evaluated under the lending, service and investment tests or the small savings association assessment method as applicable.

§ 563e.12 Service area—delineation.

(a) The effective lending territory of a savings association defines the savings association's service area. The effective lending territory is that area around each office or group of offices where the preponderance of direct reportable loans made through the office or offices are located.

(b) Subject to rebuttal, a savings association's service area is presumed to be acceptable if the area is broad enough to include low- and moderate-income geographies and does not arbitrarily exclude low- and moderate-income geographies.

(c) A savings association can show that its service area is acceptable despite its failure to satisfy the criteria of paragraph (b) of this section by clearly demonstrating to the satisfaction of the OTS that the criteria of paragraph (b) of this section are inappropriate because, for example, there are no low- or moderate-income geographies within any reasonable distance given the size and financial condition of the savings association.

(d) The OTS can reject as unacceptable a service area meeting the criteria of paragraph (b) of this section if the OTS finds that the service area does not accurately reflect the true effective lending territory of the savings association or reflects past redlining or illegal discrimination by the savings association.

(e) A savings association shall delineate more than one service area when the geographies it serves extend substantially across state boundaries, or extend substantially across boundaries of a Metropolitan Statistical Area.

(f) A savings association whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside its local community or communities may delineate a "military community" for those customers as a service area.

(g) A savings association shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 563e.13 Loan data—collection, reporting, and disclosure.

(a) Every savings association, except small savings associations electing the small savings association assessment method, shall collect and maintain the following data on its government insured and other reportable loans: number of written applications, number of application denials, number and amount of approvals, number and amount of loans purchased, and number and amount of indirect loans the savings association elects to have evaluated using the lending test. All information is to be provided by the geography where the loan is located.

(1) A savings association choosing to be rated under the strategic plan assessment described in § 563e.11(b) is not relieved from its obligation to report the data as required by this section.

(2) The information required under this section shall be collected:

(i) Beginning July 1, 1994, for the remaining six months of 1994. A summary of the savings association's data for the six months shall be submitted to OTS by January 31, 1995.

(ii) Beginning January 1, 1995, on an annual basis, a summary of the savings association's data collected under this section shall be submitted to OTS by January 31 of the following year. The summary data shall be submitted in the format prescribed in appendix A of this part.

(3) Small business loan data shall be collected, reported, and disclosed in the summary format described in this paragraph (a) for the following categories: small businesses with average annual gross receipts of less than $250,000, those with average annual gross receipts of $250,000 or more and less than $1 million; those with average annual gross receipts of $1 million or more and less than $10 million; and manufacturing businesses with average annual gross receipts of $10 million or more and less than 500 employees.

(4) Home mortgage loan data shall be collected, reported, and disclosed in the summary format described in this paragraph (a) for the following categories: 1–4 family home purchase, 1–4 family home improvement, 1–4 family refinancings, and multi-family loans.

(b) The OTS will make summary data collected pursuant to this section available to the public and to the savings associations. The data will be used by the OTS to apply the Lending Test under § 563e.7.

(c) For purposes of this section, a loan is located in a geography as follows:

(1) Consumer loans are located in the geography where the borrower resides.

(2) Loans secured by real estate are located in the geography where the relevant real estate is located.

(3) Small business loans are located in the geography where the headquarters or principal office of the business is located.

(4) Small farm loans are located in the geography where the farm property is located. (d) A savings association is not required to report under this section indirect loans unless the savings association elects to have the indirect loans attributed to it as described in § 563e.7(e) for purposes of the Lending Test. If a savings association elects to report its indirect loans, it shall report all attributable indirect loans outside low- or moderate-income geographies as well as loans inside such geographies.

§ 563e.14 Public file and disclosure.

(a) Savings associations shall maintain files that are readily available for public inspection containing the information required by this section.

(b) Each savings association shall include in its public file the following information—

(1) All signed, written comments received from the public for the current year and past two calendar years that specifically relate to the savings association's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the savings association;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the OTS. The savings association shall place this copy in the public file within 30 business days after its receipt from the OTS; and

(3) A list of the savings association's service areas and the geographies within each service area and a map of each service area showing the geographies contained therein.

(c) A savings association that is not a small savings association shall include in its public file the lending data the savings association has reported to the OTS under § 563e.13 for the current and past two calendar years.

(d) A small savings association shall include in its public file the savings association's Loan-to-Deposit ratio computed at the end of the most recent calendar year.

(e) A savings association that has been approved to be assessed under a strategic plan as described in § 563e.11(b) shall include in its public file a copy of that plan.

(f) Each savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet community credit needs.

(g) A savings association shall maintain its public file or required portions of the file at the following offices—

(1) Home offices shall have a copy of the complete public file; and

(2) Branches shall have copies of all materials in the public file relating to the service area in which the branch is located.

(h) A savings association shall provide copies of the information in the public file to members of the public upon request. A savings association may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 563e.15 Public notice by savings associations.

A savings association shall provide, in the public lobby of its home office and each branch, the public notice set forth in this section. Bracketed material shall be used only by savings associations having more than one service area. The last two sentences shall be included only if the savings association is a subsidiary of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional savings associations.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Office of Thrift Supervision (OTS) evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The OTS also takes our CRA performance into account when deciding on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the OTS of our CRA performance, and data on the loans we have made in this community during the past two years. (Current CRA information on our performance in other communities served by us is available at our home office, located at _____.)

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of savings association official) and to the Regional Director (address). Your letter, together with any response by us, may be made public.

You may ask the Director of the OTS to look at any comments received by the Regional Director. You also may request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are a subsidiary of (name of holding company), a savings and loan holding company.

§ 563e.16 Publication of planned examination schedule.

The OTS will publish at least 30 days in advance of the beginning of each calendar quarter a list of the savings associations that are scheduled for CRA examinations in that quarter. Any member of the public may submit comments to the OTS regarding the CRA performance of any savings association whose name appears on the list.

§ 563e.17 Effect of ratings—corporate applications.

(a) The OTS takes into account the applicant's record of performance in considering applications for—

(1) Establishment of a domestic branch or other facility with the ability to accept deposits;

(2) Relocation of the home office or a branch office;

(3) Merger or consolidation with or the acquisition of assets or assumption of liabilities of a federally-insured depository institution; and

(4) A Federal thrift charter.

(b) An applicant for a Federal thrift charter (other than a federally-insured depository institution) shall submit a description of its proposed CRA performance when the application is made. In considering the application, the OTS takes into account the savings association's proposed CRA performance.

(c) In considering CRA performance in a corporate application, the OTS will take into account any views expressed by State or other Federal financial supervisory agencies or other interested parties, which are submitted in accordance with the applicable public comment procedures or § 563e.16.

(d) In the OTS's consideration of the savings association's CRA record in a corporate application, the CRA rating assigned to a savings association is an important, and often controlling, factor. However, the rating is not conclusive evidence of performance. Absent other evidence on performance, CRA ratings generally affect corporate applications as follows:

(1) An "outstanding" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application and will receive extra weight in reviewing the application.

(2) A "satisfactory" rating generally will result in a finding that the CRA aspect of the application is consistent with approval of the application.

(3) A "needs to improve" rating generally will be an adverse factor in the CRA aspect of the application, and, absent demonstrated improvement in the savings association's CRA performance or other countervailing factors, generally will result in denial or conditional approval of the application.

(4) A "substantial noncompliance" rating generally will be so adverse a finding on the CRA aspect of the application as to result in denial of the application.

§ 563e.18 Transition rules.

(a) *Data collection.* The data collection and reporting requirements of § 563e.13 will go into effect July 1, 1994. Data collected from July 1, 1994 to year end must be reported to the OTS no later than January 31, 1995. Thereafter savings associations will collect data on an annual basis and the data shall be reported no later than January 31 of the following year.

(b) *Assessment standards.* Evaluation under the new standards is mandatory after July 1, 1995, except that until April 1, 1996, for good cause, a savings association may request the OTS to evaluate it under the standards in place prior to (effective date of final regulation). During the time period from April 1, 1995 until July 1, 1995, a savings association may, at its option, choose to be evaluated under the new standards or under the standards in place prior to (effective date of final regulation).

(c) *Strategic plan.* If a savings association elects to be evaluated under an approved strategic plan during the transition period, a savings association may submit a strategic plan anytime after (effective date of final regulation).

(d) *Corporate applications.* If the first rating a savings association receives under the new standards (whether that rating is given during the transition period or after the new standards become effective) is more than one rating category below the last rating the

savings association received prior to (effective date of final regulation), the OTS will not disapprove any corporate application or take any other enforcement action against the savings association based on that lower rating if the OTS has determined that the drop in the savings association's rating occurred despite the savings association's good faith efforts to perform at least satisfactorily under the new standards.

8. Appendix A to part 563e is added as set forth in the common preamble.

Appendix A to Part 563e—CRA Loan Data Format

Dated: December 6, 1993.

By the Office of Thrift Supervision.

John F. Downey,

Deputy Director for Regional Operations.

[FR Doc. 93–30921 Filed 12–15–93; 4:22 pm]

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federal register

Tuesday
December 21, 1993

Part IV

Department of Transportation

Federal Highway Administration

23 CFR Parts 420 and 511
State Planning and Research Program Administration; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 420 and 511

[FHWA Docket No. 93-18]

RIN 2125-AD21

State Planning and Research Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments from interested persons on proposed amendments to regulations for program approval and authorization, conduct and reporting of planning, research, development, and technology transfer activities undertaken by States and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. The proposed amendments are necessary to reflect revisions to title 23, United States Code, Highways, that resulted from enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In addition, the FHWA is proposing that States establish a process for management of research, development and technology transfer (RD&T) activities undertaken with FHWA planning and research funds that will enable States to exercise greater authority over such activities.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93-18, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Solury (202-366-5003), Office of Environment and Planning, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, for 23 CFR part 420, subpart A; Mr. Charles W. Niessner (703-285-2100), Office of Research and Development, Federal Highway Administration, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, VA 22101-2296, for 23 CFR part 420, subpart B; or Mr. Wilbert Baccus (202-366-0780), Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

With the restructuring of the Federal-aid highway program due to enactment of the ISTEA (Pub. L. 102-240, 105 Stat. 1914), regulations for the administration and management of activities undertaken with FHWA planning and research funds need to be updated to reflect the revised sources of and activities eligible for such funds. Additional revisions may be needed after issuance of anticipated revisions to OMB Circular A-102 and its companion common rule for administration of grants and cooperative agreements to State and local governments.

The ISTEA allows the States more flexibility in managing and directing federally-funded RD&T initiatives. This rulemaking would grant States greater responsibility and flexibility for the management and oversight of their RD&T initiatives funded with FHWA planning and research funds. Therefore, the FHWA believes its stewardship role should be one of concentrating more on the policies and procedures by which States implement federally-assisted RD&T activities than on project-specific approvals and oversight. The FHWA believes that States are well prepared and willing to take full management responsibility for the day-to-day administration of RD&T activities supported with FHWA planning and research funds, and by doing so, the FHWA anticipates that States will experience enhanced program benefits. The FHWA invites States and other interested parties to submit comments addressing the appropriateness of this redefined Federal stewardship role.

The ISTEA instituted a number of substantive changes pertinent to the planning and research program. In addition to retitling it from Highway Planning and Research to State Planning and Research (SPR), the ISTEA: (1) Increased the set-aside of funds apportioned to States for SPR activities from 1.5 percent to 2 percent; (2) included planning, research, development, and technology transfer as eligible activities under the National Highway System and Surface Transportation Programs; (3) permitted the use of funds made available under title 23, U.S.C., for other modes of transportation planning, research, development, and technology transfer; and (4) required the expenditure of 25 percent of a State's annual SPR funds for RD&T activities, unless the State certifies that it will use more than 75 percent for planning. The ISTEA sets forth the minimum Federal requirements for carrying out RD&T activities using FHWA planning and research funds and establishes the procedures under which the FHWA may allow States increased management flexibility for directing and controlling their program initiatives, subject to certain program standards and conditions.

The FHWA had published, in a separate rulemaking under docket number 92-14 (58 FR 12096, March 2, 1993), a notice of proposed rulemaking to amend chapter I of title 23, Code of Federal Regulations, by removing, in its entirety, Part 511, entitled "Research and Development (R&D) Studies and Programs; General," §§ 511.1 through 511.10. The FHWA is transferring this proposed action from the earlier NPRM to this NPRM which would remove part 511 and would replace it with 23 CFR part 420, subpart B.

In addition to the revisions to each section discussed below, the term "FHWA highway planning and research funds" has been changed to "FHWA planning and research funds" wherever it appeared in 23 CFR part 420 to reflect the broader eligibility of such funds for multimodal transportation planning and research activities. Similarly, the term "urbanized" has been changed to "metropolitan" because 23 U.S.C. 134 was renamed "Metropolitan planning" by the ISTEA.

While this regulation is not applicable to the use of Federal Transit Act funds available for multimodal transportation planning and RD&T activities, Federal Transit Administration (FTA) administrative procedures [1] are similar. The FHWA and the FTA have in the past cooperated to simplify and coordinate administrative requirements when planning grants are made to the same recipients or subrecipients. One aspect of this coordination is the use of a unified planning work program for MPOs that covers both FHWA and FTA planning funds. The FHWA and the FTA intend to continue this cooperative process and, in view of the increased flexibility for multimodal uses of such funds allowed by the ISTEA, will explore additional means to reduce the administrative burden on such recipients or subrecipients.

Proposal

This proposal revises 23 CFR 420, subpart A, and creates a new subpart B

[1] *Program Guidance and Application Instructions for Planning and Technical Studies Grants*, (UMTA Circular C8100.1A), August 30, 1985. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

pertaining to research, development and technology transfer activities. The FHWA intends, through subpart B, to grant States day-to-day authority to manage, direct, control and approve FHWA supported RD&T projects, subject to the State's certification that minimum Federal standards are met as verified through periodic peer and Federal reviews.

Under proposed subpart B, a State would have full authority and control for administration of its RD&T programs, if the State certifies that it:

(1) Has an interactive process for identifying priority RD&T activities expected to address critical national, regional or State problems;

(2) Makes appropriate use of the Transportation Research Information Services (TRIS) database to avoid duplication of program effort;

(3) Has an annual work program depicting RD&T program and fiscal commitments that contains necessary information for inclusion into national RD&T databases;

(4)Has provisions for accepting peer reviews of its RD&T activities on a periodic basis; and

(5) Has a management process that implements RD&T activities in conformance with the requirements and conditions of subpart B.

Notwithstanding the intent of this proposal, the FHWA believes its interest in State-based RD&T will remain high and that there must be a strong Federal commitment and presence for developing, establishing, and maintaining viable State-based RD&T programs nationwide. Demands in surface transportation alone warrant a strong Federal presence, especially since the highway component of RD&T plays such a critical role in influencing and meeting national transportation policies, goals, and objectives. Thus, the FHWA, through its Regional and Division Office research and technical specialists, would remain actively involved in monitoring and participating in the States' RD&T activities, especially on State research review committees or panels that select and guide RD&T activities to be funded with FHWA planning and research funds. In the interest of better research to solve urgent problems, such as congestion, safety, and infrastructure deterioration, the FHWA believes its continued involvement, at least from a national perspective, is appropriate and beneficial.

The FHWA encourages comments regarding its continued involvement on State RD&T committees or panels where the FHWA representative may serve as a non-voting resource person.

Section-By-Section Analysis

The following is a section-by-section discussion of proposed revisions to 23 CFR part 420, Planning and Research Program Administration.

Authority Citation

The authority citation for part 420 would be revised to reflect the new sections of 23 U.S.C. that are applicable to FHWA planning and research funds as a result of the enactment of the ISTEA.

Subpart A—Administration of FHWA Planning and Research Funds

Section 420.101 Purpose

Language would be added to indicate that the provisions of this part apply to subrecipients of States, including MPOs.

The reference to additional requirements for RD&T programs and studies would be changed from 23 CFR part 511 to subpart B of this part to reflect their relocation to part 420.

Section 420.103 Definitions

The term "FHWA highway planning and research funds" would be changed to "FHWA planning and research funds" to reflect the broader eligibility of such funds for multimodal planning and research activities. The term "HPR" (highway planning and research) would be changed to "SPR" (State planning and research) to correspond to the new title of 23 U.S.C. 307(c). The term "PR" would be deleted since this category of funds was not continued under the ISTEA. "FHWA planning and research funds" would be redefined to include the optional use of National Highway System (NHS) and Surface Transportation Program (STP) funds for planning and research purposes.

Definitions of "metropolitan planning area" and "metropolitan planning organization (MPO)," are added to parallel the definitions of these terms as used in 23 CFR part 450.

Section 420.105 Policy

Paragraph (c) of § 420.105, which currently states that it is FHWA's policy to administer FHWA highway planning and research funded activities in urbanized areas in accordance with 23 CFR part 450, would be deleted since the administrative requirements are in this part, not in part 450. To avoid any misunderstanding regarding the applicability of these administrative requirements to funds used in such areas, the applicability statement in § 420.101, as noted above, and this section would be revised to indicate that this part is applicable to subrecipients, including MPOs.

The provisions regarding State responsibility for administration of FHWA planning and research funds passed through to subrecipients would be moved to paragraph (h) of § 420.121 since the provisions are requirements, not policy issues.

Section 420.107 SPR Minimum Research, Development, and Technology Transfer Expenditure

This section would be added to reflect the requirement in 23 U.S.C. 307(c) that not less than 25 percent of a State's annual SPR funds are to be expended for RD&T activities unless the State certifies that it will expend more than 75 percent of such funds for transportation planning under 23 U.S.C. 134 and 135. Procedures for FHWA approval of a State's certification were established in the FHWA Executive Director's June 25, 1992, memorandum to the FHWA Regional Administrators. (This memorandum is available for review and copying in the file for FHWA docket number 93–18 at the address specified above under the caption ADDRESSES.) These procedures would be included in § 420.107. While a State may submit biennial work programs in accordance with § 420.111, the certification would need to be submitted annually with the work program or with the request for authorization of funds for the second year of a biennial work program.

Section 420.109 Distribution of PL Funds

Section 420.107 would be redesignated as § 420.109 and the title would be changed from "Allocation of PL funds" to "Distribution of PL funds" to be consistent with terminology used in 23 U.S.C. 104(f)(4).

The longstanding requirement that States make all metropolitan planning (PL) funds available to MPOs and not use such funds for administration of PL grants or subgrants would be added to paragraph (a). The additional statutory provisions that attainment of national ambient air quality standards and that other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law be considered by the State in development of its distribution formula would be added to paragraph (b).

New paragraph (e) would be added to reflect the provisions of 23 U.S.C. 134(n) that any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 may be made available by the MPO(s) to the State for funding statewide planning

activities under 23 U.S.C. 135, subject to approval by the FHWA.

New paragraph (f) would require that a State PL fund distribution formula that does not meet the requirements of § 420.109 be brought into conformance as soon as possible, but not later than in time for distribution of PL funds apportioned to the State for the first Federal fiscal year beginning after the effective date of the regulation.

Section 420.111 Work Program

Section 420.109 would be redesignated as § 420.111.

Because of the multimodal nature of the ISTEA and the interrelationship of transportation and air quality planning, paragraph (d) would be amended to encourage inclusion in the FHWA funded work programs, for informational purposes, of information on non-FHWA funded work (1) for planning for other transportation modes and (2) for air quality planning in areas designated as nonattainment for transportation related pollutants.

Section 420.113 Eligibility of Costs

Section 420.111 would be redesignated as § 420.113.

No substantive changes would be made to this section. However, since additional eligible activities (e.g., statewide multimodal planning, transit research, etc.) are specified in amended title 23, U.S.C., they are incorporated by the current reference to title 23, U.S.C., in paragraph (a)(1). It should be noted, in particular, that transportation planning studies for other than highway or transit modes are eligible for FHWA planning and research funds when performed in conjunction with the development of statewide or metropolitan transportation plans.

Section 420.115 Approval and Authorization Procedures

Section 420.113 would be redesignated as § 420.115.

No substantive changes would be made to this section.

Section 420.117 Program Monitoring and Reporting

Section 420.115 would be redesignated as § 420.117.

No substantive changes would be made to this section.

Section 420.119 Fiscal Procedures

Section 420.117 would be redesignated as § 420.119.

The references to classes of funds that comprise FHWA planning and research funds would be changed to reflect requirements in the ISTEA.

Language would be added to paragraph (c) to indicate that the statewide and, if appropriate, metropolitan transportation improvement program provisions of 23 CFR part 450 need to be met for the use of NHS, STP, or minimum allocation funds for planning or research purposes.

Paragraph (d) would be amended by adding further explanation of when the matching requirement for FHWA planning and research funds may be waived and by indicating that the FHWA Associate Administrator for Program Development or the Associate Administrator for Research and Development is authorized to approve waivers, respectively, for planning or for RD&T pooled fund activities. The FHWA would consider a waiver of matching funds if it determines that national or regional high priority planning or RD&T problems can be more effectively addressed if several States and/or MPOs pool their funds. Generally, cooperatively funded projects costing less than $50,000 would not be cost-effective and should not be proposed. Each State's or MPO's contribution to any cooperatively funded effort should be at least $10,000.

Section 420.121 Other Requirements

Section 420.119 would be redesignated as § 420.121.

The reference to 49 CFR 29.100 in paragraph (g) would be corrected to 49 CFR 29.105.

The requirement, in existing § 420.105, regarding State responsibility for administration of FHWA planning and research funds passed through to subrecipients would be moved to paragraph (h).

Paragraph (j) would be amended to indicate that the standard patent rights clause at 37 CFR 401.14 is applicable to recipients and subrecipients of FHWA planning and research funds, except for § 401.14(g). Substitute language for § 401.14(g) for FHWA programs is provided for inclusion in subgrants or contracts.

The reference to the applicability of 49 CFR Part 23 regarding disadvantaged business enterprises, now located in § 420.119(m), would be updated to incorporate the provisions of section 1003(b) of the ISTEA and would be included in new § 420.121(h).

Subpart B—Research, Development and Technology Transfer Program Management

Section 420.201 Purpose and Applicability

The purpose of this subpart is to set forth policies, requirements, and minimum conditions to implement the provisions of title 23, U.S.C., as amended by the ISTEA, with respect to RD&T. The policies, requirements, and minimum conditions would allow States increased program flexibility in managing, directing, and controlling RD&T activities undertaken with FHWA planning and research funds. This subpart would establish a State certification process and peer reviews to determine program quality and effectiveness.

It would also make the provisions of subpart B applicable to agencies and organizations which carry out or participate in RD&T activities receiving FHWA planning and research funds. The primary responsibility for RD&T administration, however, would rest with the State transportation agency working closely with other appropriate agencies. The FHWA recognizes that the structure for implementation of RD&T varies among States; therefore, specific organizational or institutional arrangements for carrying out RD&T are not being proposed in this rulemaking.

Section 420.203 Definitions

This section defines terms used in subpart B. The FHWA is seeking to avoid terms that can be construed as having an unduly restrictive effect on each State's ability to manage an effective RD&T program.

The terms "research," "applied research," and "basic research" are specifically defined to be illustrative of the types of RD&T activities that would be considered eligible for FHWA planning and research funds. Eligibility of such types of activities would not be based on cost or whether or not the activity is short-term or long-term, but on whether or not the proposed activity is eligible under the provisions of title 23, U.S.C., and falls within the meaning of RD&T as defined in this subpart.

The terms "development" and "technology transfer" would be defined to provide additional guidance to the States on what the FHWA would consider eligible development and technology transfer activities.

The terms "national pooled funded study," "regional pooled funded study," "cooperatively funded study," and "National Cooperative Highway Research Program funded study" are also specifically defined to provide guidance and encouragement to States to participate in pooled funded studies that are directed towards solving problems of national or regional significance and for the overall benefit of many, if not all, States. Due to limited resources, the FHWA strongly supports pooled funded studies.

The term "peer review" is added to capture the concept of periodic reviews

by teams of external research managers to assist a State in maintaining or improving its program quality and effectiveness. These reviews would be conducted by officials from other States, the FHWA, the Transportation Research Board, universities and/or private organizations who are well experienced in the management and conduct of research, development, and technology transfer activities.

The term "Transportation Research Information Services (TRIS)" would be added to avoid confusion with the former information system called the Highway Research Information Services, which has been incorporated into the TRIS.

The term "final report" would be defined to explain the content and scope of this document.

Comments on the need for any additional definitions or further explanation of terms are encouraged and will be considered for the final rule.

Section 420.205 Policy

This section explains the FHWA's intent to allow States maximum flexibility and discretion in managing and directing their RD&T activities while concurrently ensuring proper utilization of Federal funds and avoiding unnecessary duplication of effort. This flexibility should allow States to use available FHWA planning and research funds for RD&T activities without experiencing paperwork and approval delays. States would retain the authority to determine the content of their RD&T programs and the associated resource allocations.

This policy change is consistent with the authority expressed in the ISTEA and would give States maximum flexibility in developing and managing their RD&T programs. The FHWA, however, invites comments on whether or not this policy change would, in fact, reduce State willingness to participate in various pooled fund studies.

Section 420.207 Conditions for Grant Approval

This section would implement some of the substantive requirements added by the ISTEA to the FHWA planning and research program. These requirements would enhance the overall effectiveness of RD&T activities being implemented in the States.

This section would require each State to implement a program of RD&T activities and expend at least 25 percent of the SPR funds exclusively for such activities, unless the FHWA accepts a certification provided by a State under proposed § 420.107.

In addition, States would be required to establish and implement an interactive management process for identifying RD&T needs and setting priorities. The proposed RD&T management process is critical to the success of this proposal. Therefore, this section would establish minimum requirements for RD&T activities, as a condition to FHWA planning and research funding, to guide States in developing, establishing, and implementing a management process. The State process would produce a work program of eligible RD&T activities which are expected to solve critical State, regional, or local transportation problems. This section also proposes that the State's management process include procedures for obtaining necessary information to assess program quality and effectiveness, and to facilitate peer reviews of the RD&T program on a periodic basis.

The FHWA recognizes that some States may be reluctant to assume full management responsibility for approval of their RD&T activities supported with FHWA planning and research funds. Therefore, the FHWA specifically invites comments on whether or not this proposal should be required for all States. In the event one or more States prefer to submit individual studies for Federal approval, should there be a provision added to the final rule to permit that option? If so, should this option be phased out, for example, over a three year period?

The FHWA proposes a process for periodic peer review of each State's RD&T activities receiving FHWA Planning and Research funds. The FHWA interprets "periodic" to mean at least once every three years. The FHWA invites comments concerning this frequency. Under this proposal, the FHWA would require each State to agree to participate in a peer review to determine the quality and program effectiveness of its or another State's RD&T efforts undertaken with FHWA planning and research funds. To facilitate such a review, the State would be required to disclose to peer reviewers information and documentation required to be collected and maintained under this subpart.

Peer reviews would help in identifying, reinforcing, and conveying effective program approaches across the country. In essence, they would provide a nationwide sharing of successful practices and policies. The FHWA would use these peer review reports to influence national RD&T policy, goals and objectives for the future. The peer review process would not be used to determine compliance with this subpart.

Section 420.209 State Work Program

In this section, the FHWA would define the breadth and substance of the required RD&T work program. Essentially, the State's work program would be a document consisting of an annual or biennial description of RD&T activities to be accomplished during a given program period, including estimated costs for each activity. The work program would also need to contain a description of any activities that are part of a national or regional pooled study, including contributions to the National Cooperative Highway Research Program (NCHRP). Additionally, the State's work program would include financial summaries showing the funding levels and contributions (Federal, State, and local share) for RD&T activities for the program period.

The State should also document, through preparation of final reports, program accomplishments and benefits achieved through implementation of RD&T projects using FHWA planning and research funds. The final reports will serve as the primary source document for States to input results into the TRIS and to facilitate peer reviews of the State's RD&T program.

Section 420.211 Eligibility of Costs

This section establishes the standards under which RD&T costs would be reimbursed to the States. Eligible costs for RD&T activities, as defined in this subpart, would include costs necessary and reasonable to accomplish the RD&T objectives set out in the States' work programs, if incurred after FHWA authorization and consistent with the applicable cost principles cited in 49 CFR 18.22.

Section 420.213 Certification Requirements

To efficiently implement the new RD&T management procedures proposed in this subpart, the FHWA is proposing a State certification process as a condition for FHWA planning and research funding for RD&T projects and activities. It is proposed that each State certify to the Federal Highway Administrator that its RD&T Program complies with the requirements of this subpart.

In this section, the FHWA proposes uniform language for the certification. The FHWA's acceptance of a State's certification would serve as sufficient evidence of State compliance and would permit continued FHWA planning and research funding for RD&T activities,

subject to the availability of Federal funds. However, the FHWA could, at its discretion, conduct reviews of State compliance with subpart B on a for-cause basis relying on information obtained from the State or other sources.

The certification statement would be required to be submitted by the State to the FHWA Division Administrator before January 1, 1995. A copy of the certification would also be required to be resubmitted with each work program. The FHWA Division Office would be responsible for determining a State's compliance with the requirements of subpart B on a periodic basis.

Section 420.215 Procedure for Withdrawal of Approval

If the FHWA makes a determination that a State does not meet one or more of the standards or conditions of subpart B, the FHWA is proposing a procedure for immediate withdrawal of the State's approval authority for RD&T activities supported with FHWA planning and research funds on a project by project basis. The State would be notified of the FHWA's proposed determination of noncompliance, including the reasons for its preliminary determination and the possible ramifications therefrom.

The process allows the State the opportunity to respond, in writing, within 30 calendar days from the date of the notification. The State's reply should address the deficiencies cited in the notice and should include appropriate documentation in support of its position.

If, after reviewing the State's response, the FHWA still finds the State to be in noncompliance, the FHWA would notify the State of its final determination. In the event the State does not respond to a notice of proposed determination of noncompliance, the FHWA intends that its preliminary determination would constitute a final agency action.

The FHWA is interested, however, in receiving comments from interested parties on whether a noncompliance determination should only result in a withdrawal of RD&T program approval on a project by project basis. As an alternative the FHWA could develop a standard that would result in cessation of Federal participation in that portion of the FHWA planning and research program dealing with RD&T until the noncompliance issue is corrected to the satisfaction of the FHWA.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above under the caption "Dates" will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The action proposed by the FHWA in this document will amend requirements for administration of FHWA planning and research funds to be consistent with legislative changes due to the ISTEA. Also, this proposal would establish a mandatory State certification process and a Federal and peer review process to determine annually whether or not each State complies with the standards for State RD&T management in subpart B. The economic costs of this rulemaking will be insignificant and will consist only of the costs associated with preparation of the grant applications and State development of procedures for RD&T management. The cost savings that will be realized by the States due to the reduction in time to initiate and conduct RD&T activities under the proposed State RD&T management provisions will more than offset the one-time cost of development of the procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule addresses the administrative procedures and requirements that States must comply with when using FHWA planning and research funds provided under title 23, U.S.C. This rule does not impose any direct requirement on small entities that would result in increased economic costs. Based on this evaluation, the FHWA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612.

Although this rule relates to requirements that States must meet to be eligible for FHWA planning and research funds, federalism implications, though unavoidable, would be minimized. Nothing in this proposal preempts any State law or regulation. The proposal, if adopted, provides States increased authority and flexibility to manage their federally-assisted State planning and research programs. This increase in authority and flexibility is in concert with the principles and criteria contained in Executive Order 12612 for the implementation of express statutory provisions. Accordingly, the FHWA certifies that this proposal does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements referenced in § 420.105(b) have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2125–0028 and 2125–0032. The information collection required in §§ 420.111 (a), (b), and (c) and 420.117 (b) and (c) have been approved by the OMB and assigned control numbers 2125–0039 and 2132–0529. Paragraph (a) of § 420.213 of the proposed rule would require a State to certify to the FHWA Division Administrator before January 1, 1995, that it is complying with the requirements of subpart B. A copy of the certification would be submitted with each work program but a new certification would only need to be prepared if the State significantly revises its management process for the RD&T program. It is estimated that the one-time burden for the States for this certification will be approximately 2100 hours. OMB approval of this additional burden will be requested with a request

for extension of the collection and reporting requirements under OMB control number 2125–0039.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 420 and 511

Accounting, Grant programs—transportation, Highways and roads, Planning, Reporting and recordkeeping requirements, Research.

Issued on: December 14, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations as set forth below.

Subchapter E—Planning and Research

1. The heading of subchapter E is revised as set forth above.

2. Part 420 is revised to read as follows:

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Subpart A—Administration of FHWA Planning and Research Funds

Sec.
420.101 Purpose and applicability.
420.103 Definitions.
420.105 Policy.
420.107 SPR minimum research, development, and technology transfer expenditure.
420.109 Distribution of PL funds.
420.111 Work program.
420.113 Eligibility of costs.
420.115 Approval and authorization procedures.
420.117 Program monitoring and reporting.
420.119 Fiscal procedures.
420.121 Other requirements.

Subpart B—Research, Development and Technology Transfer Program Management

420.201 Purpose and Applicability.
420.203 Definitions.
420.205 Policy.
420.207 Conditions for grant approval.
420.209 State work program.
420.211 Eligibility of costs.
420.213 Certification requirements.
420.215 Procedure for withdrawal of approval.

Authority: 23 U.S.C. 103(i), 104(f), 115, 120, 133(b), 134(n), 149(b), 157(c), 307, and 315; and 49 CFR 1.48(b).

Supart A—Administration of FHWA Planning and Research Funds

§ 420.101 Purpose and applicability.

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken by States and their subrecipients, including Metropolitan Planning Organizations (MPOs), with FHWA planning and research funds. It applies to activities and studies funded as part of a recipient's or subrecipient's work program or as separate Federal-aid projects that are not included in a work program. This subpart also is applicable to the approval and authorization of research, development, and technology transfer (RD&T) work programs; additional policies and procedures regarding administration of RD&T programs are contained in subpart B of this part. The requirements in this part supplement those in 49 CFR part 18 which are applicable to administration of these funds.

§ 420.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

FHWA planning and research funds means:

(1) State planning and research (SPR) funds (the 2 percent funds authorized under 23 U.S.C. 307(c)(1));

(2) Metropolitan planning (PL) funds (the 1 percent funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134(a));

(3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used, at a State's option, for transportation planning in accordance with 23 U.S.C. 134 and 135, highway research and planning in accordance with 23 U.S.C. 307, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;

(4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used, at a State's option, for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum allocation funds authorized under 23 U.S.C. 157(c) used, at a State's option, for carrying out, respectively, the provisions of 23 U.S.C. 307(c)(1) (up to 1½ percent) and 23 U.S.C. 134(a) (up to ½ percent).

Metropolitan planning area means the area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

Work program means a periodic statement of proposed work and estimated costs that document the eligible activities to be undertaken with FHWA planning and research funds during the next 1- or 2-year period by State highway agencies (SHAs) and/or their subrecipients.

§ 420.105 Policy.

(a) The FHWA will administer FHWA planning and research funds supported activities according to the following general principles:

(1) Allow SHAs and their subrecipients maximum possible flexibility in the use of their FHWA planning and research funds while ensuring legal use of such funds and avoiding unnecessary duplication of efforts;

(2) Allow SHAs and their subrecipients to utilize available planning and research resources to meet highway and multimodal transportation planning and research needs at the national, State, and local levels;

(3) Allow for the cooperation of the SHAs and their subrecipients in providing the necessary planning and research resources to meet national transportation planning and research needs; and

(4) Within the limitations of available funding and with the understanding that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, and 303 are being adequately addressed, allow SHAs and their subrecipients to determine which eligible planning and research activities they desire to support with FHWA planning and research funds and at what funding level.

(b) The SHAs shall provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: Preparing proposed legislation and reports to the

Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors. (The information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 SPR minimum research, development, and technology transfer expenditure.

(a) In accordance with the provisions of 23 U.S.C. 307(c), not less than 25 percent of the SPR funds apportioned to a State for a fiscal year shall be expended for RD&T activities relating to highway, public transportation, and intermodal transportation systems, unless the State certifies, and the FHWA accepts the State's certification, that total expenditures by the State during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State shall ensure that:

(1) The additional planning activities are essential and there are no other reasonable options available for funding these planning activities (including the use of National Highway System, Surface Transportation Program, or Federal Transit Administration section 26 (a)(2) funds or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in overall needs of the State for a given year; and

(3) The total level of effort by the State in RD&T (using both Federal and State funds) is adequate.

(c) If the State chooses to pursue an exception, the request, along with supporting justification, shall be sent to the FHWA Associate Administrator for Research and Development. The Associate Administrator's decision shall be based upon the following considerations:

(1) Does the State have a process for identifying RD&T needs and for implementing a viable RD&T program?

(2) Is the State contributing to cooperative RD&T programs, such as the National Cooperative Highway Research Program, the Transportation Research Board's activities, the implementation of products of the Strategic Highway Research Program, and pooled fund studies?

(3) Is the State using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement?

(4) What percentages or amounts of the State's FHWA planning and research funds were used for planning and RD&T, respectively, prior to enactment of the 25 percent requirement, and will the percentage or amount of funds used for RD&T activities increase if the exception is approved?

(5) If an exception is approved, can the State show that in following years it will meet the requirement, or substantially increase its RD&T expenditures toward meeting the requirement over a multi-year period?

(6) Does the amount of Federal funds needed for planning for the program period exceed the total of the 75 percent limit for the fiscal year and any unexpended (including unused funds that can be released from completed projects) funds for planning from previous apportionments?

(d) If the State's request for an exception is approved, the exception will be valid only for the fiscal year in which the exception is approved. A new request must be submitted in subsequent fiscal years.

§ 420.109 Distribution of PL funds.

(a) States shall make all PL funds authorized by 23 U.S.C. 104(f) available to the Metropolitan Planning Organizations (MPOs) in accordance with a formula developed by the State, in consultation with the MPO(s), and approved by the FHWA. The State shall not use any PL funds for grant or subgrant administration.

(b) In developing the formula for distributing PL funds, the State shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) As soon as practicable after PL funds have been apportioned by the FHWA to the States, the SHAs shall inform the MPO(s) and the FHWA of the amounts allocated to each MPO.

(d) If the SHA, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134(a), the SHA may, after considering the views of the affected MPO(s) and with the approval of the FHWA, use these funds to finance transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 may be made available by the MPO(s) to the State for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraph (a) or (b) of this section shall be brought into conformance with such requirements as soon as possible, but no later than in time for distribution of PL funds apportioned to the State for the first Federal fiscal year beginning after the effective date of this regulation.

§ 420.111 Work program.

(a) Expenditure of FHWA planning and research funds shall be documented by the SHAs and subrecipients in a work program(s) acceptable to the FHWA. Statewide, metropolitan, other transportation planning activities, and transportation research and development activities may be administered as separate programs, paired in various combinations, or brought together as a single work program. Similarly, these transportation planning and research activities may be authorized for fiscal purposes as one combined Federal-aid project or as separate Federal-aid projects. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under § 420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the SHA.

(b) Work program(s) that document transportation planning activities shall include a description of work to be accomplished and cost estimates for each activity. Additional information on metropolitan planning area work programs is contained in 23 CFR 450.114. Additional information on research, development, and technology transfer work program content and format is contained in subpart B of this part.

(c) The SHAs that use separate Federal-aid projects in accordance with § 420.111(a) shall submit, in addition to the financial information specified below for each program, one overall summary showing the funding for the entire FHWA funded planning, research, development, and technology

transfer effort. Each work program shall include a financial summary that shows:

(1) Federal share by type of fund;

(2) Matching rate by type of fund;

(3) State and/or local matching share; and

(4) Other State or local funds.

(d) The SHAs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of § 420.105, for planning for other transportation modes, and for air quality planning activities in areas designated as nonattainment for transportation related pollutants in their work programs. The MPOs in TMAs shall include such information in their work programs in accordance with the provisions of 23 CFR part 450.

(Approved by the Office of Management and Budget under control numbers 2125–0039 and 2132–0529.)

§ 420.113 Eligibility of costs.

(a) Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from the SHA's or the subrecipient's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

(4) Are provided for in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of SHAs are eligible only for planning and research units to the extent allowed in accordance with 23 CFR part 140, subpart G.

(c) Indirect costs of MPOs and local governments are allowable if supported by a cost allocation plan and indirect cost proposal approved in accordance with the provisions of OMB Circular A–87. An initial plan and proposal must be submitted to the Federal cognizant or oversight agency for negotiation and approval prior to recovering any indirect costs. The cost allocation plan and indirect cost proposal shall be updated annually and retained by the MPO or local government, unless requested to be resubmitted by the Federal cognizant or oversight agency, for review at the time of the audit required in accordance with 49 CFR part 90. However, if the MPO or local government's indirect cost rate varies significantly from the rate approved for the previous year, or if the MPO or local government changes its accounting system and affects the previously approved indirect cost allocation plan and proposal or rate and its basis of application, the indirect cost allocation plan and proposal shall be resubmitted for negotiation and approval. In either case, a rate should be negotiated and approved for billing purposes until a new plan and proposal are approved.

(d) Indirect costs of other SHA subrecipients, including other State agencies, are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted, and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the subrecipient.

§ 420.115 Approval and authorization procedures.

(a) The SHA and its subrecipients shall obtain work program approval and authorization to proceed prior to beginning work on activities in the work program. Such approvals and authorizations should be based on final work program documents. The SHA and its subrecipients also shall obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 and for those items of allowable costs which require prior approval in accordance with the applicable cost principles specified in 49 CFR 18.22.

(b) Except for advance construction, authorization to proceed with the work program(s) in whole or in part shall be deemed a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and shall require that appropriate funds be available for the full Federal share of the cost of work authorized. Those SHAs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of the entire work program(s) may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR part 630, subpart G. SHAs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work program(s) for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization shall not constitute a commitment by the FHWA to fund the remaining portion of the work program(s) should additional funds become available.

(c) A Federal-Aid Project Agreement (Form PR–2) shall be executed in accordance with the procedures in 23 CFR part 630, subpart C, for each statewide planning, research and development, metropolitan planning area transportation planning work program, individual activity or study, or any combination administered as a single Federal-aid project. The project agreement shall be executed after the authorization has been given by the FHWA to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work program, the project agreement shall be amended by execution of a Form PR–2A, Modification of Federal-Aid Project Agreement, when authorization is given to proceed with additional work.

§ 420.117 Program monitoring and reporting.

(a) In accordance with 49 CFR 18.40, the SHA shall monitor all activities, including those of its subrecipients, supported by FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The SHA shall submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual research studies is contained in subpart B of this part.

(c) The frequency of reports required by paragraph (b) of this section shall be annually unless more frequent reporting is determined to be necessary by the FHWA; but in no case will reports be required more frequently than quarterly. These reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the reporting period for other reports.

(d) Events that have significant impact on the work program(s) shall be reported as soon as they become known.

The type of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) A provision of the Federal-Aid Project Agreement requires both the preparation of suitable reports to document the results of activities performed with FHWA planning and research funds and FHWA approval prior to publishing such reports. The SHA may request a waiver of the requirement for prior approval. The FHWA's approval constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA funded work shall include appropriate credit references and disclaimer statements.

(Approved by the Office of Management and Budget under control numbers 2125–0039 and 2132–0529.)

§ 420.119 Fiscal procedures.

(a) SPR funds shall be administered and accounted for as a single fund regardless of the category of Federal-aid highway funds from which they are derived.

(b) PL funds shall be administered and accounted for as a single fund.

(c) Optional funds authorized under 23 U.S.C. 104(b)(1), 104(b)(3), and 157(c) used for eligible planning and research purposes shall be identified separately in the work program(s) and shall be administered and accounted for separately for fiscal purposes. The statewide and, if appropriate, metropolitan transportation improvement program provisions of 23 CFR part 450 need to be met for the use of NHS, STP, or minimum allocation funds for planning or research purposes.

(d) The maximum rate of Federal participation with funds identified in paragraphs (a) through (c) of this section shall be as prescribed in title 23, U.S.C., for the specific class of funds; unless, for funds identified under paragraph (a) or (b) of this section, the FHWA determines that the interests of the Federal-aid highway program would be best served without such match in accordance with 23 U.S.C. 307(c)(3) or 23 U.S.C. 104(f)(3). The FHWA may, upon request, waive the requirement for matching funds, if national or regional high priority planning or RD&T problems can be more effectively addressed if several States and/or MPOs pool their funds. Requests for 100 percent Federal funding must be submitted to the FHWA Division Office for approval by the Associate Administrator for Program Development (for planning activities) or the Associate Administrator Research and Development (for RD&T activities).

(e) The provisions of 49 CFR 18.24 are applicable to any necessary matching of FHWA planning and research funds.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21.

§ 420.121 Other requirements.

(a) The financial management systems of the SHAs and their subrecipients shall be in accordance with the provisions of 49 CFR 18.20(a).

(b) Program income, as defined in 49 CFR 18.25(b), shall be shown and deducted to determine the net costs on which the FHWA share will be based, unless an alternative method for using program income is specified in the FederalAid Project Agreement.

(c) Audits shall be performed in accordance with 49 CFR 18.26 and 49 CFR part 90. (d) Acquisition, use, and disposition of equipment purchased by the SHAs and their subrecipients with FHWA planning and research funds shall be in accordance with 49 CFR 18.32(b).

(e) Acquisition and disposition of supplies acquired by the SHAs and their subrecipients with FHWA planning and research funds shall be in accordance with 49 CFR 18.33.

(f) In accordance with 49 CFR 18.34, SHAs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(g) Procedures for the procurement of property and services with FHWA planning and research funds by the SHAs and their subrecipients shall be in accordance with 49 CFR 18.36(a) and, if applicable, 18.36(t). The SHAs and their subrecipients shall not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A through E.

(h) The SHAs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and shall ensure that the requirements of 49 CFR 18.37(a) have been satisfied. SHAs shall have primary responsibility for administering FHWA planning and research funds passed through to subrecipients, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR part 18, and applicable cost principles.

(i) Recordkeeping and retention requirements shall be in accordance with 49 CFR 18.42.

(j) The SHAs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and shall include, or incorporate by reference, the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, SHAs and their subrecipients shall include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work:

> The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions.

(k) In accordance with the provisions of 49 CFR part 29, subpart F, SHAs shall certify to the FHWA that they will provide a drug free workplace. This requirement can be satisfied through the annual certification for the Federal-aid highway program.

(l) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(m) The nondiscrimination provisions of 49 CFR part 21, with respect to title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds whether or not those programs or activities are federally funded.

(n) The SHAs shall administer the transportation planning and research program(s) consistent with their overall efforts to implement section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) and 49 CFR part 23 regarding disadvantaged business enterprises.

Subpart B—Research, Development and Technology Transfer Program Management

§ 420.201 Purpose and applicability.

The purpose of this subpart is to implement the provisions of 23 U.S.C.

307 and to prescribe Federal assistance requirements for research, development, and technology transfer (RD&T) activities, programs, and studies undertaken by States with FHWA planning and research funds. The requirements of this subpart and subpart A of this part are applicable to work performed by the States and their subrecipients with FHWA planning and research funds.

§ 420.203 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and part 420, subpart A, are applicable to this subpart. As used in this subpart:

Applied research means the study of phenomena relating to a specific known need in connection with the functional characteristics of a system; the primary purpose of this kind of research is to answer a question or solve a problem.

Basic research means the study of phenomena whose specific application has not been identified; the primary purpose of this kind of research is to increase knowledge.

Cooperatively funded study means an RD&T study or activity, administered by the FHWA, a lead State, or other Federal agency, that is funded by some combination of a State's contribution of FHWA planning and research funds, FHWA administrative contract funds, 100 percent State funds, or funds from another Federal agency.

Development means the translation of basic or applied research results into prototype materials, devices, techniques, or procedures for the practical solution of a specific problem in transportation.

Final report means a report documenting a completed RD&T study or activity.

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by States and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

National pooled funded study means an RD&T study or activity expected to solve problems of national significance, usually administered by the FHWA in cooperation with States, that is funded by State contributions of FHWA planning and research funds.

Peer review means a review conducted by representatives of another State, the FHWA, American Association of State Highway and Transportation Officials, Transportation Research Board (TRB), and a representative from a university and/or the private sector.

Regional pooled funded study means an RD&T study expected to solve problems of regional significance, usually administered by a lead State in cooperation with other sponsoring States, that is funded by State contributions of FHWA planning and research funds.

Research means a systematic controlled inquiry involving analytical and experimental activities which primarily seek to increase the understanding of underlying phenomena. Research can be basic or applied.

Technology transfer means those activities that lead to the adoption of a new technique or product by users and involves dissemination, demonstration, training, and other activities that lead to eventual innovation.

Transportation Research Information Services (TRIS) means the TRB maintained computerized storage and retrieval system for abstracts of ongoing and completed RD&T activities, including abstracts of RD&T reports and articles.

§ 420.205 Policy.

(a) It is the FHWA's policy to administer the RD&T program activities utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (h) of this section.

(b) State highway agencies shall provide information necessary for peer reviews.

(c) States are encouraged to develop, establish, and implement a RD&T program funded with Federal and State resources that anticipates and addresses transportation concerns before they become critical problems. To promote effective utilization of available resources, States are encouraged to cooperate with other States, the FHWA, and other appropriate agencies to achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results.

(d) States will be allowed the authority and flexibility to manage and direct their RD&T activities as presented in their work programs, and to initiate RD&T activities supported by FHWA planning and research funds, subject to the limitation of Federal funds and to compliance with program conditions set forth in § 420.207.

(e) States will have primary responsibility for managing RD&T activities supported with FHWA planning and research funds carried out by other State agencies and organizations and for ensuring that such funds are expended for purposes consistent with this subpart.

(f) Each State shall develop, establish, and implement a management process that ensures effective use of available FHWA planning and research funds for RD&T activities on a statewide basis. Each State is permitted to tailor its management process to meet State or local needs; however, the process must comply with the minimum requirements and conditions of this subpart.

(g) States are encouraged to make effective use of the FHWA Division, Region, and Headquarters office expertise in developing and carrying out their RD&T activities. Participation of the FHWA on advisory panels and in program review meetings is encouraged.

(h) The State's RD&T activities supported with FHWA planning and research funds shall be implemented in accordance with the FHWA's civil rights policies to assure compliance with title VI of the Civil Rights Act of 1964, 49 CFR part 21, and related statutes and regulations, as stated in 23 CFR part 200.

§ 420.207 Conditions for grant approval.

(a) As a condition for FHWA planning and research funding each State shall implement a program of RD&T activities for planning, design, construction, and maintenance of highways, public transportation, and intermodal transportation systems. Not less than 25 percent of the State's apportioned SPR funds shall be spent on such activities, unless waived by the FHWA, in accordance with the provisions of § 420.107. In addition each State shall develop, establish, and implement a management process that identifies and implements RD&T activities expected to address highest priority transportation issues, and includes:

(1) An interactive process for identification and prioritization of RD&T activities for inclusion in an annual work program;

(2) Utilization, to the maximum extent possible, of all FHWA planning and research funds set aside for RD&T activities internally or for participation in national, regional pooled, or cooperatively funded studies;

(3) Procedures for tracking program activities, schedules, accomplishments, and fiscal commitments;

(4) Support and use of the TRIS database for program development, reporting of active RD&T activities, and input of the final report information;

(5) Procedures to determine the effectiveness of the State's management process in implementing the RD&T program, to determine the utilization of

the State's RD&T outputs, and to facilitate peer reviews of its RD&T Program on a periodic basis and;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation shall include the data collected, analyses performed, conclusions, and recommendations. The State shall actively implement appropriate research findings and should document benefits.

(b) Each State shall agree to submit to peer reviews of its RD&T program and participate in the review of other States' programs on a periodic basis. To assist peer reviewers in completing a quality and performance effectiveness review, the State shall disclose to them information and documentation required to be collected and maintained under this subpart. Travel and other costs associated with peer reviews of the State's program should be identified as a line item in the State work program and will be eligible for 100 percent Federal funding. The peer review team shall report its findings to the State, with copies to the FHWA Division Administrator. The State shall provide a written response to the peer review findings to the FHWA Division office.

(c) Documentation that describes the management process, the procedures for selecting and implementing RD&T activities and the expected accomplishments shall be developed and maintained by the States. The documentation shall be submitted by the State to the FHWA Division office for FHWA approval. Significant changes in the management process also shall be submitted by the State for FHWA approval. The State shall make the documentation available, if necessary, upon the request of the FHWA to facilitate peer reviews.

§ 420.209 State work program.

(a) The State's work program shall, as a minimum, consist of an annual or biennial description of activities and individual research studies to be accomplished during the program period, estimated costs for each eligible RD&T activity, and a description of any cooperatively funded activities that are part of a national or regional pooled study including the NCHRP contribution.

(b) The State's work program shall include financial summaries showing the funding levels and share (Federal, State, and other sources) for RD&T activities for the program year. States are encouraged to include any activity funded 100 percent with State or other funds.

(c) Approval and authorization procedures § 420.115 are applicable to this subpart.

§ 420.211 Eligibility of costs.

(a) Unless otherwise specified in this section, the eligible costs for Federal participation in § 420.113 are applicable to this part.

(b) Costs for implementation of RD&T activities in conformity with the requirements and conditions set forth in this subpart are eligible for Federal participation.

(c) Administrative costs for implementation of RD&T activities, such as, RD&T administration, books and periodicals, and contributions to NCHRP, incurred by State highway agencies are eligible costs to the extent allowable under 49 CFR part 18 and 23 CFR part 140, subpart G.

(d) Indirect costs of other State agencies and organizations are allowable if supported by a cost allocation plan and indirect cost proposal in accordance with OMB requirements.

§ 420.213 Certification requirements.

(a) Each State shall certify to the FHWA Division Administrator before January 1, 1995, that it is complying with the requirements of this subpart. A copy of the certification shall be submitted with each work program. A new certification will be required if the State significantly revises its management process for the RD&T program.

(b) The certification shall consist of a statement signed by the Administrator, or an official designated by the Administrator, of the State transportation agency certifying as follows:

I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 307 and its implementing regulations with respect to the research, development and technology transfer program, and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.

(c) The FHWA Division Administrator shall determine if the State is in compliance with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number _____-_____)

§ 420.215 Procedure for withdrawal of approval.

(a) If a State is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State. The notice shall set forth the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The State's reply should address the deficiencies cited in the notice and provide documentation as necessary.

(b) If the State and Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State may appeal to the Federal Highway Administrator.

(c) The Federal Highway Administrator's action will constitute the final decision of the FHWA.

(d) An adverse decision will result in immediate withdrawal of the State's ability to approve RD&T activities supported with FHWA planning and research funds. Until the noncompliance issue is resolved to the satisfaction of the FHWA, the State must submit a proposal to the FHWA for approval for each individual RD&T activity. The proposal shall include adequate discussion need and objective of the RD&T activity and a work plan that describes how the work will be accomplished.

PART 511—RESEARCH AND DEVELOPMENT (R&D) STUDIES AND PROGRAMS; GENERAL

3. Chapter I of title 23 of the Code of Federal Regulations is amended by removing and reserving part 511.

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Part V

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Proposed Amendments to Sentencing Guidelines, Policy Statements, and Commentary

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary; request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments and a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1994. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

DATES: The Commission has scheduled a public hearing on these proposed amendments for March 24, 1994, at 9:30 a.m. at the Education Center (concourse level), South Lobby, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002–8002.

Anyone wishing to testify at this public hearing should notify Michael Courlander, Public Information Specialist, at (202) 273–4590 by March 10, 1994.

Public comment, including written testimony for the hearing, should be received by the Commission no later than March 18, 1994, to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1994.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise periodically guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats. First, the majority of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, for some amendments, the Commission has published alternative methods of addressing an issue, shown in brackets. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested as to whether any of the proposed amendments should be made retroactive under this policy statement.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1994, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

The amendments below are derived from a variety of sources, including: monitoring and hotline data, case law review, and the recommendations of the Judicial Conference of the United States, Department of Justice, Federal and Community Defenders, Practitioners' Advisory Group, Probation Officers' Advisory Group, American Bar Association Sentencing Guidelines Committee, Families Against Mandatory Minimums, individual judges, probation officers, attorneys, and others. Publication of a proposed amendment or issue for comment reflects only the Commission's determination that the amendment or issue is worthy of public comment.

As a resource when considering the proposed amendments, working group reports prepared by Commission staff are available for inspection at Commission offices or off-site duplication. The reports contain empirical and legal sentencing research focusing on (1) money laundering offenses; (2) computer-related offenses; (3) public corruption offenses; and (4) controlled substance offenses/role in the offense. Contact the Commission's public information specialist at (202) 273–4590 for details.

Authority: 28 U.S.C. § 994(a), (o), (p), (x).

William W. Wilkins, Jr.,
Chairman.

Computer-Related Offenses

Chapter Two, Parts B (Offenses Involving Property) and F (Offenses Involving Fraud or Deceit)

1. *Synopsis of Proposed Amendment:* This amendment adds Commentary to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), 2B1.3 (Property Damage or Destruction), and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) to address harms that may be significant in computer-related cases but not adequately accounted for by the loss table. In addition, this amendment revises Appendix A (Statutory Index) for violations of 18 U.S.C. 1030 to reference the offense guidelines that most appropriately address the underlying harms.

Proposed Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional note:

"15. In cases in which the loss determined under subsection (b)(1) does not fully capture the harmfulness and seriousness of the conduct, an upward departure may be warranted. For example, an upward departure may be warranted if the offense involved a substantial invasion of a privacy interest. Although every violation of 18 U.S.C. § 1030(a)(2) (intentional, unauthorized access of financial or credit card information) constitutes an invasion of a privacy interest, the Commission does not consider each such invasion to be a substantial invasion of a privacy interest. When the primary purpose of the offense was pecuniary, a sentence within the applicable guideline range ordinarily will be sufficient. By contrast, an upward departure may be warranted if the financial records of a particular individual were accessed for a non-pecuniary motive.".

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 4 by inserting "or interference with a telecommunications network" immediately before "may cause".

The Commentary to § 2B1.3 captioned "Application Notes" is amended by inserting the following additional note:

"5. In a case in which a computer data file was altered or destroyed, loss can be measured by the cost to restore the file. If a defendant intentionally or recklessly altered or destroyed a computer data file and, due to a fortuitous circumstance, the cost to restore the file was substantially lower than the defendant could reasonably have expected, an upward departure may be warranted. For example, if the defendant intentionally or recklessly damaged a valuable data base, the restoration of which would have been very costly but for the fortuitous circumstance that, unknown to the defendant, an annual back-up of the data base had recently been completed thus making restoration relatively inexpensive, an upward departure may be warranted.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 10 by deleting the period at the end of subdivision (f) and inserting in lieu thereof a semicolon; and by inserting the following additional subdivisions:

"(g) the offense involved a substantial invasion of a privacy interest;

(h) the offense involved a conscious or reckless risk of harm to a person's health or safety.".

Appendix A (Statutory Index) is amended in the line beginning "18 U.S.C. 1030(a)(2)" by deleting "2F1.1" and inserting in lieu thereof "2B1.1"; in the line beginning "18 U.S.C. 1030(a)(3)" by deleting "2F1.1" and inserting in lieu thereof "2B2.3"; and in the line beginning "18 U.S.C. § 1030(a)(5)" by deleting "2F1.1" and inserting in lieu thereof "2B1.3".

Public Corruption Offenses

Chapter Two, Part C (Offenses Involving Public Officials)

2(A). *Synopsis of Proposed Amendment:* This amendment consolidates §§ 2C1.3 (Conflict of Interest) and 2C1.4 (Payment or Receipt of Unauthorized Compensation). Although the elements of the offenses of conflict of interest and unauthorized payment differ in some ways, the gravamen of the offenses is similar—unauthorized receipt of a payment in respect to an official act. The base offense levels for both guidelines are identical. The few cases in which these guidelines were applied usually involved a conflict of interest offense that was associated with a bribe or gratuity; i.e., the conflict of interest statute was used as a plea bargaining statute. None of the cases involved application of the adjustment in § 2C1.3(b)(1) for planned or actual harm to the government. In this consolidation, the adjustment for actual or planned harm to the government is replaced by an upward departure consideration and a cross-reference to the guidelines for offenses involving a bribe or gratuity.

Proposed Amendment: Section 2C1.4 is deleted in its entirety.

Section 2C1.3 is amended in the title by inserting at the end "; Payment or Receipt of Unauthorized Compensation".

Section 2C1.3 is amended by deleting subsection (b) and inserting in lieu thereof:

"(b) Cross Reference

If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate.".

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting ", 209, 1909" immediately following "208".

The Commentary to § 2C1.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes"; and by inserting the following additional note:

"2. If the offense involved actual or planned harm to the government, an upward departure may be warranted.".

The Commentary to § 2C1.3 captioned "Background" is amended by deleting:

"The maximum term of imprisonment authorized by statute is two years.",

and inserting in lieu thereof:

"It also applies to offenses involving the unlawful supplementation of salary of various federal employees.".

(B). *Synopsis of Proposed Amendment:* This amendment consolidates §§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper). Both guidelines cover offenses involving gratuities and have identical base offense levels. The only differences between the guidelines is the absence of adjustments in § 2C1.6 for multiple gratuities and high-level officials. This amendment removes this inconsistency. In addition, an application note is inserted to clarify the treatment of a gratuity in the form of a loan.

Proposed Amendment: Section 2C1.6 is deleted in its entirety.

The Commentary to § 2C1.2 captioned "Statutory Provision" is amended by deleting "Provision: 18 U.S.C. § 201(c)(1)." and inserting in lieu thereof "Provisions: 18 U.S.C. §§ 201(c)(1), 212–214, 217.".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. For the purposes of this guideline, a gratuity includes any unlawful payment (including a loan). When an unlawful payment is in the form of a loan, the value of the loan may be determined by the savings in interest over the life of the loan under the terms given compared with the loan terms for which the applicant would have legitimately qualified. Note, however, that in the case of a gratuity disguised as a loan, the 'value of the gratuity' is the face value of the loan.".

The Commentary to § 2C1.2 captioned "Background" is amended by deleting the second, third, and fourth sentences and inserting in lieu thereof:

"It also applies to the offer to, or acceptance by, a bank examiner of any unlawful payment; the offer or receipt of anything of value for procuring a loan or discount of commercial paper from a Federal Reserve Bank; and the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.".

(C). *Issue for Comment:* The Commission invites comment on whether §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) should be consolidated. Bribery and gratuity statutes vary in their respective definitions of these offenses. Some case law identifies the existence of a quid pro quo and related timing issues as key distinctions between a bribe and a gratuity. In contrast, some case law identifies § 2C1.1 as applying to offenses in which a "corrupt purpose" is an element of the offense of conviction, even where there has been no quid pro quo. Moreover, review of case files indicates that § 2C1.2 is sometimes used as a plea bargain statute for bribery offenses. To simplify determination of the appropriate guideline and to ensure consistent application of the guidelines to similar conduct, §§ 2C1.1 and 2C1.2 might be consolidated by providing alternative base offense levels for bribery and gratuity offenses and by adding clearer, more objective definitions of the conduct covered. Section 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations) uses this type of structure.

Comment is also invited on whether such a consolidation also should include § 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), a guideline that shares many of the same

specific offense characteristics and cross references.

3. *Issue for Comment:* The Commission invites comment on whether the offense levels for the public corruption guidelines and other guidelines concerning bribes and gratuities appropriately account for the seriousness of these offenses. The Commission specifically invites comment on whether, and if so to what extent, the offense levels of §§ 2C1.1, 2C1.2, 2C1.6, 2C1.7, 2B3.3, 2B4.1, and 2E5.1 should be modified or harmonized. It is noted that § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) provides a base offense level of 10 for extortion under color of official right, but § 2B3.3 (Blackmail and Similar Forms of Extortion) provides a base offense level of 9 with a possible additional 2-level enhancement under § 3B1.3 (Abuse of Position of Trust). Section 2C1.1 provides a base offense level of 10 for offenses involving bribery, but guidelines involving bribery in other contexts provide a base offense level of 8 (§ 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery)) or 10 (§ 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations)) with a possible additional 2-level enhancement under § 3B1.3. Sections 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper) provide a base offense level of 7, while § 2E5.1 provides a base offense level of 6 for a gratuity with a possible additional 2-level enhancement under § 3B1.3.

The Department of Justice has recommended an increase in the offense levels for §§ 2C1.1, 2C1.2, and 2C1.7, with a specific recommendation for an increase in the base offense level of § 2C1.1 from 10 to 14 in order to reflect more adequately the seriousness of this conduct and to prevent any defendant to whom this guideline applies from being eligible for a non-imprisonment sentence.

4(A). *Synopsis of Proposed Amendment:* The adjustments in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) for more than one bribe, extortion, or gratuity were designed to reflect the increased culpability associated with offenses that involve more than a single incident. Commission data indicate that a majority of cases involve more than one such incident. Option 1 would retain these adjustments but make the commentary and guideline language for §§ 2C1.1 and 2C1.2 more consistent. Option 2 would eliminate these adjustments as substantially duplicative with the adjustment based on value or benefit of the payment because multiple instances typically are associated with larger values or benefits.

Proposed Amendment: [*Option 1:* Section 2C1.1(b)(1) is amended by deleting "bribe" and inserting in lieu thereof "incident of bribery".

Section 2C1.2(b)(1) is amended by inserting "incident of offering, giving, soliciting, or receiving a" immediately following "one".

The Commentary to § 2C1.2 captioned "Application Notes" is amended in Note 4 by inserting the following additional sentence as the first sentence:

"Subsection (b)(1) provides an adjustment for offenses involving more than one incident of offering, giving, soliciting, or receiving a gratuity.".]

[*Option 2:* Section 2C1.1(b) is amended by deleting subdivision (1); by renumbering subdivision (2) as subdivision (1); and in the caption by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by deleting Note 6.

Section 2C1.2(b) is amended by deleting subdivision (1); by renumbering subdivision (2) as subdivision (1); and in the caption by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by deleting Note 4.]

(B). *Issue for Comment:* The Commission invites comment on whether the discussion of the adjustments for multiple payments in the Commentary to §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) should be amended to facilitate more consistent application of these adjustments.

5(A). *Synopsis of Proposed Amendment:* This amendment makes the adjustments for value of the payment and high-level official in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) cumulative, rather than alternative, so as to reflect the harm involved in offenses involving both high values of payment or benefit and high-level officials. The Commission invites comment on the proper level of adjustment for high-level officials if these adjustments are made cumulative.

Proposed Amendment: Section 2C1.1(b) is amended by deleting: "(2) (If more than one applies, use the greater):"; by deleting "(A)" and inserting in lieu thereof "(2)"; by deleting "(B)" and inserting in lieu thereof "(3)"; and by deleting "8 levels" and inserting in lieu thereof "[2–8] levels".

Section 2C1.2(b) is amended by deleting "(2) (If more than one applies, use the greater):"; by deleting "(A)" and inserting in lieu thereof "(2)"; by deleting "(B)" and inserting in lieu thereof "(3)"; and by deleting "8 levels" and inserting in lieu thereof "[2–8] levels".

Section 2C1.7(b) is amended by deleting "(1) (If more than one applies, use the greater):"; by deleting "(A)" and inserting in lieu thereof "(1)"; by deleting "; or" and inserting in lieu thereof a period; by deleting "(B)" and inserting in lieu thereof "(2)"; and by deleting "8 levels" and inserting in lieu thereof "[2–8] levels".

(B). *Issue for Comment:* The Commission invites comment on whether the definition of high-level official in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) should be modified to facilitate more consistent application of this adjustment. Case review indicates some confusion as to whether this adjustment is to be applied, for example, to (1) line immigration or IRS agents who do not have supervisory authority and (2) federal procurement officials with authority to obligate substantial agency funds for contracts. The Commission invites comment on objective standards (e.g., specific job descriptions or titles, salary or grade, number of employees supervised, amount of funds authorized to be dispensed) that might be added to facilitate application of this adjustment.

The Commission also invites comment on whether the 8-level adjustment for high-level officials in §§ 2C1.1(b)(2), 2C1.2(b)(2), and 2C1.7(b)(1) should be modified as discussed below:

(1) Should the adjustment for a high-level official in § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) be reduced by [2–6] levels to limit the frequency with which the adjustment results in sentences at the statutory maximum? This adjustment is applied in approximately 15 percent of the cases under § 2C1.2 and typically results in an adjusted offense level 17 (base offense level 7 plus 2 levels for multiple gratuities and 8 levels for high-level official). The resulting guideline range (assuming criminal history category I) is 15–21 months (if a 3-level acceptance of responsibility reduction applies) and 18–24 months (if a 2-level acceptance of responsibility reduction applies); the statutory maximum for this offense is 24 months.

(2) Should the adjustment for a high-level official in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) be modified to provide different adjustments ([2–12] levels) depending on the level of authority, responsibility, salary, or other characteristics of the public officials involved; should it be reduced to moderate the impact of this adjustment which is relatively large in comparison with most guideline adjustments; or should the current adjustment remain and, as recommended by the Department of Justice, an additional subdivision be created increasing the adjustment to 12 levels for elected or very high-level officials (a legislator, department or agency head, a judge, a presidential appointee, or another person at a similarly high level of state or federal government)?

(3) Instead of, or in addition to, modifying the current 8-level adjustment for a high-level official in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), should the Commission amend the commentary to authorize or recommend a departure in certain cases? Examples might include a suggested downward departure in cases of particularly low-level elected public officials (e.g., an elected treasurer to a local school board) or a suggested upward departure in cases of very high-level officials.

6(A). *Synopsis of Proposed Amendment:* This amendment clarifies that the term "payment" in §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) refers to anything of value and need not be monetary. In addition, this amendment clarifies the definition of the value of "the benefit received or to be received" in respect to cases involving extortion under color of official right. Finally, this amendment clarifies that the term "high-level official" for purposes of § 2C1.7(b)(1) is limited to high-level public officials.

Proposed Amendment: The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by inserting the following additional sentence as the second sentence:

" 'Payment' means anything of value.";

and by inserting the following additional sentence at the end:

"In offenses involving extortion under color of official right, the value of 'the benefit received or to be received' includes the value of the benefit that would have been denied, or the loss that would have been caused, to the victim had the victim not made the extorted payment.".

Section 2C1.7(b)(1)(B) is amended by inserting "public" immediately before "official" each time the latter term appears.

The Commentary to § 2C1.7 captioned "Application Notes" is amended in Note 2 by deleting "Official" and inserting in lieu thereof "Public official".

(B). *Issue for Comment:* The Commission invites comment on whether Application Note 2 of the Commentary to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) defining "benefit received" should be clarified to address varying approaches among the circuits as to the extent to which the defendant is to be held accountable for relevant conduct of others. Compare *United States* v. *Muldoon*, 931 F.2d 282 (4th Cir. 1991) with *United States* v. *Ellis*, 951 F.2d 580 (4th Cir. 1991), cert. denied, 112 S. Ct. 3030 (1992), *United States* v. *Kant*, 946 F.2d 267 (4th Cir. 1991), and *United States* v. *Narvaez*, 995 F.2d 759 (7th Cir. 1993).

(C). *Synopsis of Proposed Amendment:* This amendment adds an application note to §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) authorizing an upward departure where the offense involved ongoing harm or a risk of ongoing harm to a government entity or program to address cases in which a public official engages in behavior for a significant period of time even though the additional benefit received by the person is small or difficult to quantify.

Proposed Amendment: The Commentary to § 2C1.1 captioned "Application Notes" is amended by inserting the following additional note:

"7. If the offense involved ongoing harm, or a risk of ongoing harm, to a government entity or program, an upward departure may be warranted.".

The Commentary to § 2C1.7 captioned "Application Notes" is amended by inserting the following additional note:

"6. If the offense involved ongoing harm, or a risk of ongoing harm, to a government entity or program, an upward departure may be warranted.".

7. *Issue for Comment:* Section 994(d) of title 28, United States Code, requires the Commission to "assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders." Some courts have determined that departures may be based on certain factors such as cultural characteristics of the defendant or the collateral consequences that a public official might encounter as a result of a conviction. See *United States* v. *Aguilar*, 994 F.2d 609 (9th Cir. 1993) (collateral consequences); *United States* v. *Yu*, 954 F.2d 951 (3d Cir. 1992) (leaving to Commission the question of permissibility of departure for cultural characteristics in IRS bribery case); *United States* v. *Swapp*, 719 F. Supp. 1015 (D. Utah 1989) (downward departure justified for defendant convicted of damaging church with explosives because defendant operated in context of unique cultural history and culturally isolated family). The Commission invites comment on how it might resolve these competing policy concerns. The Commission also invites comment on whether additional departures should be suggested to

address unusual types of public corruption cases.

Drug Offenses and Role in the Offense

Chapter Two, Part D (Offenses Involving Drugs) and Chapter Three, Part B (Role in the Offense)

8(A). *Synopsis of Proposed Amendment:* This amendment keys the mandatory minimum levels in the Drug Quantity Table to levels 30 and 24, rather than 32 and 26, and sets the upper limit of this table at Level 38. When the Commission initially developed the Drug Quantity Table, it keyed the offense level for 1 KG of heroin (10 year mandatory minimum) at level 32 (121–151 months for a first offender) and 100 grams of heroin (5 year mandatory minimum) at level 26 (63–78 months for a first offender) because these guideline ranges included the 5 and 10 year mandatory minimum sentences. However, offense levels 30 (97–121 months) and 24 (51–63 months) also include the 5 year and 10 year mandatory minimum sentences, as do offense levels 31 (108–135 months) and 25 (57–71 months). This amendment revises the Drug Quantity Table to reflect the mandatory minimums at levels 30 and 24, rather than 32 and 26. In addition, the upper limit of the Drug Quantity Table is set at level 38. As an organizer or leader of a very large operation generally will receive a 4-level increase for an aggravating role, and may receive an additional 2-level weapon enhancement, extension of the Drug Quantity Table above level 38 for quantity itself does not seem required.

Proposed Amendment: Section 2D1.1(c) is amended by deleting subdivisions 1–12; by renumbering subdivisions 13–19 as 11–17; and by inserting the following as subdivisions 1–10:

Level 38

"(1) 100 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates);

500 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

5 KG or more of Cocaine Base;

100 KG or more of PCP, or 10 KG or more of PCP (actual);

100 KG or more of Methamphetamine, or 10 KG or more of Methamphetamine (actual), or 10 KG or more of 'Ice';

1 KG or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

40 KG or more of Fentanyl;

10 KG or more of a Fentanyl Analogue;

100,000 KG or more of Marihuana;

20,000 KG or more of Hashish;

2,000 KG or more of Hashish Oil.

Level 36

(2) At least 30 KG but less than 100 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 150 KG but less than 500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 1.5 KG but less than 5 KG of Cocaine Base;

At least 30 KG but less than 100 KG of PCP, or at least 3 KG but less than 10 KG of PCP (actual);

At least 30 KG but less than 100 KG of Methamphetamine, or at least 3 KG but less than 10 KG of Methamphetamine (actual), or at least 3 KG but less than 10 KG of 'Ice';

At least 300 G but less than 1 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 12 KG but less than 40 KG of Fentanyl;

At least 3 KG but less than 10 KG of a Fentanyl Analogue;

At least 30,000 KG but less than 100,000 KG of Marihuana;

At least 6,000 KG but less than 20,000 KG of Hashish;

At least 600 KG but less than 2,000 KG of Hashish Oil.

Level 34

(3) At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 500 G but less than 1.5 KG of Cocaine Base;

At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual);

At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Methamphetamine (actual), or at least 1 KG but less than 3 KG of 'Ice';

At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 4 KG but less than 12 KG of Fentanyl;

At least 1 KG but less than 3 KG of a Fentanyl Analogue;

At least 10,000 KG but less than 30,000 KG of Marihuana;

At least 2,000 KG but less than 6,000 KG of Hashish;

At least 200 KG but less than 600 KG of Hashish Oil.

Level 32

(4) At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 150 G but less than 500 G of Cocaine Base;

At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of PCP (actual);

At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Methamphetamine (actual), or at least 300 G but less than 1 KG of 'Ice';

At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 1.2 KG but less than 4 KG of Fentanyl;

At least 300 G but less than 1 KG of Fentanyl Analogue;

At least 3,000 KG but less than 10,000 KG of Marihuana;

At least 600 KG but less than 2,000 KG of Hashish;

At least 60 KG but less than 200 KG of Hashish Oil.

Level 30

(5) At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 50 G but less than 150 G of Cocaine Base;

At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of PCP (actual);

At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Methamphetamine (actual), or at least 100 G but less than 300 G of 'Ice';

At least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 400 G but less than 1.2 KG of Fentanyl;

At least 100 G but less than 300 G of a Fentanyl Analogue;

At least 1,000 KG but less than 3,000 KG of Marihuana;

At least 200 KG but less than 600 KG of Hashish;

At least 20 KG but less than 60 KG of Hashish Oil.

Level 28

(6) At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 35 G but less than 50 G of Cocaine Base;

At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of PCP (actual);

At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Methamphetamine (actual), or at least 70 G but less than 100 G of 'Ice';

At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 280 G but less than 400 G of Fentanyl;

At least 70 G but less than 100 G of Fentanyl Analogue;

At least 700 KG but less than 1,000 KG of Marihuana;

At least 140 KG but less than 200 KG of Hashish;

At least 14 KG but less than 20 KG of Hashish Oil.

Level 26

(7) At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 20 G but less than 35 G of Cocaine Base;

At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of PCP (actual);

At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Methamphetamine (actual), or at least 40 G but less than 70 G of 'Ice';

At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 160 G but less than 280 G of Fentanyl;

At least 40 G but less than 70 G of a Fentanyl Analogue;

At least 400 KG but less than 700 KG of Marihuana;

At least 80 KG but less than 140 KG of Hashish;

At least 8 KG but less than 14 KG of Hashish Oil.

Level 24

(8) At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 5 G but less than 20 G of Cocaine Base;

At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);

At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Methamphetamine (actual), or at least 10 G but less than 40 G of 'Ice';

At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 40 G but less than 160 G of Fentanyl;

At least 10 G but less than 40 G of a Fentanyl Analogue;

At least 100 KG but less than 400 KG of Marihuana;

At least 20 KG but less than 80 KG of Hashish;

At least 2 KG but less than 8 KG of Hashish Oil.

Level 22

(9) At least 70 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 350 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 3.5 G but less than 5 G of Cocaine Base;

At least 70 G but less than 100 G of PCP, or at least 7 G but less than 10 G of PCP (actual);

At least 70 G but less than 100 G of Methamphetamine, or at least 7 G but less than 10 G of Methamphetamine (actual), or at least 7 G but less than 10 G of 'Ice';

At least 700 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 28 G but less than 40 G of Fentanyl;

At least 7 G but less than 10 G of a Fentanyl Analogue;

At least 70 KG but less than 100 KG of Marihuana;

At least 14 KG but less than 20 KG of Hashish;

At least 1.4 KG but less than 2 KG of Hashish Oil.

Level 20

(10) At least 40 G but less than 70 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);

At least 200 G but less than 350 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);

At least 2 G but less than 3.5 G of Cocaine Base;

At least 40 G but less than 70 G of PCP, or at least 4 G but less than 7 G of PCP (actual);

At least 40 G but less than 70 G of Methamphetamine, or at least 4 G but less than 7 G of Methamphetamine (actual), or at least 4 G but less than 7 G of 'Ice';

At least 400 MG but less than 700 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);

At least 16 G but less than 28 G of Fentanyl;

At least 4 G but less than 7 G of a Fentanyl Analogue;

At least 40 KG but less than 70 KG of Marihuana;

At least 8 KG but less than 14 KG of Hashish;

At least 800 G but less than 1.4 KG of Hashish Oil;

20 KG or more of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except anabolic steroids);

40,000 or more units of anabolic steroids.".

(B). *Synopsis of Proposed Amendment:* This amendment adds an additional enhancement in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) for weapon use/assault. Two options are set forth. The Commission, in addition, invites comment on whether the weapon enhancement should be amended to differentiate the dangerousness of certain weapons (e.g., assault weapons, machine guns, and sawed-off shotguns) and the number of weapons involved.

Proposed Amendment: [*Option 1:* Section 2D1.1(b) is amended by deleting subdivision (1) and inserting in lieu thereof:

"(1) (A) If a firearm was discharged or a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; or

(B) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.";

by renumbering subdivision (2) as subdivision (3); and by inserting the following additional subdivision:

"(2) If the offense resulted in serious bodily injury, other than that to which subsection (a) (1) or (2) applies, increase by 2 levels.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by inserting ", 'otherwise used,'" immediately before "and".]

[*Option 2:* Section 2D1.1 is amended by inserting the following additional subsection:

"(e) Special Instruction

(1) If the offense involved an attempted murder or aggravated assault, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) or § 2A2.2 (Aggravated Assault) as if the defendant had been convicted of a separate count charging such conduct.

Notes

(A) This instruction is in addition to, and not in lieu of, the application of subsection (b)(1).

(B) The 'count' established under this instruction is not to be grouped with the count for the underlying controlled substance offense under § 3D1.2 (Groups of Closely Related Counts).

(C) For the purposes of this instruction, the discharge of a firearm under circumstances that create a substantial risk of serious bodily injury, even without the specific intent to cause such injury, is to be treated as an aggravated assault.".]

(C). *Synopsis of Proposed Amendment:* This amendment revises subsection (a)(3) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) to provide a ceiling in the Chapter Two offense level for defendants who receive a mitigating role adjustment under § 3B1.2 (Mitigating Role). Some commentators have argued that the current guidelines may over-punish certain low-level defendants when the sentence is driven in large part by the quantity of drugs involved in the offense. For such low-level defendants, the quantity of drugs involved is often opportunistic and may be a less appropriate measure of the seriousness of the offense than when the defendant has a mid-level or high-level role. This amendment limits the impact quantity will play in determining the sentence of a defendant who qualifies for a mitigating role adjustment.

Proposed Amendment: Section 2D1.1(a)(3) is amended by inserting the following additional sentence at the end:

"Provided, that if the defendant qualifies for a mitigating role adjustment under § 3B1.2 (Mitigating Role), the base offense level shall not be greater than level [32] [30].".

(D). *Issue for Comment:* The Commission invites comment on whether it should deemphasize the impact of drug quantity on offense level by using a broader range of quantity at each level in the offense table, and

instead provide greater enhancements for weapons or violence.

9. *Synopsis of Proposed Amendment:* This amendment revises § 3B1.1 (Aggravating Role) by (1) defining "participant" more comprehensively; (2) providing that subsection (b) applies where the defendant managed or supervised at least four other participants, a result more consistent with the structure of 21 U.S.C. 848 (Continuing Criminal Enterprise) (which requires supervision of at least five other participants) and one that will correct what appears to be an anomaly in the guideline in that a lower level defendant who supervises only one participant in an offense with a total of five participants currently receives a higher offense level than a defendant who is the leader or organizer of an offense having a total of four participants and manages or supervises all of those participants; and (3) clarifying the interaction of § 3B1.1 with § 3B1.2 in the case of a defendant who would otherwise qualify as a minor or minimal participant but exercises limited supervision over other participants with minor or minimal roles. This interaction has been the subject of inconsistent interpretation, and at least one circuit court decision, *United States* v. *Tsai*, 954 F.2d 155 (3rd Cir. 1992), has required that sections 3B1.1 and 3B1.2 be independently and sequentially applied to the same defendant.

Proposed Amendment: Section 3B1.1 is amended by deleting "follows:" and inserting in lieu thereof "follows (Apply the Greatest):".

Section 3B1.1(a) is amended by deleting "a criminal activity that involved five or more participants" and inserting in lieu thereof "the offense, and the offense involved at least four other participants".

Section 3B1.1(b) is amended by deleting "(but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive" and inserting in lieu thereof "of at least four other participants in the offense".

Section 3B1.1(c) is amended by deleting "in any criminal activity other than described in (a) or (b)" and inserting in lieu thereof "of at least one other participant in the offense".

The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 1 by deleting:

"A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant."

and inserting in lieu thereof:

"A person who is not criminally responsible for the offense is not considered a participant, except as provided below:

(A) *Undercover Agents.* An undercover agent (a law enforcement officer or a person operating under the direction of a law enforcement officer) playing the role of a participant is counted as a participant (even though he is not criminally responsible for the offense), provided that he was recruited by, or at the direction of, a criminally responsible participant. For example, if the defendant recruited two undercover agents to offload a shipment of marihuana, both undercover agents would be counted as participants for the purposes of this guideline. However, if the defendant recruited one undercover agent to offload a shipment of marihuana and that agent then counseled or encouraged the recruitment of other agents, only the first undercover agent would be counted as a participant.

(B) *Certain Other Persons.* In unusual cases, a person may be recruited by a criminally responsible participant for a significant role in the offense that is typically held by a criminally responsible participant, yet the person recruited may not be criminally responsible (1) because he is unaware that an offense is being committed, (2) because he has not yet reached the age of criminal responsibility, or (3) because of mental deficiency or condition. For example, a person hired by a defendant to solicit money for a charitable organization who was unaware that the charitable organization was fraudulent, a person duped by a defendant into driving the getaway car from a bank robbery who was unaware that a robbery was being committed, or a child recruited by a defendant to deliver a quantity of cocaine would meet these criteria. For the purposes of this guideline, such persons are counted as participants. Note, however, that persons such as postal employees, messengers, and taxi drivers, who are merely performing their normal duties, and are not otherwise criminally responsible for the offense, are not included in this provision.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraph at the end:

"As used in this guideline, a 'manager' or 'supervisor' means a person who managed or supervised another participant, whether directly or indirectly.".

The Commentary to § 3B1.1 captioned "Application Notes" is amended by renumbering Note 4 as Note 5; and by inserting the following additional note:

"4. When a defendant, who otherwise would merit a mitigating role reduction under § 3B1.2 (Mitigating Role), exercised limited supervision over participants with equal or lesser roles, do not apply an adjustment from this section. For example, an increase in offense level under this section would not be appropriate for a defendant whose only function was to offload a single large shipment of marihuana, and who supervised other offloaders of that shipment. Instead, consider such circumstances in determining the appropriate reduction, if any, under § 3B1.2 (Mitigating Role).".

10. *Synopsis of Proposed Amendment:* This amendment revises the Introductory Commentary of Chapter Three, Part B (Role in the Offense); Section 3B1.2 (Mitigating Role); and the Commentary to § 3B1.2 to provide clearer definitions of the defendants who merit a mitigating role reduction.

Proposed Amendment: The Introductory Commentary to Chapter Three, Part B, is amended by deleting:

"When an offense is committed by more than one participant, § 3B1.1 or § 3B1.2 (or neither) may apply.",

and inserting in lieu thereof:

"In the case of criminal activity involving more than one participant, § 3B1.1 or § 3B1.2, or neither section, may apply. When the criminal activity involves only one participant, or only participants of roughly equal culpability, neither § 3B1.1 nor § 3B1.2 will apply. In some cases, some participants in a criminal activity may receive an upward adjustment in offense level under § 3B1.1, other participants may receive a downward adjustment in offense level under § 3B1.2, and still other participants may receive no adjustment. Section 3B1.3 may apply to offenses committed by any number of participants.

Sections 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) authorize an increase or decrease in offense level for a defendant who qualifies as having an aggravating or mitigating role, respectively, in the criminal activity for which he is accountable under § 1B1.3 (Relevant Conduct). These sections are designed to work in conjunction with § 1B1.3. Section 1B1.3 focuses upon the acts and omissions in which the defendant participated (i.e., that he committed, aided, abetted, counseled, commanded, induced, procured or willfully caused) and, in the case of a jointly-undertaken criminal activity, the acts and omissions of others in furtherance of the jointly-undertaken criminal activity that were reasonably foreseeable. Within the context of that criminal activity, §§ 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) focus upon the role and relative culpability of the defendant.

To determine whether a defendant qualifies for an increase under § 3B1.1 or a decrease under § 3B1.2 requires a comparative judgment. The role and relative culpability of the defendant must be assessed in relation to the criminal activity for which he is being held accountable under § 1B1.3 (Relevant Conduct).

For example, in a controlled substance trafficking offense, the Chapter Two offense level for Defendant A who, acting alone, purchases and resells 1000 kilograms of marihuana is level 32. The same Chapter Two offense level applies to Defendant B, a hired hand whose only role was to assist in offloading the ship upon which the marihuana was imported; Defendant C, a hired hand whose only role was as a deckhand on that ship; and Defendant D, a

hired hand whose only role was to act as a lookout for that unloading. Defendant E, who organized the importing of the marihuana, also receives the same Chapter Two offense level, provided that he was involved only in importing that one shipment. Although the quantity of marihuana involved for each of these defendants (and thus the Chapter Two offense level) is identical, criminal justice decisionmakers traditionally have distinguished among such defendants in imposing sentence to take into account their relative culpability (based on their respective roles). For example, Defendant E logically would be seen as having a more culpable role because he recruited and managed others. Defendant A, who acted alone, would receive no role adjustment. Defendants B, C, and D logically would be seen as having less culpable roles. Sections 3B1.1 (Aggravating Role) and 3B1.2 (Mitigating Role) are designed to provide the court with the ability to make appropriate adjustments in offense levels on the basis of the defendant's role and relative culpability in the criminal activity for which he is accountable under § 1B1.3 (Relevant Conduct).".

Section 3B1.2(a) is amended by deleting "in any criminal activity".

Section 3B1.2(b) is amended by deleting "in any criminal activity".

Section 3B1.2 is amended by deleting "In cases falling between (a) and (b), decrease by 3 levels.".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by renumbering Note 4 as Note 9; and by deleting Notes 1–3 and inserting in lieu thereof:

"1. This section provides a downward adjustment in offense level for a defendant who has a mitigating (minimal or minor) role in the criminal activity for which the defendant is accountable under § 1B1.3 (Relevant Conduct). One factor that determines whether a defendant warrants a mitigating role adjustment is the defendant's role and relative culpability in comparison with other participants, including any unindicted participants, in the criminal activity. 'Participant' is defined in the Commentary to § 3B1.1 (Aggravating Role).

The fact that the conduct of one participant warrants an upward adjustment for an aggravating role (§ 3B1.1) or warrants no adjustment, does not necessarily mean that another participant must be assigned a downward adjustment for a mitigating role. Example: Defendant A plans a bank robbery and hires Defendant B to commit the robbery. Defendant B commits the actual robbery. Both defendants plead guilty to bank robbery, and each has a Chapter Two offense level of 24. Although Defendant B may be less culpable than Defendant A who will receive an upward adjustment under § 3B1.1 (Aggravating Role), Defendant B does not have a minimal or minor role in respect to the robbery.

2. The following is a non-exhaustive list of characteristics that ordinarily are associated with a mitigating role:

(A) The defendant performed only unskilled and unsophisticated tasks;

(B) The defendant had no decision-making authority or responsibility;

(C) Total compensation to the defendant was small in amount [, i.e., value of $1,000 or less, generally in the form of a flat fee]; and

(D) The defendant did not exercise any supervision over other participant(s).

In addition, although not determinative, a defendant's lack of knowledge or understanding of the scope and structure of the criminal activity and of the activities of others may be indicative of a mitigating role.

3. With regard to offenses involving contraband (including controlled substances), a defendant who

(A) sold, or played a substantial part in negotiating the terms of the sale of, the contraband;

(B) had an ownership interest in any portion of the contraband; or

(C) financed any aspect of the criminal activity

shall not receive a mitigating role adjustment below the Chapter Two offense level that the defendant would have received for the quantity of contraband that the defendant sold, negotiated, or owned, or for that aspect of the criminal activity that the defendant financed because, with regard to those acts, the defendant has acted as neither a minimal nor a minor participant.

For example, a defendant who sells 100 grams of cocaine and who is held accountable under § 1B1.3 (Relevant Conduct) for only that quantity shall not be considered for a mitigating role adjustment. In contrast, a defendant who sells 100 grams of cocaine, but who is held accountable, pursuant to § 1B1.3, for a jointly undertaken criminal activity involving 5 kilograms of cocaine may, if otherwise qualified, be considered for a mitigating role adjustment in respect to that jointly undertaken criminal activity, but the resulting offense level may not be less than the Chapter Two offense level for the 100 grams of cocaine that the defendant sold.

4. A defendant who is entrusted with a quantity of contraband for purposes of transporting such contraband (e.g., a courier or mule), shall not receive a minimal role adjustment for that quantity of contraband that the defendant transported. If such a defendant otherwise qualifies for a mitigating role adjustment, consideration may be given to a minor role adjustment.

5. [*Option 1:* This section does not apply if the defendant possessed a firearm or directed or induced another participant to possess a firearm in connection with the criminal activity.]

[*Option 2:* A defendant who possessed a firearm or directed or induced another participant to possess a firearm in connection with the criminal activity shall not receive a minimal role adjustment. If such a defendant otherwise qualifies for a mitigating role adjustment, consideration may be given to a minor role adjustment.]

6. To qualify for a minimal role adjustment under subsection (a), the defendant must be one of the least culpable of the participants in the criminal activity within the scope of § 1B1.3 (Relevant Conduct). Such defendants ordinarily must have all of the characteristics consistent with a mitigating role listed in Application Note 2(a)–(d) above.

7. To qualify for a minor role adjustment under subsection (b), the defendant must be one of the less culpable participants in the criminal activity within the scope of § 1B1.3 (Relevant Conduct), but have a role that cannot be described as minimal. Such defendants ordinarily must have most of the characteristics listed in Application Note 2(a)–(d) above.

8. Consistent with the structure of the guidelines, the defendant bears the burden of persuasion in establishing entitlement to a mitigating role adjustment. In determining whether a mitigating role adjustment is warranted, the court should consider all of the available facts, including any information arising from the circumstances of the defendant's arrest that may be relevant to a determination of the defendant's role in the offense. In weighing the totality of the circumstances, a court may consider a defendant's assertion of facts that supports a mitigating role adjustment. However, a court is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.".

The Commentary to § 3B1.2 captioned "Background" is amended by deleting "a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant" and inserting in lieu thereof "participants in the criminal activity within the scope of § 1B1.3 (Relevant Conduct)".

Money Laundering Offenses

Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)

11. *Synopsis of Proposed Amendment:* This amendment revises and consolidates §§ 2S1.1 (Laundering of Monetary Instruments) and 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), relating the offense levels more closely to the offense level for the underlying offense from which the funds were derived. In cases that involved nothing more than depositing proceeds from criminal conduct into the defendant's bank account, the offense level for the financial transaction offense generally would be the same as the offense level for the underlying criminal conduct. An enhancement is provided if the offense was designed to conceal or disguise the proceeds of criminal activity. An additional enhancement is provided if the offense involved sophisticated money laundering.

Proposed Amendment: Sections 2S1.1 and 2S1.2 are deleted in their entirety and the following is inserted in lieu thereof:

"§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived From Unlawful Activity

(a) Base Offense Level (Apply the greatest):

(1) The offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense (or otherwise would be accountable for the commission of the underlying offense under § 1B1.3 (Relevant Conduct)) and the offense level for that offense can be determined; or

(2) 12 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances; or

(3) 8 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics (Apply the Greater):

(1) If the defendant knew or believed that (A) the transactions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct, or (B) the funds were to be used to promote further criminal activity, increase by 2 levels.

(2) If subsection (b)(1)(A) is applicable and the offense (A) involved placement of funds into, or movement of funds through or from a company or financial institution outside the United States, or (B) otherwise involved a sophisticated form of money laundering, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1956, 1957.

Application Notes

1. For purposes of this guideline, 'value of the funds' means the amount of the funds involved in the financial or monetary transaction that were derived from or believed to have been derived from specified unlawful activity.

When the total proceeds from criminal conduct are involved in the financial or monetary transaction, the value of the funds is ordinarily equal to the total proceeds from the criminal conduct. For example, in the case of funds that are the proceeds from sales of contraband substances, the value of the funds is equal to the total proceeds.

When a financial or monetary transaction involves legitimately derived funds that have been commingled with criminally derived funds, the value of the funds is the amount of the criminally derived funds, not the total amount of the commingled funds. For example, if the defendant deposited $50,000 derived from a bribe together with $25,000 of legitimately derived funds, the value of the funds is $50,000, not $75,000.

In certain cases involving fraud, the total proceeds from the offense may exceed the amount of loss caused by the offense (e.g., the defendant fraudulently sold stock for $200,000 that was worth only $100,000 and deposited the $200,000 in a bank). The value of the funds shall be presumed to be equal to the total proceeds from the offense. However, if the defendant is able to establish that the loss caused by the offense, as defined in § 2F1.1 (Fraud and Deceit), was less than the total proceeds from the offense, the loss from the offense shall be used as the value of the funds.

2. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts).

3. Subsection (b)(1)(A) is intended to provide an increase for those cases that involve actual money laundering, i.e., efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducted a transaction through a straw party or a front company, concealed a money-laundering transaction in a legitimate business, or used an alias or otherwise provided false information to disguise the true source or ownership of the funds.

4. In order for subsection (b)(1)(B) to apply, the defendant must have known or believed that the funds would be used to promote further criminal activity, i.e., criminal activity beyond the underlying acts from which the funds were derived.

5. Subsection (b)(2) is designed to provide an additional increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the layering of transactions, i.e., the creation of two or more levels of transaction that were intended to appear legitimate.

Background: The statutes covered by this guideline were enacted as part of the Anti-Drug Abuse Act of 1986 and prohibit financial and monetary transactions involving funds that are the proceeds of 'specified unlawful activity.' These statutes cover a wide range of conduct. For example, they apply to large-scale operations that engage in international laundering of illegal drug proceeds. They also apply to a defendant who deposits $11,000 of fraudulently obtained funds in a bank. In order to achieve proportionality in sentencing, this guideline generally starts from a base offense level equivalent to that which would apply to the specified unlawful activity from which the funds were derived. The specific offense characteristics provide enhancements if the offense was designed to conceal or disguise the proceeds of criminal conduct and if the offense involved sophisticated money laundering.".

More Than Minimal Planning

Chapter One, Part B (General Application Principles) and Chapter Two, Parts A (Offenses Against the Person), B (Offenses Involving Property), and F (Offenses Involving Fraud or Deceit)

12(A). *Synopsis of Proposed Amendment:* This amendment revises the specific offense characteristic "more than minimal planning" to distinguish better those defendants whose culpability warrants an enhancement for this factor. The current specific offense characteristic has been criticized as overly broad, not well defined, and subject to inconsistent application.

Proposed Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) by deleting the first two paragraphs and inserting in lieu thereof:

"'Sophisticated planning' means planning that is complex, extensive, or meticulous.";

in the second (formerly third) paragraph by deleting the second sentence and inserting in lieu thereof:

"By contrast, luring the victim to an isolated location by pretending to be a prospective customer would constitute *sophisticated planning.*";

in the third (formerly fourth) paragraph by deleting "more than minimal" wherever it appears and inserting in lieu thereof in each instance "sophisticated";

and by deleting the fourth (formerly fifth) and fifth (formerly sixth) paragraphs and inserting in lieu thereof:

"In a theft, going to a secluded area of a store to conceal the stolen item in one's pocket would not, by itself, constitute sophisticated planning. By contrast, fashioning a special device to conceal the stolen property would constitute sophisticated planning.

In an embezzlement, making a false book entry to conceal the offense entry would not, by itself, constitute sophisticated planning. By contrast, maintaining dual accounting books; engaging in transactions through corporate shells; using offshore bank accounts; or creating purchase orders to, and invoices from, a dummy corporation for merchandise that was never delivered to conceal an embezzlement would constitute sophisticated planning.".

Section 2A2.2(b)(1) is amended by deleting "more than minimal" and inserting in lieu thereof "sophisticated".

The Commentary to § 2A2.2 captioned "Application Notes" is amended in Note 2 by deleting "more than minimal" and inserting in lieu thereof "sophisticated".

Section 2B1.1(b)(5)(A) is amended by deleting "more than minimal" and inserting in lieu thereof "sophisticated".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by deleting "More than minimal" and inserting in lieu thereof "Sophisticated".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by deleting Note 13; and by renumbering Note 14 as Note 13.

The Commentary to § 2B1.1 captioned "Background" is amended by deleting

the second paragraph and inserting in lieu thereof:

"The guidelines also provide an enhancement for sophisticated planning, a factor related to the culpability of the offender and often to an increased difficulty of detection and proof.".

Section 2B1.3(b)(3) is amended by deleting "more than minimal" and inserting in lieu thereof "sophisticated".

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 1 by deleting "More than minimal" and inserting in lieu thereof "Sophisticated".

Section 2B2.1(b)(1) is amended by deleting "more than minimal" and inserting in lieu thereof "sophisticated".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 1 by deleting "More than minimal" and inserting in lieu thereof "Sophisticated".

Section 2F1.1(b)(2) is amended by deleting "(A) more than minimal planning, or (B) a scheme to defraud more than one victim" and by inserting in lieu thereof "sophisticated planning".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 2 by deleting "'More than minimal planning' (subsection (b)(2)(A))" and inserting in lieu thereof "'Sophisticated planning'".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by deleting Notes 3 and 18; and by renumbering the remaining notes accordingly.

The Commentary to § 2F1.1 captioned "Background" is amended in the first paragraph by deleting the second sentence.

The Commentary to § 2F1.1 captioned "Background" is amended by deleting the second paragraph and inserting in lieu thereof:

"The extent to which an offense involved sophisticated planning is related to the culpability of the offender and often to an increased difficulty of detection and proof. Accordingly, the guideline provides an enhancement for sophisticated planning.".

(B). *Synopsis of Proposed Amendment:* This amendment raises the base offense level in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) from level 4 to level 6 (the same as in § 2F1.1 (Fraud and Deceit)), and conforms the loss table in § 2B1.1 to that in § 2F1.1. The effect is that the offense levels from these guidelines will be the same regardless of the amount of loss. Currently, where the loss is $1,000 or more, §§ 2B1.1 and 2F1.1 provide the same offense levels. Where the loss is $1,000 or less, § 2B1.1 generally provides an offense level that is 1 or 2 levels lower than § 2F1.1. For example, the theft of a $500 check has an offense level of 5 under § 2B1.1, but the forgery of that check has an offense level of 6 under § 2F1.1. Under this amendment, these offenses would be treated more consistently. Section 2B1.3 (which has the same structure as § 2B1.1) is amended to conform.

Proposed Amendment: Section 2B1.1(a) is amended by deleting "4" and inserting in lieu thereof "6".

Section 2B1.1(b) is amended by deleting subdivision (1) and inserting in lieu thereof the following:

"(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $2,000 or less	No increase.
(B) More than $2,000	Add 1.
(C) More than $5,000	Add 2.
(D) More than $10,000	Add 3.
(E) More than $20,000	Add 4.
(F) More than $40,000	Add 5.
(G) More than $70,000	Add 6.
(H) More than $120,000	Add 7.
(I) More than $200,000	Add 8.
(J) More than $350,000	Add 9.
(K) More than $500,000	Add 10.
(L) More than $800,000	Add 11.
(M) More than $1,500,000	Add 12.
(N) More than $2,500,000	Add 13.
(O) More than $5,000,000	Add 14.
(P) More than $10,000,000	Add 15.
(Q) More than $20,000,000	Add 16.
(R) More than $40,000,000	Add 17.
(S) More than $80,000,000	Add 18.".

Section 2B1.1(b)(2) is amended by deleting "; but if the resulting offense level is less than 7, increase to level 7".

Section 2B1.1(b) is amended by deleting subdivision (4); and by renumbering subdivision (5) as subdivision (4).

The Commentary to § 2B1.1 captioned "Application Notes" is amended by deleting Note 6; and by renumbering the remaining notes accordingly.

Section 2B1.3(a) is amended by deleting "4" and inserting in lieu thereof "6".

Section 2B1.3(b) is amended by deleting subdivision (2); and by renumbering subdivision (3) as subdivision (2).

The Commentary to § 2B1.3 captioned "Application Notes" is amended by deleting Note 3; and by renumbering Note 4 as Note 3.

(C). *Issue for Comment:* The Commission invites comment as to whether the loss tables in §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property), 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), and 2T4.1 (Tax Table) should be revised to provide one-level increases with a more uniform slope from small to large offenses [Option 1]. Some commentators have noted that the slope of the current loss tables is not uniform throughout the range of loss in the tables. Or, should the loss tables in §§ 2B1.1, 2F1.1, and 2T4.1 be revised to provide two-level increases with a more uniform slope from small to large offenses [Option 2]? A loss table with 2-level increments, as in the drug quantity tables in § 2D1.1 and the precursor and essential chemical table in § 2D1.11, might simplify guideline application. Examples illustrating loss tables with more uniform slopes for Options 1 and 2 are shown below. These examples assume that the base offense level for § 2B1.1 is raised from 4 to 6 as proposed in Part B of this amendment. If not, two additional divisions in the table for § 2B1.1 would be necessary at the lower end.

[*Option 1:* Sections 2B1.1(b)(1) and 2F1.1(b)(1) are deleted and the following is inserted in lieu thereof:

"(1) If the loss exceeded $1,500, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $1,500 or less	No increase.
(B) More than $1,500	Add 1.
(C) More than $2,500	Add 2.
(D) More than $4,500	Add 3.
(E) More than $8,000	Add 4.
(F) More than $15,000	Add 5.
(G) More than $25,000	Add 6.
(H) More than $45,000	Add 7.
(I) More than $80,000	Add 8.
(J) More than $150,000	Add 9.
(K) More than $250,000	Add 10.
(L) More than $450,000	Add 11.
(M) More than $800,000	Add 12.
(N) More than $1,500,000	Add 13.
(O) More than $2,500,000	Add 14.
(P) More than $4,500,000	Add 15.
(Q) More than $8,000,000	Add 16.
(R) More than $15,000,000	Add 17.
(S) More than $25,000,000	Add 18.
(T) More than $45,000,000	Add 19.
(U) More than $80,000,000	Add 20.".

The table in § 2T4.1 is deleted and the following is inserted in lieu thereof:

"Tax loss (apply the greatest)	Increase in level
(A) $1,500 or less	Add 6.
(B) More than $1,500	Add 7.
(C) More than $2,500	Add 8.
(D) More than $4,500	Add 9.
(E) More than $8,000	Add 10.

"Tax loss (apply the greatest)	Increase in level
(F) More than $15,000	Add 11.
(G) More than $25,000	Add 12.
(H) More than $45,000	Add 13.
(I) More than $80,000	Add 14.
(J) More than $150,000	Add 15.
(K) More than $250,000	Add 16.
(L) More than $450,000	Add 17.
(M) More than $800,000	Add 18.
(N) More than $1,500,000	Add 19.
(O) More than $2,500,000	Add 20.
(P) More than $4,500,000	Add 21.
(Q) More than $8,000,000	Add 22.
(R) More than $15,000,000	Add 23.
(S) More than $25,000,000	Add 24.
(T) More than $45,000,000	Add 25.
(U) More than $80,000,000	Add 26.]".

[*Option 2:* Section 2B1.1(b)(1) and 2F1.1(b)(1) are deleted and the following is inserted in lieu thereof:

"(1) If the loss exceeded $2,500, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) $2,500 or less	No increase.
(B) More than $2,500	Add 2.
(C) More than $8,000	Add 4.
(D) More than $25,000	Add 6.
(E) More than $80,000	Add 8.
(F) More than $250,000	Add 10.
(G) More than $800,000	Add 12.
(H) More than $2,500,000	Add 14.
(I) More than $8,000,000	Add 16.
(J) More than $25,000,000	Add 18.
(K) More than $80,000,000	Add 20.".

The table in § 2T4.1 is deleted and the following is inserted in lieu thereof:

"Tax loss (apply the greatest)	Offense level
(A) $2,500 or less	6
(B) More than $2,500	8
(C) More than $8,000	10
(D) More than $25,000	12
(E) More than $80,000	14
(F) More than $250,000	16
(G) More than $800,000	18
(H) More than $2,500,000	20
(I) More than $8,000,000	22
(J) More than $25,000,000	24
(K) More than $80,000,000	26.".]

Career Offenders

Chapter Four, Part B (Career Offenders and Criminal Livelihood)

13(A). *Synopsis of Proposed Amendment:* This amendment adds additional background commentary explaining the Commission's rationale and authority for § 4B1.1 (Career Offender). The amendment responds to a recent decision by the United States Court of Appeals for the District of Columbia Circuit in United States v. Price, 990 F.2d 1367 (D.C. Cir. 1993). In Price, the court invalidated application of the career offender guideline to a defendant convicted of a drug conspiracy because 28 U.S.C. 994(h), which the Commission cites as the mandating authority for the career offender guideline, does not expressly refer to inchoate offenses. The court indicated that it did not foreclose Commission authority to include conspiracy offenses under the career offender guideline by drawing upon its broader guideline promulgation authority in 28 U.S.C. 994(a).

Proposed Amendment: The Commentary to § 4B1.1 captioned "Application Notes" is amended by repromulgating Note 1.

The Commentary to § 4B1.1 captioned "Background" is amended in the first sentence by deleting ", as defined in the statute," immediately following "offenders"; in the second sentence by deleting "mandate" and inserting in lieu thereof:

"directive, with the definition of a career offender tracking in large part the criteria set forth in 28 U.S.C. 994(h). However, in accord with its general guideline promulgation authority under 28 U.S.C. 994(a)–(f), and its amendment authority under 28 U.S.C. 994 (o) and (p), the Commission has modified this definition in several respects to focus more precisely on the class of recidivist offenders for whom a lengthy term of imprisonment is appropriate and avoid 'unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct * * *' 28 U.S.C. 991(b)(1)(B). The Commission's refinement of this definition over time is consistent with Congress' choice of a directive to the Commission rather than a mandatory minimum sentencing statute ('The [Senate Judiciary] Committee believes that such a directive to the Commission will be more effective; the guidelines development process can assure consistent and rational implementation of the Committee's view that substantial prison terms should be imposed on repeat violent offenders and repeat drug traffickers.' S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983)).";

by deleting "98–225" and inserting in lieu thereof "No. 225"; by deleting ", 128" and inserting in lieu thereof "; 128"; by deleting ", 26, 515" and inserting in lieu thereof "; id. at 26, 515"; by deleting "26, 517–18" and inserting in lieu thereof "; id. at 26, 517–18"; and by beginning a new paragraph with the fifth (formerly third) sentence.

(B). *Synopsis of Proposed Amendment:* This amendment revises § 4B1.1 (Career Offender) by defining the term "offense statutory maximum" as the statutory maximum prior to any enhancement based on prior criminal record. That is, an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record would not be used in determining the offense level under this guideline. This avoids what appears to be unwarranted double counting. It is noted that when the instruction to the Commission that underlies 4B1.1 (28 U.S.C. 994(h)) was enacted by the Congress in 1984, the enhanced maximum sentences provided for recidivist drug offenders (e.g., under 21 U.S.C. 841) did not exist.

Proposed Amendment: The Commentary to § 4B1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof:

"'Offense Statutory Maximum,' for the purposes of this guideline, refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, not including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in 21 U.S.C. 841(a)(1)(B), 841(a)(1)(C), 841(a)(1)(D), and 844(a)). For example, where the statutory maximum term of imprisonment under 21 U.S.C. 841(a)(1)(C) is increased from twenty years to thirty years because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' for the purposes of this guideline is twenty years and not thirty years.".

(C). *Synopsis of Proposed Amendment:* This amendment makes § 4B1.1 (Career Offender) more of a true "recidivist" provision by providing that the offenses that resulted in the two qualifying prior convictions must be separated by an intervening arrest for one of the offenses. Option 2 includes the provisions of Option 1 but, in addition, broadens the portion of the career offender provision for prior convictions of a crime of violence or possession of a weapon during and in relation to a drug offense.

Proposed Amendment: [*Option 1:* Section 4B1.2(3) is amended by inserting immediately before the period at the end of the first sentence:

"and the offenses resulting in those two convictions were separated by an intervening arrest for one of the offenses (i.e., the defendant was arrested for the first offense prior to committing the second offense)".]

[*Option 2:* Section 4B1.2(3) is amended by inserting immediately before the period at the end of the first sentence:

"and the offenses resulting in those two convictions were separated by an intervening arrest for one of the offenses (i.e., the defendant was arrested for the first offense prior to committing the second offense). Provided, that in the case of a prior felony conviction of a crime of violence, any such

conviction countable under § 4A1.1(f) is also countable under this provision. In addition, any prior conviction for carrying or possessing a weapon during and in relation to a drug trafficking offense is to be counted separately from the underlying drug trafficking offense".]

(D). *Synopsis of Proposed Amendment:* This amendment clarifies the operation of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and addresses an inter-circuit conflict. In *United States* v. *Fiore,* 983 F.2d 1 (1st Cir. 1992), the First Circuit read § 4B1.2 to include all types of burglary despite the express listing of burglary of a dwelling in § 4B1.2(1)(ii). In contrast, the Fourth Circuit has held that burglary of a commercial structure is not a "crime of violence" under § 4B1.2. *United States* v. *Talbott,* 902 F.2d 1129 (4th Cir. 1990). Similarly, the Tenth Circuit has held that non-residential burglary is not a crime of violence under § 4B1.2. *United States* v. *Smith,* F.2d, No. 91–4169 (10th Cir. November 30, 1993).

In addition, the phrase "punishable by imprisonment for a term exceeding one year" in § 4B1.2(1) is redundant because it is covered by the requirement in § 4B1.1 that the offense be a felony. Moreover, as the guideline is currently written, the phrase "punishable by imprisonment for a term exceeding one year" is used in subsection (1) but not in subsection (2), although both subsections actually contain the same requirements. This drafting inconsistency could lead to confusion. Elimination of this phrase resolves this issue.

Proposed Amendment: Section 4B1.2(1) is amended by deleting "punishable by imprisonment for a term exceeding one year".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraph at the end:

"The term 'crime of violence' includes burglary of a dwelling (including any adjacent outbuilding considered part of the dwelling). It does not include other kinds of burglary.".

(E). *Synopsis of Proposed Amendment:* This amendment revises § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to narrow the portion of the definition of crimes of violence that "otherwise involve conduct that presents a serious risk of physical injury" to offenses that are in some respect similar to the offenses expressly listed. Currently, § 4B1.2(1) uses the same wording to define crime of violence as 18 U.S.C. 924(e), except that in § 4B1.2(1) the Commission restricted the term burglary to residential burglary. However, the Third Circuit in *United States* v. *Parson,* 955 F.2d 858 (3rd Cir. 1992) has pointed out that Application Note 2 calls for a considerably broader reading of the definition of crime of violence than is set forth in 18 U.S.C. 924(e), when this statute is read in conjunction with its legislative history. The court found that the phrase "or otherwise involved conduct that presents a serious potential risk of physical injury to another" in 18 U.S.C. 924(e) was intended to cover only offenses similar to those expressly listed and that the wording of the statute produces this result under the principle of statutory construction "ejusdem genesis." Thus, under 18 U.S.C. 924(e), crimes not traditionally considered crimes of violence, e.g., crimes involving reckless or negligent child endangerment, are not included. Although the guideline itself uses the same phraseology as the statute, current Application Note 2 in the Commentary to § 4B1.2 sets forth a broader definition of the term "otherwise involved." Thus, for example, driving while intoxicated or recklessly endangering a child by leaving it alone might qualify as a crime of violence under the definition in § 4B1.2, but would not qualify as a crime of violence under 18 U.S.C. 924(e).

Proposed Amendment: The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by deleting the first paragraph and inserting in lieu thereof:

"An offense may be a 'crime of violence' under either subsection (1)(i) or subsection (1)(ii).

Under subsection (1)(i), a 'crime of violence' includes an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another. For example, murder, voluntary manslaughter, kidnapping, aggravated assault, forcible sex offenses, and robbery are included under this subsection.

Under subsection (1)(ii), a 'crime of violence' includes certain listed offenses: burglary of a dwelling, arson, extortion, and offenses involving the use of explosives (including any explosive material or destructive device). It also includes certain unlisted offenses. For an unlisted offense to qualify, it must both—

(a) be similar in some respect to one of the listed offenses, and

(b) involve conduct (expressly charged in the count of which the defendant was convicted) that presents a serious potential risk of physical injury to another.

The requirement that an unlisted offense be similar in some respect to one of the listed offenses limits application of this definition to offenses traditionally considered crimes of violence.";

by renumbering Notes 3 and 4 as Notes 4 and 5, respectively; and by inserting the following as Note 3:

"3. 'Crime of violence' and 'controlled substance offense,' as used in this section, are based upon the offenses (instant and prior) of which the defendant was convicted. Therefore, the conduct considered in determining whether an offense is a crime of violence or a controlled substance offense is the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted; i.e., the conduct of which the defendant was convicted is the focus of inquiry.".

The Commentary to § 4B1.2 is amended by adding the following at the end thereof:

"*Background:* The use of the phrase 'or otherwise involves' following the series of listed offenses in subsection (1)(ii) limits the unlisted offenses to those that are similar in some respect to one of the listed offenses under the canon of statutory interpretation 'ejusdem generis.' ".

Chapter Five, Part H (Specific Offense Characteristics)

Chapter Five, Part K (Departures)

14. *Synopsis of Proposed Amendment:* This amendment addresses the issue of a departure for an offender characteristic or other circumstance, or combination of characteristics or circumstances, that are not ordinarily relevant to a determination of whether a sentence should be outside the applicable guideline range. The amendment is derived from proposals and comments submitted by the Judicial Conference Committee on Criminal Law, the Department of Justice, and the Federal and Community Defenders.

The Commission specifically invites comment on whether or not the bracketed language pertaining to combination of circumstances should be included.

Proposed Amendment: The Introductory Commentary to Chapter Five, Part H, is amended in the second paragraph by inserting the following additional sentence at the end:

"Furthermore, although these factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. See § 5K2.0 (Grounds for Departure).".

Section 5K2.0 is amended by inserting the following additional paragraph at the end:

"An offender characteristic or other circumstance that is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range may be relevant to this determination if such characteristic or circumstance [, or

combination of characteristics or circumstances,] is present to an unusual degree and distinguishes the case from the 'heartland' cases covered by the guidelines in a way that is important to the statutory purposes of sentencing.".

Section 5K2.0 is amended by inserting the following at the end:

"Commentary

A useful analytic framework for the consideration of circumstances that may warrant a departure from the applicable guideline range is set forth in *United States* v. *Rivera*, 994 F.2d 942 (1st Cir. 1993):

(1) What features of the case, potentially, take it outside the Guidelines' 'heartland' and make of it a special, or unusual case?

(2) Has the Commission forbidden departures based on those features?

(3) If not, has the Commission encouraged departures based on those features?

(4) If not, has the Commission discouraged departures based on those features?

If no special features are present, or if special features are also 'forbidden' features [factors that the Commission has expressly listed as not relevant to departure (e.g., race, sex, national origin)], then the sentencing court, in all likelihood, simply would apply the relevant guidelines. If the special features are 'encouraged' features [factors that the Commission has expressly listed as warranting departure in the circumstances described (e.g., the factors listed in §§ 2K2.1–2K2.16)], the court would likely depart, sentencing in accordance with the Guidelines' suggestions. If the special features are 'discouraged' features [factors that the Commission has expressly listed as not ordinarily relevant to sentencing (e.g., family ties and responsibilities)], the court would go on to decide whether the case is nonetheless not 'ordinary,' i.e., whether the case differs from the ordinary case in which those features are present. If the case is ordinary, the court would not depart. If it is not ordinary, the court would go on to consider departure.'

In the absence of a characteristic or circumstance [or combination of characteristics or circumstances] that distinguishes a case as sufficiently atypical to warrant a sentence different from that called for under the guidelines, a sentence outside the guideline range is not authorized. See 18 U.S.C. 3553(b). For example, dissatisfaction with the available sentencing range or a preference for a different sentence than that authorized by the guidelines is not an appropriate basis for a sentence outside the applicable guideline range.".

Guideline Simplification—Consolidation of Offense Guidelines

15. *Synopsis of Proposed Amendment:* In 1993, the Commission simplified the operation of the guidelines by reducing the number of Chapter Two offense guidelines from 179 to 150 by the consolidation of closely related offense guidelines. The following additional consolidations of closely related guidelines are designed to simplify further the operation of the guidelines:

(A) Section 2A2.4 (Obstructing or Impeding Officers) is consolidated with § 2A2.3 (Minor Assault). The resulting offense levels are identical, except that the cross reference to aggravated assault will apply to both §§ 2A2.3 and 2A2.4, rather than only to § 2A2.4. This amendment also addresses a split among the circuits as to whether subsection (c) refers to the conviction offense or is based upon consideration of the underlying conduct (compare *United States* v. *Jennings*, 991 F.2d 725 (11 Cir. 1993) with *United States* v. *Padilla*, 961 F.2d 322 (2d Cir. 1992)) by conforming the language in this cross reference to that used in other cross references;

(B) Section 2B1.3 (Property Damage or Destruction) is consolidated with § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) with no substantive change;

(C) Section 2D2.2 (Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy) is consolidated with § 2D2.1 (Unlawful Possession; Attempt or Conspiracy). The only substantive change is that any adjustment for acquiring a controlled substance by forgery, fraud, deceit, or subterfuge will be determined as a sentencing factor rather than on the basis of the offense of conviction;

(D) Section 2E1.4 (Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire) is consolidated with § 2A1.5 (Conspiracy or Solicitation to Commit Murder) with no substantive change;

(E) Section 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct) is consolidated with § 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct). The specific offense characteristics and cross references that now apply only to § 2G1.2 are added to § 2G1.1, making these characteristics and cross references sentencing factors (rather than offense of conviction factors);

(F) Section 2N3.1 (Odometer Laws and Regulations) is consolidated with § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Currently, § 2N3.1 has the same base offense level as § 2F1.1 and is cross-referenced to § 2F1.1 if more than one vehicle was involved (one vehicle cases are infrequent; there were only 5 one-vehicle cases reported in monitoring data in 1991). Under this consolidation, fraud by odometer tampering involving one vehicle will be treated the same as other fraud (i.e., the specific offense characteristics for loss and more than minimal planning will apply, if warranted);

(G) Section 2T2.2 (Regulatory Offenses) is consolidated with § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents). This amendment consolidates two infrequently applied guidelines (1 case under § 2T2.1 and 2 cases under § 2T2.2 were reported in monitoring data in 1991). Under this consolidation, the base offense level for § 2T2.2 is raised from 4 to 6, which is the base offense most typical for regulatory offenses; and

(H) Section 3B1.4 (Untitled) is deleted as unnecessary and inconsistent with the remainder of the Guidelines Manual. Absent an upward or downward adjustment under §§ 3B1.1–3B1.3, there is no authority for any adjustment and thus no need for this section. The Commentary to § 3B1.4 is moved to the Introductory Commentary of Chapter Three, Part B, where it fits better, and a technical inaccuracy in this commentary is corrected (the statement that a single individual cannot receive an adjustment under this Part is accurate with respect to §§ 3B1.1 and 3B1.2 but inaccurate with respect to § 3B1.3).

Proposed Amendment: (A). Section 2A2.4 is deleted in its entirety.

Section 2A2.3 is amended in the title by inserting at the end "; Obstructing or Impeding Officers".

Section 2A2.3 is amended by inserting the following additional subsections:

"(b) Specific Offense Characteristic

(1) If the offense involved obstructing or impeding a governmental officer in the performance of his duty, increase by 3 levels.

(c) Cross Reference

(1) If the offense involved aggravated assault, apply § 2A2.2 (Aggravated Assault).".

The Commentary to § 2A2.3 captioned "Statutory Provisions" is amended by inserting "111," immediately before "112"; by inserting "1501, 1502," immediately following "351(e),"; and by inserting ", 3056(d)" immediately following "1751(e)".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by inserting the following additional notes:

"3. Subsection (b)(1) reflects the fact that the victim was a governmental officer performing official duties. Therefore, do not apply § 3A1.2 (Official Victim) unless the

offense level is determined by use of the cross reference in subsection (c).

4. The offense level under this guideline does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).".

The Commentary to § 2A2.3 captioned "Background" is deleted.

(B). Section 2B1.3 is deleted in its entirety.

Section 2B1.1 is amended in the title by inserting at the end "; Property Damage or Destruction".

Section 2B1.1(b)(4) is amended by inserting "or destroyed" immediately following "taken"; and by inserting "or destruction" immediately following "taking".

Section 2B1.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives).".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by deleting "1702," and inserting in lieu thereof "1361, 1702, 1703,".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional note:

"15. In some cases, the monetary value of the property damaged or destroyed may not adequately reflect the extent of the harm caused. For example, the destruction of a $500 telephone line may cause an interruption in service to thousands of people for several hours. In such instances, an upward departure may be warranted.".

Section 2K1.4(a)(4) is amended by deleting "§ 2B1.3 (Property Damage or Destruction)" and inserting in lieu thereof: "§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property; Property Damage or Destruction)".

Section 2H3.3(a)(2) is amended by inserting "or destruction" immediately following "theft"; and by inserting "; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property; Property Damage or Destruction" immediately following "Theft".

Section 2H3.3(a)(3) is deleted.

The Commentary to § 2H3.3 captioned "Background" is amended by inserting "; Receiving, Transporting, Transferring, or Possessing Stolen Property; Property Damage or Destruction" immediately following "Theft"; and by deleting "or § 2B1.3 (Property Damage or Destruction)".

(C). Section 2D2.2 is deleted in its entirety.

Section 2D2.1 is amended in the title by inserting "of a Controlled Substance; Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge" immediately following "Possession". Section 2D2.1 is amended by redesignating subsection (b) as subsection (c); and by inserting the following additional subsection:

"(b) Specific Offense Characteristic

(1) If the offense involved acquiring a controlled substance by forgery, fraud, deception, or subterfuge, and the offense level as determined above is less than level 8, increase to level 8.".

The Commentary to § 2D2.1 captioned "Statutory Provisions" is amended by deleting "§ 844(a)" and inserting in lieu thereof "§§ 843(a)(3), 844(a)".

The Commentary to § 2D2.1 captioned "Background" is amended in the second paragraph by deleting "2D2.1(b)(1)" and inserting in lieu thereof "2D2.1(c)(1)".

(D). Section 2E1.4 is deleted in its entirety.

Section 2A1.5 is amended in the title by inserting at the end "; Use of Interstate Commerce Facilities in the Commission of Murder For Hire".

The Commentary to § 2A1.5 captioned "Statutory Provisions" is amended by inserting ", 1958 (formerly § 1952A)" immediately following "1751(d)".

The Commentary to § 2A1.5 is amended by inserting the following additional subdivision:

"Application Note:

1. In the case of a defendant convicted under 18 U.S.C. 1958 (formerly 18 U.S.C. 1952A), subsection (b)(1) always will apply.".

(E). Section 2G1.2 is deleted in its entirety.

Section 2G1.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics"; and by inserting the following additional subdivisions:

"(2) If the offense involved the transportation of a person who (A) has not attained the age of twelve years, increase by 6 levels; (B) has attained the age of twelve years but has not attained the age of sixteen years, increase by 4 levels; or (C) has attained the age of sixteen years but has not attained the age of eighteen years, increase by 2 levels.

(3) If subsection (b)(2) applies, and the defendant was a parent, relative, or legal guardian of the minor, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

Section 2G1.1 is amended by redesignating subsection (c) as subsection (d); and by inserting the following additional subsection:

"(c) Cross References

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

(3) If the offense did not involve transportation for the purpose of prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).".

Section 2G1.1(d) (formerly subsection (c)) is amended by deleting "Instruction" and inserting in lieu thereof "Instructions"; and by inserting the following additional subdivision:

"(2) For the purposes of this guideline, 'transportation' includes (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, and (B) persuading, inducing, enticing, or coercing a person to travel for the purpose of prostitution or prohibited sexual conduct.".

The Commentary to § 2G1.1 captioned "Statutory Provisions" is amended by inserting ", 2423" immediately following "2422".

The Commentary to § 2G1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Sexually explicit conduct,' as used in this guideline, has the meaning set forth in 18 U.S.C. 2256.".

The Commentary to § 2G1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"6. Subsection (b)(4) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

7. If the adjustment in subsection (b)(4) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

8. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved

employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

9. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve transportation for the purpose of prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used, e.g., § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). If there is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used.".

(F). Section 2N3.1 is deleted in its entirety.

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting ", 1983–1988, 1990c" immediately following "1644".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"This guideline also covers offenses relating to odometer laws and regulations.".

(G). Section 2T2.2 is deleted in its entirety.

The Introductory Commentary to Subpart Two of Chapter Two, Part T, is amended by deleting the last two sentences.

Section 2T2.1(a) is amended by deleting "Level from § 2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) Level from § 2T4.1 (Tax Table) corresponding to the tax loss;
(2) 6, if there is no tax loss.".

(H). Section 3B1.4 is deleted in its entirety.

The Introductory Commentary to Chapter Three, Part B is amended by deleting "When an offense is committed by more than one participant, § 3B1.1 or § 3B1.2 (or neither) may apply." and inserting in lieu thereof:

"In the case of criminal activity involving more than one participant, § 3B1.1 or § 3B1.2, or neither section, may apply. When the criminal activity involves only one participant, or only participants of roughly equal culpability, neither § 3B1.1 nor § 3B1.2 will apply. In some cases, some participants in a criminal activity may receive an upward adjustment in offense level under § 3B1.1, other participants may receive a downward adjustment in offense level under § 3B1.2, and still other participants may receive no adjustment.".

Aging Prisoners

16. *Issue for Comment:* The Commission invites comment on whether and how the guidelines, policy statements and pertinent statutory provisions should be amended to provide greater sentencing flexibility, or authority for modification of a previously imposed sentence of imprisonment, in the case of older, infirm defendants who do not pose a risk to public safety. In particular, the Commission invites comment on whether the authority under 18 U.S.C. 3582(c)(1)(A) (relating to court authority to modify a term of imprisonment upon motion of the Director of the Bureau of Prisons for "extraordinary and compelling reasons" if consistent with Commission policy statements) and 28 U.S.C. 994(t) (relating to Commission authority to issue policy statements describing what should be considered extraordinary and compelling reasons under 18 U.S.C. 3582(c)(1)(A)) is adequate to address concerns about an aging inmate population within the Federal prison system, or whether additional statutory authority is needed.

Miscellaneous Substantive, Clarifying, and Conforming Amendments

17(A). *Synopsis of Proposed Amendment:* This amendment clarifies the operation of § 1B1.3 (Relevant Conduct) in respect to the liability of a defendant for actions of conspirators prior to the defendant's joining the conspiracy. There is a split among the circuits as to whether a defendant ever may have substantive criminal liability for actions of conspirators prior to the defendant's joining the conspiracy, but this split need not be resolved to provide useful guidance in respect to the application of relevant conduct.

In addition, this amendment adds a well phrased formulation for analyzing the same course of conduct developed by the Ninth Circuit in *United States* v. *Hahn*, 960 F.2d 903 (9th Cir. 1992), to supplement the commentary currently addressing this concept.

Proposed Amendment: The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraph as the eighth paragraph:

"A defendant's relevant conduct under subsection (a)(1)(B) does not include the conduct of members of a conspiracy prior to the defendant's joining the conspiracy, even if the defendant knows of that conduct (e.g., in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant's joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which an exception to this principle may be necessary to appropriately reflect the defendant's culpability; such a case, however, may be addressed through a departure.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 9(B) by inserting the following additional paragraph at the end:

"The essential components of the same course of conduct are similarity, regularity, and temporal proximity. When one component is absent, the courts must look for a stronger presence of at least one of the other components. Where the conduct alleged to be relevant is relatively remote to the offense of conviction, a stronger showing of similarity or regularity is necessary to compensate for the absence of the third component. *United States* v. *Hahn*, 960 F.2d 903 (9th Cir. 1992).".

(B). *Synopsis of Proposed Amendment:* This amendment makes conforming changes pertaining to the interaction of Chapter Two (Offense Conduct) and Chapter Eight (Sentencing of Organizations). The amendment conforms the language of the special instructions in §§ 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), and 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations) to the language of subsection (c)(3) of § 8C2.4 (Base Fine). The amendment also adds a conforming special instruction concerning fines for organizations in §§ 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions).

In addition, this amendment modifies § 2R1.1 (Bid-Rigging Price Fixing, or Market-Allocation Agreements Among Competitors) by moving the test for determining an organization's volume of commerce in a bid-rigging case in which the organization submitted one or more complementary bids to subsection (b) where it logically fits; extending to individual defendants the same standard for determining the volume of commerce in a bid-rigging case involving complementary bids as is now used for organizational defendants;

deleting language from the original Guidelines Manual that has been made obsolete by the provisions of § 1B1.3(a)(2) and could now be misread to inappropriately narrow the scope of relevant conduct; revising the last paragraph of subsection (b)(2) to address a bid-rigging conspiracy in which the defendant agrees not to bid rather than affirmatively submitting a complementary bid; and deleting Application Note 6 as no longer necessary because a complementary bid now would be included directly in determining the offense level.

Finally, this amendment revises the language in § 8C2.5 (Culpability Score) (adopted in 1991) to conform to changes in the language of § 3E1.1 (Acceptance of Responsibility) made in 1992 (amendment 459).

Proposed Amendment: Section 2B4.1(c)(1)(C) is amended by inserting "reasonably foreseeable" immediately before "consequential".

Section 2C1.6 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the value of the unlawful payment.".

Section 2C1.7 is amended by inserting the following additional subsection:

"(d) Special Instruction for Fines—Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the reasonably foreseeable consequential damages resulting from the unlawful payment.".

Section 2E5.1(c)(1)(C) is amended by inserting "reasonably foreseeable" immediately before "consequential".

Section 2R1.1(b)(2) is amended by deleting "in a conspiracy"; by deleting "violation" and inserting in lieu thereof "offense"; and by deleting the last sentence.

Section 2R1.1(b)(2) is amended by inserting the following additional paragraph at the end:

"In a bid-rigging offense in which an individual participant or his principal, or an organization, submitted one or more complementary bids or agreed not to submit one or more bids, use as the individual's or the organization's volume of commerce the greater of (A) the volume of commerce done by the individual participant or his principal, or the organization, in the goods or services that were affected by the offense, or (B) the largest contract on which the individual participant or his principal, or the organization, submitted a complementary bid or agreed not to bid in connection with the offense.".

Section 2R1.1(d) is amended by deleting subdivision (3).

The Commentary to § 2R1.1 captioned "Application Notes" is amended by deleting Note 6.

Section 8C2.5(g)(3) is amended by deleting "recognition and affirmative"; and by deleting "criminal conduct" and inserting in lieu thereof "offense".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 13 by deleting "truthful admission of involvement in the offense and related conduct" and inserting in lieu thereof "truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which it is accountable under § 1B1.3 (Relevant Conduct),".

(C). *Synopsis of Proposed Amendment:* This amendment clarifies the operation of § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) in two respects to address issues raised in litigation. First, this amendment deletes a phrase concerning photocopying a note which could lead to the inappropriate conclusion that an enhancement from subsection (b)(2) does not apply even to sophisticated copying of notes. Second, this amendment expressly provides that items clearly not intended for circulation (e.g., discarded, defective items) are not counted under subsection (b)(1).

Proposed Amendment: The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 3 by deleting "merely photocopy notes or otherwise".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. For the purposes of subsection (b)(1), do not count items that clearly were not intended for circulation (e.g., discarded, defective items).".

(D). *Synopsis of Proposed Amendment:* This amendment adds definitions of hashish and hashish oil to subsection (c) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) in the notes following the Drug Quantity Table. Currently, these terms are not defined by statute or in the guidelines, leading to litigation as to which substances are to be classified as hashish or hashish oil (as opposed to marihuana). This issue has arisen in sentencing hearings, see *United States* v. *Schultz*, 810 F. Supp. 230 (S.D. Ohio 1992) and *United States* v. *Gravelle*, 819 F. Supp. 1076 (S.D. Florida 1993), training presentations, and hotline questions.

In addition, this amendment clarifies the treatment of marihuana that has a moisture content sufficient to render it unusable without drying (e.g., a bale of marihuana left in the rain or recently harvested marihuana that had not had time to dry). In such cases, including the moisture in the weight of the marihuana can increase the offense level for a factor that bears no relationship to the scale of the offense or the marketable form of the marihuana. Prior to the effective date of the 1993 amendments, two circuits have approved weighing wet marihuana despite the fact that the marihuana was not in a usable form. *United States* v. *Garcia*, 925 F.2d 170 (7th Cir., 1991); *United States* v. *Pinedo-Montoya*, 966 F.2d 591 (10th Cir. 1992). Although Application Note 1 of § 2D1.1, effective November 1, 1993 (pertaining to unusable parts of a mixture or substance) should produce the appropriate result because marihuana must be dried before being used, this type of case is sufficiently distinct to warrant a specific reference to ensure correct application of the guideline.

Proposed Amendment: Section 2D1.1(c) is amended in the Notes following the Drug Quantity Table by inserting the following additional paragraphs as the fourth and fifth paragraphs:

"Hashish, for the purposes of this guideline, means a concentrate of cannabis containing cannabinoids and fragments of plant material (such as cystolith fibers).

Hashish oil, for the purposes of this guideline, means a preparation of the soluble cannabinoids derived from cannabis that includes one or more of the tetrahydrocannabinols (as defined in 21 CFR 1308.11(d)(25)) and at least two of the following: Cannabinol, cannabidiol, or cannabishromene, and is essentially free of plant material (e.g., plant fragments). Typically, hashish oil is a viscous, dark colored oil, but it can vary from a dry resin to a colorless liquid.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional paragraph at the end:

"Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.".

(E). *Synopsis of Proposed Amendment:* This amendment revises the Commentary to § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or

Conspiracy) to make explicit that § 3B1.1 (Aggravating Role) operates independently of § 2D1.2. Absent such an express statement, the Seventh Circuit has held that it is inappropriate double counting to apply § 2D1.2 for the supervision of a person under age eighteen in a drug trafficking offense and also apply § 3B1.1 for the supervision of that person. United States v. Stevenson, No. 91–3431 (7th Cir. Oct. 6, 1993). Under this logic, however, there is no differentiation in final offense level between the organizer, leader, manager, or supervisor of an adult in a drug sale and the organizer, leader, manager, or supervisor of a juvenile in a drug sale.

Proposed Amendment: The Commentary to § 2D1.2 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes"; and by inserting the following additional note:

"2. Section 3B1.1 (Aggravating Role) is to be applied independently of the operation of this section. Thus, for example, in the case of a defendant who hires an underage person to deliver a controlled substance, an adjustment from § 3B1.1 will apply in addition to the offense level determined under this section.".

(F). *Synopsis of Proposed Amendment:* This amendment clarifies the operation of §§ 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy), 2E1.1 (Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations), 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise), 2E1.3 (Violent Crimes in Aid of Racketeering Activity), and 2E1.4 (Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire) in a manner consistent with the operation of § 1B1.2 (Applicable Guidelines) governing the selection of the offense guideline section. In addition, this amendment deletes an application note from §§ 2E1.1, 2E1.2, and 2E1.3 that is unnecessary and is not included in other sections of the Guidelines Manual.

Proposed Amendment: The Commentary to § 2D1.6 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes"; by renumbering Note 1 as Note 2; and by inserting the following as Note 1:

"1. 'Offense level applicable to the underlying offense' means the offense level determined by using the offense guideline applicable to the controlled substance offense that the defendant was convicted of using a communication facility to commit, cause, or facilitate.".

The Commentary to § 2E1.1 captioned "Application Notes" is amended in Note 1 by deleting "Where there is more than one underlying offense" and inserting in lieu thereof:

"The offense guideline applicable to the underlying offense under subsection (a)(2) is determined under the provisions of § 1B1.2 (Applicable Guidelines). Where more than one underlying offense is established (for this determination, apply the provisions of Application Note 5 of the Commentary to § 1B1.2 as in a conspiracy case).".

The Commentary to § 2E1.1 captioned "Application Notes" is amended by deleting Note 3; and by renumbering Note 4 as Note 3.

The Commentary to § 2E1.2 captioned "Application Notes" is amended in Note 1 by deleting "Where there is more than one underlying offense" and inserting in lieu thereof:

"The offense guideline applicable to the underlying offense under subsection (a)(2) is determined under the provisions of § 1B1.2 (Applicable Guidelines). Where more than one underlying offense is established (for this determination, apply the provisions of Application Note 5 of the Commentary to § 1B1.2 as in a conspiracy case).".

The Commentary to § 2E1.2 captioned "Application Notes" is amended by deleting Note 3.

The Commentary to § 2E1.3 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence as the first sentence:

"The offense guideline applicable to the underlying offense under subsection (a)(2) is determined under the provisions of § 1B1.2 (Applicable Guidelines).";

by deleting Note 2; and, in the caption, by deleting "Notes" and inserting in lieu thereof "Note".

The Commentary to § 2E1.4 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence as the first sentence:

"The offense guideline applicable to the underlying offense under subsection (a)(2) is determined under the provisions of § 1B1.2 (Applicable Guidelines).".

(G). *Synopsis of Proposed Amendment:* This amendment revises Application Note 13 in the Commentary to § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). On two occasions, the Ninth Circuit has read this application note as requiring application of § 2T3.1 to false statements to a customs officer in connection with currency reporting violations even though § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) clearly better fit the facts of the cases. *United States* v. *Carillo-Hernandez*, 963 F.2d 1316 (9th Cir. 1992), *United States* v. *Mendoza-Fernandez*, 4 F.3d 815 (9th Cir. 1993) No. 92–50761. This amendment clarifies the intended operation of this application note.

Proposed Amendment: The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 13 by inserting "§ 2S1.3 or" immediately before "§ 2T3.1".

(H). *Synopsis of Proposed Amendment:* This amendment clarifies the interaction of subsection (c)(1) of § 2J1.2 (Obstruction of Justice) and subsection (c)(1) of § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) with § 2X3.1 (Accessory After the Fact). In addition, this amendment clarifies the application of §§ 2X1.1 (Attempt, Solicitation, or Conspiracy) and 2X3.1 (Accessory After the Fact) when these guidelines are used as the result of a cross reference.

Proposed Amendment: The Commentary to § 2J1.2 captioned "Background" is amended in the second paragraph by inserting the following at the end:

"Note that application of this cross reference does not require that the defendant's conduct constitute the offense of accessory after the fact. Rather, it provides for the use, in the circumstances specified, of the guideline that applies to accessory after the fact offenses. Thus, the fact that a defendant cannot be an accessory after the fact, under federal law, to an offense in which he is a principal does not bar application of this cross reference.".

The Commentary to § 2J1.3 captioned "Background" is amended in the last sentence by deleting:

", and an alternative reference to the guideline for accessory after the fact is made";

and by inserting the following additional sentences at the end:

"Because the conduct covered by this guideline is frequently part of an effort to avoid punishment for an offense that the defendant has committed or to assist another person to escape punishment for an offense, a cross reference to § 2X3.1 (Accessory After the Fact) is provided. Use of this cross reference will provide an enhanced offense level when the obstruction is in respect to a particularly serious offense, whether such offense was committed by the defendant or another person. Note that application of this cross reference does not require that the defendant's conduct constitute the offense of accessory after the fact. Rather, it provides for the use, in the circumstances specified, of the guideline that applies to accessory after the fact offenses. Thus, the fact that a defendant

cannot be an accessory after the fact, under federal law, to an offense in which he is a principal does not bar application of this cross reference.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 2 by beginning a new paragraph with the second sentence; and by inserting the following additional sentence at the end of the first paragraph:

"However, if the application of § 2X1.1 results from a cross reference or other instruction in another Chapter Two offense guideline (e.g., §§ 2K1.3(c)(1)(A), 2K2.1(c)(1)(A), 2K3.2(a)(1)), the substantive offense is the offense determined by that cross reference or instruction.".

The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by beginning a new paragraph with the second sentence; and by inserting the following additional sentence immediately after the first sentence:

"However, if the application of § 2X3.1 results from a cross reference or other instruction in another Chapter Two offense guideline (e.g., §§ 2J1.2(c)(1), 2J1.3(c)(1)), the underlying offense is the offense determined by that cross reference or instruction.".

(I). *Synopsis of Proposed Amendment:* This amendment clarifies the application of subsection (c) of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and addresses an intercircuit conflict. In *United States* v. *Concepcion*, 983 F.2d 369 (2d Cir. 1992), involving a defendant found to have possessed a firearm in connection with a RICO drug operation, the court held that application of the firearms guideline cross-reference to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) could not include the weapon enhancement in § 2D1.1(b)(1). In applying cross-references in somewhat similar circumstances, other courts have held that a specific offense characteristic for weapon use contained in the cross-referenced guideline should be applied. See, e.g., *United States* v. *Gonzalez*, 996 F.2d 88 (5th Cir. 1993) (upholding application of two-level increase in kidnapping guideline for dangerous weapon where defendant, convicted of being a felon in possession, was held accountable for firearm used in kidnapping scheme). This amendment adds an additional Application Note to § 2K2.1 to address this issue.

In addition, the definitions of firearms listed under 26 U.S.C. § 5845(a) that are currently contained in the Application Notes to §§ 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and 7B1.1 (Classification of Violations) are inconsistent with each other and are insufficiently defined to serve their intended purpose (i.e., to allow probation officers and courts to apply the pertinent guideline adjustment without having to consult 26 U.S.C. § 5845). This amendment addresses this issue by substituting a single, revised definition.

Proposed Amendment: The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 3 by deleting:

"any short-barreled rifle or shotgun or any weapon made therefrom",

and inserting in lieu thereof:

"a shotgun, or a weapon made from a shotgun, having a barrel or barrels of less than 18 inches in length; a rifle, or a weapon made from a rifle, having a barrel or barrels of less than 16 inches in length; or a weapon made from a shotgun or rifle, having an overall length of less than 26 inches";

and by deleting:

"or (v) any 'other weapon,' as that term is defined by 26 U.S.C. 5845(e). A firearm listed in 26 U.S.C. 5845(a) does not include unaltered handguns or regulation-length rifles or shotguns",

and inserting in lieu thereof:

"and (v) certain other weapons (that are not conventional, unaltered handguns, rifles, or shotguns) as defined in 26 U.S.C. 5845(e)".

The Commentary to § 2K2.1 captioned "Application Notes" is amended by inserting the following additional note:

"20. Where subsection (c)(1) requires the application of another offense guideline, the entire offense guideline that is referenced (including any enhancement for possession of a firearm) is to be applied. See § 1B1.5 (Interpretation of References to Other Offense Guidelines).".

The Commentary to § 7B1.1 captioned "Application Notes" is amended by deleting Note 4 and inserting in lieu thereof:

"4. 'Firearm or destructive device of a type described in 26 U.S.C. § 5845(a)' is defined in the Commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).".

(J). *Synopsis of Proposed Amendment:* This amendment revises the Commentary to § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) by expanding the list of examples to which Application Note 2 applies to facilitate application of this provision. In addition, this amendment clarifies that, if an enhancement from § 2K2.4 applies, any specific offense characteristic for use or possession of any weapon in the offense is not to be applied. This addresses an issue raised in *United States* v. *Kimmons*, 965 F.2d 1001 (11th Cir. 1992), cert. denied, 113 S. Ct. 1065, and cert. granted, vacated and remanded sub nom. *Small* v. *United States*, 113 S. Ct. 2326 (1993). In Kimmons, a case involving a defendant who used a firearm in a robbery and was convicted of both robbery and 18 U.S.C. 924(c), the court held that even though the defendant was convicted of a 924(c) count, he was also subject to the weapon enhancement in the robbery guideline because of his co-defendant's use of a firearm during the robbery.

Proposed Amendment: The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 in the first sentence of the first paragraph by deleting "an explosive or firearm (e.g., § 2B3.1(b)(2)(A)–(F) (Robbery))" and inserting in lieu thereof "any explosive or firearm for which the defendant would be accountable under § 1B1.3 (Relevant Conduct)"; and by inserting the following additional sentence as the second sentence of the first paragraph:

"For example, an adjustment from §§ 2A2.2(b)(2), 2A3.1(b)(1), 2B3.1(b)(2)(A–F), 2B3.2(b)(3), 2D1.1(b)(1), 2D1.11(b)(1), 2K1.3(b)(3), or 2K2.1(b)(5) would not apply. In addition, in § 4B1.4 (Armed Career Criminal), the adjustment from subsection (b)(3)(A) is not to be applied.".

(K). *Synopsis of Proposed Amendment:* This amendment corrects a technical error in § 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law). Currently this guideline uses the term "set" to include either a single document or multiple related documents. However, in common usage, the term "set" refers to a group containing at least two items, thereby making it arguable that subsection (b)(2) applies only to sets of two or more related documents. See *United States* v. *Martinez-Cano*, F.2d , No. 93–50257 (9th Cir. Oct. 7, 1993). This amendment corrects this error and ensures comparability in offense level with § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien).

Proposed Amendment: Section 2L2.1(b)(2) is amended by deleting "sets of"; and by deleting "Sets of".

The Commentary to § 2L2.1 captioned "Application Notes" is amended in Note 2 by deleting "a single" and inserting in lieu thereof "one"; and by deleting "as one set" and inserting in lieu thereof "in the set as one document for the purposes of subsection (b)(2)".

(L). *Synopsis of Proposed Amendment:* This amendment clarifies the operation of Chapter Three, Part D (Multiple Counts) and § 5G1.2 (Sentencing on Multiple Counts of Conviction) in respect to statutes that require consecutive sentences of imprisonment.

Proposed Amendment: Section 3D1.1(b) is amended by deleting "imposition of a consecutive sentence" and inserting in lieu thereof "both that a term of imprisonment be imposed and that such term of imprisonment run consecutively to any other term of imprisonment".

The Commentary to § 3D1.1 captioned "Application Note" is amended by deleting Note 1 and inserting in lieu thereof:

"1. Subsection (b) provides that any count for which the statute mandates both that a term of imprisonment be imposed and that such term of imprisonment run consecutively to any other term of imprisonment is excepted from application of the multiple count rules. Convictions on such counts are not used in the determination of a combined offense level under this part, but may affect the offense level for other counts. See § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes).

Certain statutes (1) require a consecutive sentence only if a term of imprisonment is imposed (e.g., 18 U.S.C. 3146), or (2) set forth a sentencing enhancement rather than a separate count of conviction (e.g., 18 U.S.C. 3147). Subsection (b) does not apply in such cases. See, e.g., Application Note 3 of the Commentary to § 2J1.6 (Failure to Appear), Application Note 2 of the Commentary to § 2J1.7 (Offense Committed While on Release), and Application Note 3 of the Commentary to § 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone).".

The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 1 by deleting "imposition of a consecutive sentence" and inserting in lieu thereof "both that a term of imprisonment be imposed and that such term of imprisonment run consecutively to any other term of imprisonment".

Section 5G1.2(a) is amended by deleting "a consecutive sentence" and inserting in lieu thereof "both that a term of imprisonment be imposed and that such term of imprisonment run consecutively to any other term of imprisonment".

The Commentary to § 5G1.2 is amended by deleting the fourth paragraph and inserting in lieu thereof:

"Subsection (a) applies to any count for which a statute mandates both that a term of imprisonment be imposed and that such term of imprisonment run consecutively to any other term of imprisonment (e.g., a count charging a violation of 18 U.S.C. 844(h), 924(c), or 929(a)). The sentence for such a count is determined independently of, and runs consecutively to, the sentences for any other counts. See Commentary to §§ 2K2.4 and 3D1.1 regarding determination of the offense levels for related counts when a conviction under 18 U.S.C. 844(h), 924(c), or 929(a) is involved. Subsection (a) does not apply to a statute that requires a consecutive sentence only if a term of imprisonment is imposed (e.g., 18 U.S.C. 3146) or sets forth a sentencing enhancement rather than a separate count of conviction (e.g., 18 U.S.C. 3147). See, e.g., Application Note 3 of the Commentary to § 2J1.6 (Failure to Appear), Application Note 2 of the Commentary to § 2J1.7 (Offense Committed While on Release), and Application Note 3 of the Commentary to § 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone).".

(M). *Synopsis of Proposed Amendment:* This amendment makes the listing of the offense guidelines in subsection (d) of § 3D1.2 (Groups of Closely-Related Counts) more comprehensive. Expressly listing these additional sections will simplify the application of this guideline.

Proposed Amendment: Section 3D1.2(d) is amended in the second paragraph by inserting "2C1.6," immediately before "2C1.7"; by inserting "§§ 2G2.2, 2G2.4, 2G3.1, 2G3.2;" as an additional line immediately below "2F1.1, 2F1.2;"; and by inserting "§ 2K1.3," immediately before "2K2.1".

(N). *Synopsis of Proposed Amendment:* This amendment clarifies that Application Note 7 in the Commentary to § 4A1.2 (Definitions and Instructions for Computing Criminal History) explains § 4A1.2(d) and does not impose an additional limitation on the counting of sentences committed prior to age eighteen. The variation in language between § 4A1.2(d) and Application Note 7 has resulted in litigation. See *United States* v. *Carillo*, 991 F.2d 590 (9th Cir. 1993). Although the prisoner was unsuccessful in this case, this amendment will remove the opportunity for other challenges on this point.

Proposed Amendment: The Commentary to § 4A1.2 captioned "Application Notes" is amended by deleting Note 7 and inserting in lieu thereof:

"7. Offenses Committed Prior to Age Eighteen. Section 4A1.2(d) covers sentences resulting from all offenses committed prior to age eighteen and is designed to minimize the impact of differences among jurisdictions in the age at which a defendant is considered a 'juvenile' and in the availability of juvenile records. Section 4A1.2(d)(1) applies to adult convictions resulting in sentences of imprisonment of more than one year. Section 4A1.2(d)(2) applies to lesser sentences resulting from adult convictions and all sentences resulting from juvenile delinquency adjudications.".

(O). *Synopsis of Proposed Amendment:* This amendment adds an additional paragraph to the Commentary to § 5G1.1 (Sentencing on a Single Count of Conviction) to clarify that where the guideline sentence is determined by the statutorily authorized maximum sentence under § 5G1.1(a) or the statutorily required minimum sentence under § 5G1.1(b), the guideline range from Chapter Five, Part A, remains the applicable guideline range for other purposes (e.g., determining eligibility for retroactive application of an amended guideline range under § 1B1.10, determining whether alternatives to imprisonment are authorized under § 5B1.1 or § 5C1.1, or determining the appropriateness of a departure from the guideline range under § 4A1.3).

In addition, this amendment revises the Commentary to § 5G1.2 (Sentencing on Multiple Counts of Conviction) cited by two courts of appeals as supporting the view that, notwithstanding the language in 18 U.S.C. 3624(e) stating that terms of supervised release run concurrently, a court nevertheless may order that supervised release terms be served consecutively under certain circumstances. See *United States* v. *Maxwell*, 966 F.2d 545, 551 (10th Cir. 1992) and *United States* v. *Shorthouse*, No. 92–30334 (9th Cir. Oct. 5, 1993). This amendment is in accord with the position taken by the Eighth Circuit that 18 U.S.C. 3624(e) provides, in all cases, that multiple terms of supervised release run concurrently (*United States* v. *Gullickson*, 982 F.2d 1231, 1236 (8th Cir. 1993)).

Proposed Amendment: The Commentary to § 5G1.1 is amended by inserting the following additional paragraph at the end:

"In a case in which the guideline sentence is determined by the statutorily authorized maximum sentence (under subsection (a)) or the statutorily required minimum sentence (under subsection (b)), the guideline range from Chapter Five, Part A (Sentencing Table) remains applicable for other purposes (e.g., determining whether alternatives to imprisonment are authorized under § 5B1.1 (Imposition of a Term of Probation) or

§ 5C1.1 (Imposition of a Term of Imprisonment); determining the appropriateness of a departure from the guideline range under § 4A1.3 (Adequacy of Criminal History Category); and determining eligibility for the retroactive application of an amended guideline range under § 1B1.10 (Retroactive Application of Amended Guideline Range)).".

The Commentary to § 5G1.2 is amended in the fourth paragraph by inserting the following additional sentence at the end:

"Note, however, that even in the case of a consecutive term of imprisonment imposed under subsection (a), any term of supervised release imposed is to run concurrently with any other term of supervised release imposed. See 18 U.S.C. 3624(e).".

(P). *Synopsis of Proposed Amendment:* This amendment adds a policy statement to Chapter Five, Part K (Departures) providing expressly that a downward departure may be warranted where the defendant made complete, or substantially complete, restitution prior to the discovery of the offense or the defendant's participation of the offense, except in the case of a crime of violence. This amendment distinguishes this circumstance from the more typical situation in which the defendant makes restitution prior to sentencing but after the defendant's participation in the offense is discovered, a situation addressed by § 3E1.1 (Acceptance of Responsibility).

Proposed Amendment: Chapter Five, part K, subpart 2 is amended by inserting the following additional section:

"§ 5K2.17. Restitution Prior to Discovery (Policy Statement)

If the defendant made complete, or substantially complete, restitution prior to the discovery of the offense or the defendant's participation in the offense, a downward departure may be warranted. This provision does not apply, however, where (1) the offense was a crime of violence as defined in § 4B1.2 (Definition of Terms Used in Section 4B1.1), or (2) such restitution was made after the discovery of the defendant's participation in the offense became likely or imminent.".

(Q). *Synopsis of Proposed Amendment:* This amendment provides expressly how § 7B1.1 (Classification of Violations) is to be applied in the case of false statements made to probation officers by probationers and supervised releasees. A variety of false statements made to probation officers by probationers or supervised releasees during the period of supervision could be, but rarely if ever are, prosecuted under 18 U.S.C. 1001 (a felony). The question has arisen as to whether such violations are to be treated as Grade B (felony) or Grade C (misdemeanor/technical) violations. Option 1 of this amendment provides that a false statement made to a probation officer during supervision is treated as a Grade C violation (absent a felony conviction for such false statement). Option 2 treats any such violation as a Grade B (felony) violation. In addition, this amendment simplifies the commentary of § 7B1.1 and conforms it to the drafting principle adopted by the Commission of consolidating definitions in one section.

Proposed Amendment: [*Option 1:* Section 7B1.1 is amended by inserting the following additional subsection:

"(c) Special Instruction

(1) Absent a new conviction for a violation of 18 U.S.C. 1001 (or another felony statute), a false statement to a probation officer by a probationer or supervised releasee (e.g., a false statement on a monthly report) is to be treated as a Grade C violation.".]

[*Option 2:* The Commentary to § 7B1.2 captioned "Application Notes" is amended by inserting the following additional note:

"6. Any false statement made by a probationer or supervised releasee to a probation officer that could be charged as a violation of 18 U.S.C. § 1001 shall be treated as a Grade B violation.".]

[*Both Options:* The Commentary to § 7B1.1 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraph as the first paragraph:

"'Controlled substance offense' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(2) and Application Note 1 of the Commentary to § 4B1.2.";

and by inserting the following additional paragraph at the end:

"'Firearm or destructive device of a type described in 26 U.S.C. 5845(a)' is defined in the Commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).".

The Commentary to § 7B1.1 captioned "Application Notes" is amended by deleting Notes 3 and 4; and by redesignating Note 5 as Note 3.]

Proposed Amendments and Issues for Comment Recommended by the Practitioners' Advisory Committee

18. *Synopsis of Proposed Amendment:* This amendment provides that conduct of which the defendant has been acquitted after trial may not be used in determining the guideline range but may, if found by a preponderance of the evidence, provide the basis for an upward departure.

Proposed Amendment: Section 1B1.3 is amended by inserting the following additional subsection:

"(c) Conduct of which the defendant has been acquitted after a court or jury trial shall not be considered under this section. However, such conduct, if proven by a preponderance of the evidence, may provide the basis for an upward departure."

19. *Synopsis of Proposed Amendment:* This amendment makes a number of minor revisions to clarify the operation of § 1B1.10 (Retroactivity of Amended Guideline Range). In addition, this amendment deletes current § 1B1.10(c), a rather complex subsection, as an unnecessary restriction on the court's consideration of a revised sentence in response to an amended guideline range. The simpler restriction in subsection (b) would remain a limitation on the court's discretion.

Proposed Amendment: Section 1B1.10(a) is amended by deleting "guidelines" and inserting in lieu thereof "Guidelines Manual"; by deleting "may be considered" and inserting in lieu thereof "is authorized"; and by inserting "and thus is not authorized" immediately following "policy statement".

Section 1B1.10(b) is amended by inserting ", and to what extent," immediately before "a reduction"; and by deleting "consider the sentence that it would have originally imposed had the guidelines, as amended, been in effect at that time" and inserting in lieu thereof "apply the Guidelines Manual currently in effect to determine the amended guideline range and the appropriateness of any departure".

Section 1B1.10 is amended by deleting subsection (c); and by redesignating subsection (d) as subsection (c).

The Commentary to § 1B1.10 captioned "Application Notes" is amended by deleting the text of Note 1 and inserting in lieu thereof:

"Eligibility for consideration under 18 U.S.C. 3582(c)(2) is triggered only by an amendment listed in subsection (c) of this section that lowers the applicable guideline range. The amended guideline range is determined by applying all amendments to the Guidelines Manual (i.e., by applying the Guidelines Manual currently in effect).

This policy statement specifies the circumstances under which a defendant may be considered for a reduced sentence under 18 U.S.C. § 3582(c)(2). The decision whether or not to grant a reduction in a particular case is discretionary with the court.".

The Commentary to § 1B1.10 captioned "Background" is amended in the last paragraph by deleting "(d)" and inserting in lieu thereof "(c)".

20(A). *Synopsis of Proposed Amendment:* This amendment revises the Commentary to § 2F1.1 to provide greater consistency between the definitions of loss in §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States).

Proposed Amendment: The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 by deleting the last three sentences of the first paragraph and inserting in lieu thereof:

"Frequently, loss in a fraud case will be the same as in a theft case. Examples: (1) In the case of a forged check that was represented to be genuine, the loss is the loss that would have occurred if the check had been cashed. (2) In a case where worthless stock was represented to be worth $40,000, the loss would be $40,000. Where the loss that the defendant attempted to inflict is greater than the actual loss, the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy) will apply.";

and by deleting the first two lines of the second paragraph and inserting in lieu thereof:

"In some fraud cases, additional factors are to be considered in determining loss:".

(B). *Issue for Comment:* The Commission invites comment on whether the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) should be conformed to the Commentary to § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) by stating that:

(1) The loss should be reduced to reflect the amount the victim has recovered prior to discovery of the offense or which the victim expects to recover from any assets originally pledged by the defendant; and

(2) The actual loss may in some cases significantly overstate or understate the seriousness of the defendant's conduct; in such cases, a departure from the guidelines may be warranted.

(C). *Issue for Comment:* The Commission invites comment on whether or not the provisions concerning loss in Chapter Two, Parts B (Offenses Involving Property) and F (Offenses Involving Fraud or Deceit), should be revised to make clear that interest is not to be counted under any circumstances. There appears to be a conflict between the Commission's intent with respect to the inclusion of interest in the calculation of loss and two recent appellate decisions. Although Application Note 7 in the Commentary to § 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) states that loss does not, for example, include interest the victim could have earned on such funds had the offense not occurred, two appellate court decisions have permitted the inclusion of lost interest in the calculation of loss. See *United States* v. *Lowder*, No. 92–6378, 1993 WL 356898 (10th Cir. 1993) and *United States* v. *Jones*, 933 F.2d 353 (6th Cir. 1991). In contrast, the Fourth Circuit has held that interest should not be counted in the determination of loss where it amounts to lost profit. *United States* v. *Bailey*, 975 F.2d 1028 (4th Cir. 1992).

21. *Synopsis of Proposed Amendment:* This amendment clarifies the intended coverage of § 2X1.1 (Attempt, Solicitation, or Conspiracy). Several appellate courts have read this guideline as not applying in the case of an attempt if the statute covering the substantive offense also covers an attempt to commit the offense. See, e.g., *United States* v. *Van Bloom*, 961 F.2d 145 (9th Cir. 1992); *United States* v. *Koenig*, 952 F.2d 267 (9th Cir. 1991); *United States* v. *Williams*, 891 F.2d 962 (1st Cir. 1989); *United States* v. *Toles*, 867 F.2d 222 (5th Cir. 1989) and *United States* v. *Vasquez*, 791 F.Supp. 348 (E.D.N.Y. 1992)). This amendment clarifies the Commission's intent that the determining factor in whether § 2X1.1 applies is whether the title of the offense guideline for the substantive offense expressly covers the inchoate form of the offense.

In addition, this amendment simplifies the currently complex structure of this guideline by merging subsections (b) (1), (2), and (3). The titles of the offense guidelines covered by subsection (b)(3)(B) are amended to conform.

Proposed Amendment: The title of § 2X1.1 is amended by deleting "(Not Covered by a Specific Offense Guideline)".

Section 2X1.1(b) is amended by deleting:

"(1) If an attempt, decrease by 3 levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.

(2) If a conspiracy, decrease by 3 levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3) (A) If a solicitation, decrease by 3 levels unless the person solicited to commit or aid the substantive offense completed all the acts he believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the substantive offense identically with the substantive offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the substantive offense.",

and inserting in lieu thereof:

"(1) Decrease by 3 levels unless (A) the defendant, a co-conspirator, or, in the case of a solicitation, the person solicited to commit the offense committed all of the acts he believed necessary for the successful completion of the substantive offense; or (B) the circumstances demonstrate that such person was about to complete all such acts but for apprehension or interruption by some similar event beyond his control.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting the first sentence of Note 1 and inserting in lieu thereof:

" 'Expressly covered by another offense guideline section,' as used in subsection (c), means that the title of the offense guideline section applicable to the substantive offense expressly covers an attempt, conspiracy, or solicitation. For example, § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) expressly covers attempted murder; § 2A1.5 (Conspiracy or Solicitation to Commit Murder) expressly covers conspiracy and solicitation to commit murder. In contrast, § 2B3.1 (Robbery) does not expressly cover attempt, conspiracy, or solicitation to commit robbery.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in the last paragraph of Note 1 by inserting "§ 2B4.1;" on an additional line immediately below "§ 2A1.5"; and by inserting ", 2C1.6" immediately following "2C1.2".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 4 by deleting "§ 2X1.1(b)(1), (b)(2), or (b)(3)(A)" wherever it appears and inserting in lieu thereof in each instance "§ 2X1.1(b)(1)".

The Commentary to § 2X1.1 captioned "Background" is amended by deleting

"§ 2X1.1(b) (1) or (2)" and inserting in lieu thereof "2X1.1(b)(1)".

Section 2B4.1 is amended in the title by inserting at the end "; Offering, Giving, Soliciting, or Receiving".

Section 2C1.6 is amended in the title by inserting at the end "; Offering, Giving, Soliciting, or Receiving".

22. *Synopsis of Proposed Amendment:* This amendment addresses the meaning of the term "non-violent offense" in § 5K2.13 (i.e., whether a "violent offense" is synonymous with a "crime of violence" as used in § 4B1.2 (Definitions of Terms Used in section 4B1.1); and, if so, whether a departure under this policy statement is prohibited in all such cases). There is a split among the appellate courts with regard to this issue. Of the seven circuits that have addressed the question, all except the DC Circuit follow the holding of *United States* v. *Poff*, 926 F.2d 588 (7th Cir. 1991) (en banc) that the terms are synonymous. Hence, departure for diminished capacity would be precluded for any offense that is a crime of violence under the guidelines. The DC Circuit, in *United States* v. *Chatman*, 986 F.2d 1446 (DC Cir. 1993), came to a different conclusion, permitting a downward departure in an unarmed, "idle threat" bank robbery case.

As generally illustrated by instances in the relevant appellate cases, the issue arises in cases that fall within the definition of crime of violence as used in § 4B1.2 but may not pose any significant risk of physical injury (e.g., a person with psychological problems who writes a threatening letter but evidences no intent or capacity to carry out the threat). As the underlying purpose of this provision seems best expressed in the clause "provided that the defendant's criminal history does not indicate a need for incarceration to protect the public," this amendment revises the language of this policy statement to express its intent more directly. The option of an additional sentence setting forth, for emphasis, a strong presumption against the applicability of this provision in the case of a crime of violence is included.

Proposed Amendment: [Options 1 and 2: Section 5K2.13 is amended by deleting "a non-violent" and inserting in lieu thereof "an"; and by deleting "the defendant's criminal history" and inserting in lieu thereof "consideration of the nature and circumstances of the offense and the history and characteristics of the defendant".]

[*Option 2 only:* Section 5K2.13 is amended by inserting the following additional sentence at the end:

"Absent extraordinary circumstances, a downward departure under this provision is not authorized for an offense that is a crime of violence as defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).".]

Proposed Amendment Recommended by the Probation Officers' Advisory Group

23. *Synopsis of Proposed Amendment:* This amendment revises § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) by deleting subsection (c), which currently requires the court to employ a methodology that parallels the multiple count rules of Chapter Three, and substituting a provision that allows the court to impose the sentence either concurrently or consecutively, with an application note suggesting use of the multiple count methodology only if accurate, factual, and reliable information concerning the prior sentence is readily available. This amendment is designed to respond to the difficulty in obtaining state and local offense information regarding prior unexpired sentences and accurately applying such information to federal guidelines.

Proposed Amendment: Section 5G1.3 is amended by deleting subsection (c) and by inserting in lieu thereof:

"(c) In any other case, the sentence for the instant offense may run concurrently or consecutively to the prior undischarged term of imprisonment, except to the extent otherwise required by law.".

The Commentary to § 5G1.3 captioned "Application Notes" is amended by deleting Note 3 and inserting in lieu thereof:

"3. Where the defendant is subject to an undischarged term of imprisonment in circumstances other than those set forth in subsection (a) or (b), subsection (c) applies. The sentence for the instant offense may run concurrently or consecutively to the prior undischarged term of imprisonment. If accurate, factual, and reliable information concerning the prior conviction and sentence for which the defendant is serving the undischarged term of imprisonment is readily available, the court may combine the instant offense and the prior offense by applying the grouping rules at § 3D1.2 to arrive at an approximate total punishment that would have been imposed had all the offenses been federal offenses for which sentences were being imposed at the same time. To the extent practicable, the court should consider imposing a sentence of imprisonment that results in incremental punishment as envisioned in Chapter 3, Part D, and § 5G1.2.

It is not intended that the above suggested methodology be applied when it either prolongs or complicates the sentencing process or produces inaccurate or unreliable results.".

Proposed Amendments Recommended by the Federal and Community Defenders

24. *Synopsis of Proposed Amendment:* This amendment revises the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) to provide that in a case involving negotiation for a quantity of a controlled substance, the negotiated quantity is used to determine the offense level unless the completed transaction establishes a larger quantity, or the defendant establishes that he was not reasonably capable of producing the negotiated amount or otherwise did not intend to produce that amount. Under the wording of the current provision, if the defendant establishes that he was not reasonably capable of producing the quantity of controlled substances but is unable to establish that he did not intend to produce the quantity of controlled substances, or if the defendant establishes that he did not intend to produce the quantity of controlled substance but is unable to establish that he was not reasonably capable of producing that quantity, he is denied the benefit of this provision.

Proposed Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 12 by deleting the third paragraph and inserting in lieu thereof:

"In an offense involving negotiation for a quantity of a controlled substance, the negotiated quantity shall be used in determining the offense level unless the completed transaction establishes a larger quantity. However, where the court finds that the defendant was not reasonably capable of producing, or otherwise did not intend to produce, the negotiated quantity of controlled substance, the court shall exclude the amount that it finds the defendant was not reasonably capable of producing or otherwise did not intend to produce.".

25. *Synopsis of Proposed Amendment:* This amendment revises § 2P1.1 (Escape, Instigating or Assisting Escape) to conform the definition of non-secure custody in subsection (b)(3) to that used in subsection (b)(2), thus providing more consistent treatment of escapes from non-secure custody. The definition of non-secure custody in subsection (b)(2) is consistent with the definition of non-secure custody used by the Bureau of Prisons. Two options are provided. The difference between Options 1 and 2 is that Option 2 would exclude a prisoner who fails to return from a furlough from a secure institution from the operation of subsection (b)(3).

Proposed Amendment: [*Option 1:* Section 2P1.1(b)(3) is amended by

deleting "the non-secure custody of a community corrections center, community treatment center, 'halfway house,' or similar facility" and inserting in lieu thereof "non-secure custody".]

[*Option 2:* Section 2P1.1(b)(3) is amended by deleting "the non-secure custody of a community corrections center, community treatment center, 'halfway house,' or similar facility" and inserting in lieu thereof "non-secure custody".

Section 2P1.1(b)(3) is amended by inserting "(A) the offense involved a failure to return from a furlough from secure custody; or (B)" immediately following "shall not apply if".]

[*Both Options:* The Commentary to § 2P1.1 captioned "Application Notes" is amended in Note 2 by deleting "(not in connection with an arrest or other charges)" and by inserting in lieu thereof:

"; it does not include notifying authorities of one's status as an escapee upon being arrested on another charge".]

Proposed Amendments and Issues for Comment Recommended by the Department of Justice

26. *Synopsis of Proposed Amendment:* This amendment provides that the base offense level of 12 in § 2H2.1 (Obstructing an Election or Registration) applies in all cases where the defendant corrupts the registration or votes of others, while the alternative base offense level of 6 applies where the defendant corrupts only his or her own registration or ballot. Sections 2H2.1(a)(2) and (3) currently do not clearly distinguish such cases.

Proposed Amendment: Section 2H2.1(a) is amended by deleting subdivisions (2) and (3) and inserting in lieu thereof:

"(2) 12, if the obstruction involved corruption of the registration or votes of others by forgery, fraud, theft, bribery, deceit, or other means; or

(3) 6, if the defendant corrupted only his own registration or vote.".

The Commentary to § 2H2.1 captioned "Background" is amended by deleting the first sentence and inserting in lieu thereof:

"Alternative base offense levels cover three different ways of obstructing an election:

(1) By the use of force or the threat of force;

(2) By schemes involving deceptive or dishonest conduct with regard to the registration or votes of others; or

(3) By an individual's selling or otherwise acting fraudulently with regard only to his own registration or vote.".

27. *Synopsis of Proposed Amendment:* This amendment revises §§ 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) to provide a 4-level increase if the defendant committed the offense as a member of, on behalf of, or in association with a criminal gang, and defines a "criminal gang" as a group, club, organization, or association of five or more persons whose members engage, or have engaged within the past five years, in a continuing series of crimes of violence and/or controlled substance offenses as defined in § 4B1.2.

Proposed Amendment: Section 2K2.1(b) is amended by inserting the following additional subdivision:

"7. If the defendant committed an offense as a member of, on behalf of, or in association with a criminal gang, increase by 4 levels. A 'criminal gang' is defined as a group, club, organization, or association of five or more persons whose members engage, or have engaged within the past five years, in a continuing series of crimes of violence and/or controlled substance offenses as defined in § 4B1.2.".

Section 2K2.5(b) is amended by inserting the following additional subdivision:

"2. If the defendant committed an offense as a member of, on behalf of, or in association with a criminal gang, increase by 4 levels. A 'criminal gang' is defined as a group, club, organization, or association of five or more persons whose members engage, or have engaged within the past five years, in a continuing series of crimes of violence and/or controlled substance offenses as defined in § 4B1.2.";

and in the caption by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

28. *Issue for Comment:* The Commission invites comment on whether § 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) should be amended to include enhancements if the firearm was discharged or loaded or if the defendant possessed both a firearm and ammunition in a school zone, and whether enhancements currently found in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) should be included in § 2K2.5 (e.g., an enhancement for possessing multiple weapons in a school zone).

The Commission also invites comment on whether § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) should be amended to increase the base offense level from 12 to 14 for persons who sell firearms with knowledge or reason to believe that the recipient is a felon or other prohibited person or an underage person.

29. *Issue for Comment:* The Commission invites comment on whether to add an enhancement in Chapter Three (Adjustments) applicable to members of criminal organizations who expressly agree, or require others to agree, to commit a crime of violence as a formal condition of membership in that organization (such act of violence may be required to be committed prior to approval of membership in the organization or the promise of such act in the future may be required). The Commission also invites comment on the number of levels to be given to such an enhancement. Comment is further invited on whether this circumstance is likely to arise often enough to warrant a new Chapter Three adjustment or whether it instead should be addressed as an upward departure consideration in Chapter Five, Part K (Departures).

30. *Issue for Comment:* The Commission invites comment on whether § 4A1.1 (Criminal History Category) and Chapter Five, Part A (Sentencing Table) should be amended to add additional distinctions. For example, should all prior sentences of imprisonment of more than one year and one month continue to receive three criminal history points or should distinctions be made for longer periods of imprisonment or specific types of offenses; should distinctions be made where the prior offense and instant offense are similar; should a separate criminal history category be created for defendants with a clean record (no arrests or convictions); and should an additional criminal history category be created for defendants with substantially more than thirteen criminal history points?

Issue for Comment Recommended by the Judicial Conference Committee on Criminal Law

31. *Issue for Comment:* Under § 1B1.10 (Retroactivity of Amended Guideline Range), if a defendant is serving a sentence of imprisonment, and the guideline range applicable to the defendant has subsequently been lowered as a result of an amendment to the guidelines expressly listed in § 1B1.10(d), the court may consider a reduction in the defendant's term of imprisonment. In determining whether a reduction is warranted and the extent of any reduction, the court is directed to consider the amended guideline range. Under § 1B1.10(b), the amended

guideline range is determined by applying the revised Guidelines Manual in its entirety, thereby making all other amendments retroactive as well. The Commission invites comment on whether § 1B1.1(b) should be retained as written or whether it should be modified so that the amended guideline range is determined by using only those amendments that have been expressly designated for retroactive application; such amendments would be applied in conjunction with the Guidelines Manual used at the defendant's original sentencing.

Proposed Amendment Recommended by a District Court Judge

32. *Synopsis of Proposed Amendment:* This amendment creates an additional guideline in Chapter Three, Part E (Acceptance of Responsibility), to provide an additional one-level decrease for a defendant who goes to trial but avoids actions that unreasonably delay or burden the proceedings or place an undue burden on the government.

Proposed Amendment: Chapter Three, Part E, is amended by inserting the following additional section:

"§ 3E1.2. Assisting in the Fair and Expeditious Administration of Justice

If a defendant who goes to trial demonstrates a willingness to assist in the fair and expeditious administration of justice by avoiding actions which would unreasonably delay or burden the proceedings or place an undue burden on the Government, decrease the offense level by one level.

Commentary

Application Note:

1. In determining whether a defendant qualifies under this section, appropriate considerations include, but are not limited to, the following:

(a) whether the defendant refrained from making frivolous motions;

(b) whether the defendant agreed to reasonable stipulations concerning issues as to which there was no genuine dispute, for example, stipulated to business records to avoid prolonging the trial by calling records custodians.

Background: The reduction of offense level provided by this section recognizes the legitimate interest in rewarding those defendants who go to trial but who nonetheless assist in the fair and expeditious administration of justice by avoiding conduct which unreasonably delays or burdens the process. Like the extra one-level reduction provided with respect to certain defendants for timely notification of an intent to plead guilty (§ 3E1.1(b)(2)), this section seeks to reward conduct that assists the court and the Government in allocating their resources efficiently.".

Issues for Comment Recommended by Families Against Mandatory Minimums

33(A). *Issue for Comment:* The Commission invites comment on whether it should modify the provisions in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) that distinguish between cocaine and crack cocaine at the ratio of 100 to 1 (i.e., 100 grams of cocaine is equivalent to 1 gram of crack cocaine). This ratio is based upon the ratio of crack cocaine to other cocaine contained in the mandatory minimum sentencing provisions of 21 U.S.C. 841(b)(1)(A) and (B). The Commission invites comment on whether the 100 to 1 ratio should continue to be used for guideline purposes, or whether another ratio, such as 1 to 1, 2 to 1, 5 to 1, or 10 to 1, would better reflect the relative seriousness of these offenses for guideline purposes.

(B). *Issue for Comment:* The Commission invites comment on the appropriate equivalency between a marihuana plant and marihuana for guideline purposes. Currently, § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) equates each marihuana plant with one kilogram of marihuana for offenses involving fifty or more plants, and each plant with 100 grams of marihuana for offenses involving fewer than fifty plants. The one kilogram per plant ratio is based on the ratio found in the mandatory minimum sentencing provisions of 21 U.S.C. 841(b)(1)(A) and (B). The relevant legislative history, see 134 Cong. Rec. S17368 (daily ed. Nov. 10, 1988)(statement of Sen. Biden), indicates that the purpose of using 1,000 kilograms as the equivalent of 1,000 plants was to curtail the debate between defendants charged with possessing large quantities of marihuana plants and the government over whether the statutory definition of marihuana included weighing the stems and seeds as part of the marihuana mixture. Commentators have argued that the 1 kilogram per plant equivalency is unrealistically high in relation to the amount of marihuana that a marihuana plant will yield. The equivalency of 100 grams of marihuana per plant used in offenses involving fewer than fifty plants was developed after a review by the Commission of information relating to the actual yield of marihuana plants under a variety of conditions. The Commission invites comment on whether the current marihuana plant to marihuana ratio should be maintained, whether an equivalency of 100 grams of marihuana per plant should be adopted for guideline purposes for all cases, or whether some other equivalency should be adopted.

The Commission also invites comment on any other issue relating to marihuana plants; e.g., whether male plants should be treated differently or excluded (because male plants have a comparatively low THC content and are frequently culled out by growers) or whether a definition of a marihuana plant should be adopted that would distinguish among plants at different levels of maturity or would exclude plants below a certain level of maturity.

Proposed Amendments and Issue for Comment Recommended by the United States Postal Service

34(A). *Synopsis of Proposed Amendment:* This amendment creates a new adjustment in Chapter Three, Part A, to address the harm caused when there is more than one victim.

Proposed Amendment: Chapter Three, Part A, is amended by inserting the following additional section:

"§ 3A1.4. Multiple Victims

If the offense affected more than one victim, increase the offense level as follows:

Number of victims	Increase in level
2–99	2
100–349	4
350–649	6
650 or more	8.".

(B). *Issue for Comment:* The Commission invites comment on methods other than the use of a victim table to reflect the harm when there is more than one victim of the offense.

35. *Synopsis of Proposed Amendment:* This amendment provides a minimum offense level of 14 for an organized scheme to steal mail.

Proposed Amendment: Section 2B1.1(b) is amended by inserting the following additional subdivision:

"8. If the offense involved an organized scheme to steal undelivered United States mail, and the offense level as determined above is less than level 14, increase to level 14.".

[FR Doc. 93–31035 Filed 12–20–93; 8:45 am]
BILLING CODE 2210–40–P

federal register

Tuesday
December 21, 1993

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 37 rescission proposals and 12 deferrals contained in three special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993.

Rescissions (Attachments A and C)

As of December 1, 1993, 37 rescission proposals totaling $1,946.1 million had been transmitted to the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of December 1, 1993, $6,011.3 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

58 FR 54256, Wednesday, October 20, 1993

58 FR 59517, Tuesday, November 9, 1993

58 FR 63264, Tuesday, November 30, 1993

Leon E. Panetta,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	1,946.1
Rejected by the Congress.....	---
Currently before the Congress.....	1,946.1

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,548.7
Routine Executive releases through December 1, 1993	-2,537.4
Overturned by the Congress.....	---
Currently before the Congress.....	6,011.3

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1	40,000		11-1-93				
Economic support fund	R94-2	90,000		11-1-93				
Agency for International Development								
Development assistance fund	R94-3	160,000		11-1-93				
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4	16,233		11-1-93				
Buildings and facilities	R94-5	8,460		11-1-93				
Cooperative State Research Service								
Cooperative State Research Service	R94-6	30,002		11-1-93				
Buildings and facilities	R94-7	34,000		11-1-93				
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8	12,167		11-1-93				
Soil Conservation Service								
Conservation operations	R94-9	12,167		11-1-93				
Farmers Home Administration								
Salaries and expenses	R94-10	12,167		11-1-93				
Rural Electification Administration								
Rural electrification and telephone loans program account	R94-11	6,445		11-1-93				

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Food and Nutrition Service								
Commodity supplemental food program	R94-12	12,600		11-1-93				
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13	6,000		11-1-93				
Construction	R94-14	4,000		11-1-93				
International Trade Administration								
Operations and administration	R94-15	2,000		11-1-93				
DEPARTMENT OF DEFENSE								
Military Construction								
Military construction, Army	R94-16	116,134		11-1-93				
Military construction, Air Force	R94-17	85,094		11-1-93				
Military construction, Army Reserve	R94-18	19,807		11-1-93				
Military construction, Naval Reserve	R94-19	4,438		11-1-93				
Military construction, Air Force Reserve	R94-20	18,759		11-1-93				
Military construction, Army National Guard	R94-21	251,854		11-1-93				
Military construction, Air National Guard	R94-22	105,138		11-1-93				
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23	24,970		11-1-93				
Construction, general	R94-24	97,319		11-1-93				
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25	97,300		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Uranium supply and enrichment activities	R94-25	42,000		11-1-93				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26	180,000		11-1-93				
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27	16,000		11-1-93				
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28	600		11-1-93				
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29	2,750		11-1-93				
Facilities and equipment	R94-30	40,257		11-1-93				
Federal Transit Administration								
Discretionary grants	R94-31	52,037		11-1-93				
Federal Highway Administration								
Highway demonstration projects	R94-32	187,827		11-1-93				
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33	126,022		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34	13,100		11-1-93				
OTHER INDEPENDENT AGENCIES								
State Justice Institute								
Salaries and expenses	R94-35	6,775		11-1-93	*			
United States Information Agency								
Salaries and expenses	R94-36	3,000		11-1-93				
North/South Center	R94-37	8,700		11-1-93				
TOTAL RESCISSIONS		1,946,122	0		0		0	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congres-sionally Required	Congres-sional Action	Cumulative Adjust-ments (+)	Amount Deferred as of 12-1-93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93	84,357				1,474,380
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,800,000				1,337,279
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93					118,059
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

ATTACHMENT D
Status of FY 1994 Deferrals - As of December 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-93
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93					76,361
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	653,049				2,182,811
TOTAL, DEFERRALS		7,334,903	1,213,823		2,537,406	0		0	6,011,320

[FR Doc. 93-31034 Filed 12-20-93; 8:45 am]
BILLING CODE 3110-01-C

federal register

Tuesday
December 21, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 900

Mammography Facilities—Requirements for Accrediting Bodies and Quality Standards and Certification Requirements; Interim Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 93N-0351]

Requirements for Accrediting Bodies of Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to implement the Mammography Quality Standards Act of 1992 (MQSA), which requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. This rule establishes procedures for application to FDA for approval as an accrediting body and requirements and responsibilities of such bodies. This action is being taken to assure adequate and consistent evaluation of mammography facilities on a nationwide level and to help assure their compliance with quality standards. The agency requests comments on the contents of this document.

DATES: These regulations are effective February 22, 1994. Written comments by January 20, 1994.

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: Charles Showalter, Center for Devices and Radiological Health (HFZ-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-3311.

SUPPLEMENTARY INFORMATION: On October 27, 1992, the MQSA (Pub. L. 102-539) was enacted to establish uniform, national quality standards for mammography. The MQSA amends part F of Title III of the Public Health Service Act (the PHS Act) (42 U.S.C. 262 *et seq.*) by adding new section 354 (42 U.S.C. 263b) to establish a comprehensive statutory mechanism for certification and inspection of all mammography facilities in the United States. The MQSA requires that, to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, must be accredited by an approved accrediting organization and obtain a certificate from the Secretary of Health and Human Services (HHS) (the Secretary), and, by delegation, FDA. This requirement applies to all facilities producing, processing, or interpreting mammograms, whether for screening or diagnostic purposes. The authority to implement the provisions of the MQSA was delegated by the Secretary of HHS to FDA, which is issuing this interim rule to establish regulations implementing section 354(e) of the PHS Act pertaining to accrediting bodies.

I. Background

The motivation for the MQSA was public response to concerns about breast cancer and to concerns about the quality of mammography services relied on for early detection of breast cancer. Breast cancer is the most prevalent nonskin cancer among women (and the second most deadly), with over 175,000 new cases and 45,000 breast cancer-related deaths occurring annually (Ref. 1). The disease is most treatable in the early stages. Regular screening mammography can often identify possible disease at an early stage, and diagnostic mammography is very valuable in confirming the presence of breast cancer. Current research raises the possibility that widespread use of mammography could reduce breast cancer mortality by approximately one third, especially in older women, through early detection of cancerous lesions and prompt initiation of treatment protocols (Ref. 1). Missed diagnosis of early lesions due to factors such as poor image quality or incorrect interpretation of images could result in delayed treatment, leading to otherwise avoidable increases in mortality or more complex and costly remediations. High-quality mammography procedures are, therefore, vital to ensure that cancerous breast lesions are detected and treated early.

The importance of early detection of breast cancer by screening mammography prompted Congress, in the 1990 Omnibus Budget Reconciliation Act (Pub. L. 101-508), to require that mammography be a covered service for medicare-eligible women. Similarly, various States, under authority of the McCarran-Ferguson Act over private insurance companies, have required that private health insurance carriers and/or the State-administered Medicaid program provide reimbursement for preventive mammography screening services rendered to beneficiaries.

Stimulated by such public health agency programs and public health need, the demand for mammography screening services has increased substantially, resulting in significant growth in the number of mammography facilities, currently estimated to be over 10,000. A concern with respect to this growth is that mammography is one of the more technically challenging radiological procedures, and accurate mammography interpretation is comparatively difficult. Therefore, adequate training of all mammography personnel and programs for quality assurance and quality control are crucial for mammography facilities to attain necessary levels of quality for all mammography services.

However, problems with the provision of quality mammography services have been documented by a number of studies. Significant evidence came from the 1985 Nationwide Evaluation of X-Ray Trends (NEXT) study, a cooperative effort of FDA and the Conference of Radiation Control Program Directors (an organization of State and local radiation control officials). Through the survey of a representative national sample of mammography facilities, the 1985 NEXT study found that the image quality produced by some of these facilities was less than desirable (Ref. 2).

In a 1990 report to Congress, the General Accounting Office (GAO) reported that many mammography service providers lacked adequate quality assurance programs (Ref. 3). GAO concluded that the quality of screening mammography was directly related to whether providers established and maintained a wide range of quality assurance programs. GAO found no relationship between the price charged for screening mammography and adherence to these quality standards. GAO also found evidence that providers performing comparatively larger numbers of mammography examinations were more likely to comply with quality standards, while providers performing relatively few mammograms had the lowest rates of compliance.

Similarly, the American College of Radiology (ACR), a private, nonprofit association of radiologists, investigated the provision of mammography services. In 1987 the ACR began a voluntary Mammography Accreditation Program (MAP), the purpose of which was to provide assurance of quality to patients seeking services at ACR-accredited facilities. The ACR's MAP involves a number of facility procedure and image quality requirements, one of the most significant of which is an evaluation of

clinical mammograms produced by each facility. However, the program at present does not include an on-site inspection of each facility by program personnel. In the absence of a national regulatory requirement, only those facilities that voluntarily sought accreditation have undergone the ACR accreditation process. Nevertheless, the vast majority of mammography facilities have already received (or have applied for) ACR accreditation. Historically, approximately 30 percent of the facilities applying for accreditation fail on their first attempt to meet the ACR Standards, although many of these are subsequently able to improve their services and meet the standards on a second attempt. Over 6,000 facilities, out of the estimated 10,000 facilities in the United States, are currently accredited by the ACR.

A number of States have also instituted quality surveillance, inspection, and licensing programs to ensure that State residents are provided high-quality mammography services. However, many States have not established comprehensive quality assurance standards for mammography. Present State programs typically do not involve a critical examination of the image quality manifested by real clinical mammograms at each facility.

The 1990 Federal legislation that provided coverage under medicare for breast cancer screening (Pub. L. 101–508) (administered by the Health Care Financing Administration (HCFA)) required that facilities seeking reimbursement for screening mammography from medicare meet prescribed quality standards. These standards (set forth in 42 CFR part 494 based on an interim rule published in the **Federal Register** of December 31, 1990 (55 FR 53510)) apply only to screening mammography, not to diagnostic mammography, and do not provide for image quality examination of clinical mammograms in each facility. Facilities are required to be inspected annually for compliance with the standards. The inspection program began on September 9, 1992. In most States, the inspections are a cooperative effort between the State radiation control agency and the agency that normally conducts medicare inspections under contract with HCFA.

The Breast and Cervical Cancer Mortality Prevention Act of 1990 (Pub. L. 101–354) provided Federal funds to States to ensure that indigent women had access to breast and cervical cancer screening. This statute also required that matching funds be provided by applicant States and that certain quality assurance provisions be met by all covered providers. The Centers for Disease Control and Prevention (CDC), the agency responsible for implementing the program, requires that providers of screening mammography services for their program be accredited by ACR and certified by HCFA, which administers the medicare program.

As indicated above, the lack of uniform national oversight over the wide range of available mammography services has resulted in a patchwork of sometimes overlapping, but frequently less than comprehensive, State and Federal programs for assuring quality mammography. Therefore, on a nationwide level, there are no universal standards for providing safe, reliable, and accurate mammography services. In order to rectify this situation, the MQSA was enacted. Under the MQSA, Congress established a comprehensive statutory mechanism for the certification and inspection of mammography facilities to ensure that, after October 1, 1994, only those facilities which are in compliance with uniform Federal standards for safe high-quality mammography services may legally continue operation. Operation after that date is contingent upon receipt, after application, of an HHS certificate attesting that the facility meets the minimum mammography quality standards promulgated under section 354(f) of the PHS Act. These standards apply to both screening and diagnostic mammography. Specifically, the MQSA requires the following:

1. Accreditation of mammography facilities by private, nonprofit organizations or State agencies which have met the standards established by the Secretary for accrediting bodies and have been approved by the Secretary. The MQSA requires a direct Federal audit of the accrediting bodies through facility inspections by Federal officers. It also requires that, as a part of the overall accreditation process, clinical mammograms from each facility be evaluated for quality.

2. An annual mammography facility physics survey, consultation, and evaluation performed by a certified or State-licensed/approved medical physicist.

3. Annual inspection of mammography facilities, to be performed by Federally-certified or State-certified inspectors. The MQSA requires a Federal audit of the facility inspection program by inspections of a sample of facilities.

4. Establishment of qualification standards for interpreting physicians, mammography technologists, medical physicists, and mammography facility inspectors.

5. Specification of boards or organizations eligible to certify the adequacy of training and experience of particular mammography personnel.

6. Establishment of quality standards for mammography equipment and practices, including quality assurance and quality control programs.

7. Establishment by the Secretary of a National Mammography Quality Assurance Advisory Committee. Among other things, the advisory committee will advise the Secretary on the appropriate quality standards for the mammography facilities and the accrediting bodies.

8. Establishment of standards governing recordkeeping for patient files and requirements concerning mammography reporting and patient notification by physicians.

II. Provisions of the Rule

The MQSA requires the Secretary to set requirements for accrediting bodies and to establish standards for such bodies. The Senate report on the MQSA states that the standards for accrediting bodies must be no less stringent than those established by the ACR (Ref 4.). The legislative history indicates that Congress intended that the ACR program serve as the model for the statutory accrediting body, although Congress also intended that, over time, the accrediting program should undergo improvements stimulated by Federal oversight. Thus, FDA has reviewed the ACR standards and procedures in arriving at the content of this interim rule (Ref. 5). FDA has also reviewed standards and procedures developed by HCFA, a part of the HHS which operates a system of certification for facilities under Medicare (December 31, 1990, 55 FR 53510). Such review has also included relevant State accreditation programs.

On December 14, 1993, the President signed legislation (H. Rept. 2202) granting interim rule authority to the Secretary for promulgation of standards required by the MQSA. This authorization was provided in recognition of the fact that the certification deadline of October 1, 1994, could not be met without streamlining the process for initial promulgation of standards. Granting of this interim rule authority, rather than extension of the deadline to develop standards, was decided upon because of the perceived urgent public health need for Federal standards for mammography. FDA has chosen to use this authority in order to meet the October 1, 1994, deadline for certification of facilities. While FDA believes that there is an urgent need for

standards to be in effect, the agency also wants to provide time for facilities to meet these standards so that they can continue lawfully to operate and so that quality mammography will be available.

Under the interim rule legislation, the Secretary is authorized to issue temporary, interim regulations setting forth standards for approving accrediting bodies and for quality standards for mammography, under section 354(e) and (f) of the PHS Act. Under the abbreviated process, the Secretary is required to adopt existing standards to the maximum extent feasible, such as those established by HCFA, private voluntary accreditation bodies, e.g., ACR, and some States. Also, in developing the interim regulations, the Secretary is not required to consult the National Mammography Quality Assurance Advisory Committee. However, following issuance of the initial standards, Congress intends that the Secretary proceed with the more extensive rulemaking procedures envisioned by the original enactment of the MQSA, including the statutorily required consultation with the Advisory Committee.

Thus, the interim rule authority permits the Secretary to expedite establishment of legally binding initial accreditation and quality standards, based on standards currently in use. These initial standards will be used to accredit and certify facilities before the October 1, 1994 deadline, while the Secretary simultaneously continues to evaluate and develop the final standards under section 354(e) and (f) of the PHS Act. This second set of final regulations, will supersede the initial regulations.

Because these regulations fall short of implementing the entire MQSA, FDA expects, in the future, to propose for notice and comment further implementing regulations not made necessary by section 354(e) and (f) of the PHS Act, such as regulations implementing section 354(r) concerning funding.

The accreditation regulations implemented by this interim rule are consistent with the congressional intent to incorporate existing standards to the maximum extent possible. Significant provisions of the regulations are summarized below.

A. Approval of Accreditation Bodies

Under section 354(e)(1) of the PHS Act (42 U.S.C. 263b(e)(1)), on approval of accrediting bodies, the Secretary is required to do the following:

1. Establish standards requiring accrediting bodies to review clinical images from facilities accredited by those accrediting bodies.

2. Establish standards prohibiting any financial relationship that would constitute a conflict of interest between individuals conducting the clinical image reviews discussed in item 1 above and the facilities undergoing review.

3. Establish standards limiting the imposition of fees by accrediting bodies to reasonable amounts.

4. Establish a requirement that mammography facilities undergo surveys at least annually by a medical physicist and a requirement that monitoring and evaluation of those physicist surveys be conducted by the accrediting body.

5. Establish any necessary additional standards for accrediting bodies beyond those specified by the law.

6. Establish a requirement that accrediting bodies submit to the Secretary information regarding accreditation revocations, denials, and suspensions; changes to the accrediting body standards; and other information that FDA might require. A requirement must also be established that accrediting bodies notify facilities they accredit if their approval as an accrediting body is withdrawn by FDA.

FDA is requiring that, in conducting clinical image reviews, accrediting bodies meet the statutorily defined review frequencies (every 3 years for each facility accredited) and use breast positioning, compression and overall image quality as criteria for clinical image evaluations. FDA notes that because HCFA does not require clinical image review as a condition of certification, facilities that are presently certified only by HCFA would not necessarily qualify for certification by FDA. However, facilities that are accredited by ACR, or an organization with comparable requirements which does require clinical image reviews in addition to other requirements, would qualify for certification by FDA.

Under the statute, potential accrediting bodies are limited to private, nonprofit organizations or State agencies. Therefore, FDA is defining the "reasonableness" of their fees as those limited to recovering costs incurred by the body in accrediting a given facility, including overhead adjusted proportionately for that facility. With regard to reporting and recordkeeping, FDA has established deadlines for accrediting body reports in accordance with suggested intervals in the Senate report accompanying the MQSA. In order to facilitate the certification process, FDA is requiring additional reporting and recordkeeping beyond that specified in the MQSA, including requiring accrediting bodies to collect and submit to FDA the information required for certification under section 354(d)(1) of the PHS Act for all facilities they accredit and also information required for provisional certification. Finally, FDA is requiring that accrediting bodies establish processes for receipt, investigation and records maintenance of complaints about facilities that the bodies accredit and submit to FDA any information requested about facilities they accredit.

In order for an applicant to be approved as an accrediting body, the MQSA requires that applicants establish quality standards for mammography substantially the same as those promulgated under section 354(f) of the PHS Act. The rule provides for FDA review of changes in accrediting body's standards before they go into effect. This is to allow FDA to determine whether a proposed change would so significantly affect the body's standards as to render them no longer "substantially the same as" FDA's standards, which would abrogate the approval of the accrediting organization.

FDA wants to allow flexibility to accrediting bodies to fine-tune standards to their own organizational situation and to make adjustments based on experience. For example, a state might have independent personnel standards to be cross-referenced or otherwise reflected in an accrediting program operated within its borders. To achieve this goal of flexibility, FDA is requiring that accrediting body standards be "substantially the same as" FDA's standards, rather than identical. FDA intends to administer this provision primarily on a section basis. The accrediting body would need to have sections corresponding to each of FDA's, and to achieve a comparable level of quality within each section. Not every provision within a section would need to be identical, but the section could not involve substantially more or less stringent requirements when taken as a whole. Additional standards not fitting within this framework would not be allowed, except as voluntary standards.

FDA anticipates that the standards will require periodic upgrading in response to changes in technology or experience gained in implementing mammography quality programs. If an accrediting body developed a desirable new standard that would be substantially different from existing standards, FDA would expect the body to propose a revision to the FDA standards, which would apply nationally to all accrediting bodies and facilities. FDA would expect to act expeditiously on such proposals. Alternatively, an organization could

create voluntary standards, so long as they did not become binding requirements. With the above three approaches—allowing flexibility for standards to be substantially the same as FDA's, modifying FDA standards over time, and allowing voluntary standards—FDA believes that the desirable flexibility to innovate is preserved without allowing the national quality standards or the integrity of the rulemaking process to be undermined. FDA requests comment on this approach, and on ways to improve it.

Section 354(f)(1)(H) of the PHS Act requires that standards be established relating to special techniques for mammography of patients with breast implants. FDA does not believe that sufficient information is presently available in this area to establish such standards and requests comments on the appropriate contents of such standards for consideration in development of the final rule.

B. Withdrawal of Approval

Section 354(e)(2) of the PHS Act requires the Secretary to promulgate regulations under which the Secretary may withdraw the approval of an accrediting body. Under this section, the Secretary is also required to establish a period of time for which certificates shall continue in effect for facilities accredited by a body whose approval has been withdrawn. The latter requirement is being addressed in subpart B of part 900 (published elsewhere in this issue of the **Federal Register**) because it pertains to certification. Regarding withdrawal of approval of an accrediting body, FDA has established the following tiered system of enforcement based on the severity of the accrediting body deficiencies identified: (1) Designation of probationary status of the accrediting body, contingent on the development and implementation of a satisfactory corrective action plan for correcting minor deficiencies, and (2) withdrawal of approval of the accrediting body, upon identification of severe accrediting body deficiencies or upon determination that a satisfactory corrective plan of action for minor deficiencies has not been developed or implemented within a specified time period. FDA believes that the agency should only resort to immediate withdrawal of approval of accrediting bodies in cases of very serious deficiencies such as fraud or gross incompetence in the performance of a critical accreditation function. Also, accrediting bodies should be allowed the opportunity to correct minor deficiencies without having their approval withdrawn unless they fail to correct such minor deficiencies in a sufficiently timely manner. FDA will issue notices of opportunity for hearing to accrediting bodies to contest FDA's adverse withdrawal decisions through informal hearings held in accordance with 21 CFR part 16. With regard to placement of an accrediting body on probationary status, FDA is considering whether facilities accredited by such bodies should be notified of the probationary status of the body and solicits comments on this issue for consideration in the development of the final rule. Such notification is not being required in this interim rule.

C. Accreditation and Compliance

Section 354(e)(3) and (e)(4) of the PHS Act require facilities to meet accrediting body standards in order to be accredited and require the accrediting body to take measures, including on-site inspections of a sample of facilities, to ensure that the facilities it accredits meet those standards. Because FDA believes that experience in this aspect of the program is needed before a final requirement is established, FDA has not specified a particular number or percentage of facilities that must be visited annually by the accrediting body; however, FDA is requiring accrediting body applicants to submit information in their applications justifying proposed methods for addressing the inspection requirements of section 354(e)(4) of the PHS Act. This inspection information will be evaluated by FDA in making rulings on applications. FDA has also specified that accrediting bodies must provide facilities the same amount of advance notice of inspection as was recommended in the Senate Report for annual FDA/State facility inspections. FDA believes that this advance notice will not compromise the inspection process and that it is necessary to minimize disruption to the operation of the facility and to the schedules of its patients.

D. Revocation of Accreditation

Section 354(e)(5) of the PHS Act requires the Secretary to establish a time interval for which a facility's certificate will remain in effect if the facility's accreditation is revoked by the accrediting body. This requirement is being addressed in subpart B of this part 900 (published elsewhere in this issue of the **Federal Register**) because it pertains to certification.

E. Evaluation and Report

Section 354(e)(6) of the PHS Act requires that the Secretary annually evaluate the performance of each approved accrediting body via inspection of facilities accredited by each body and by any additional means the Secretary deems appropriate. In addition to evaluating accrediting bodies via the required inspections, FDA will evaluate accrediting bodies by the following criteria: Clinical image review, phantom image review, speed and efficiency in accrediting facilities, responsiveness to FDA, and recordkeeping. FDA believes that evaluation according to these criteria is necessary because they are important to quality mammography and because they cannot be addressed adequately through facility inspections.

As specifically authorized by the legislation signed by the President on December 14, 1993 (H. Rept. 2202), this interim rule implementing section 354(e) of the PHS Act is being issued without proceeding through the normal notice-and-comment rulemaking process in order to enable FDA to meet the statutory deadline of October 1, 1994, for certification of all certifiable mammography facilities. The agency requests comments on this interim rule. Comments submitted to FDA will be considered in the development of the final rule. Also, the National Mammography Quality Assurance Advisory Committee, which has been chartered, and whose members are in the process of being selected, will be consulted in the development of the final rule in accordance with the requirements of section 354(n) of the PHS Act.

III. References

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

1. "The National Strategic Plan for the Early Detection and Control of Breast and Cervical Cancers," U.S. Department of Health and Human Services, 1993.

2. Conway, B. J., J. L. McCrohan, F. G. Rueter, and O. H. Suleiman, "Mammography in the Eighties," *Radiology*, 177:335–39, 1990.

3. "Screening Mammography—Low Cost Services Do Not Compromise Quality," U.S. GAO, GAO/HRD–90–32, January 1990.

4. "Report on the Mammography Quality Standards Act of 1992," U.S. Senate, Report 102–448, October 1, 1992.

5. American College of Radiology, "American College of Radiology Mammography Accreditation Program," July 1993.

IV. Paperwork Reduction Act of 1980

This interim rule contains information collections which are

subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Requirements for Accrediting Bodies of Mammography Facilities under Pub. L. 102–539—General Requirements.

Description: FDA is issuing an interim rule to implement the accreditation provisions of the MQSA. Under the new law, FDA will accept applications for approval as an accrediting body from private nonprofit organizations or State agencies. This rule establishes procedures for application to FDA as an accrediting body and requirements and responsibilities of such bodies. This action is being taken to ensure adequate and consistent evaluation of mammography facilities on a nationwide basis to help ensure their compliance with quality standards.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this interim rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attention: Desk Officer for FDA.

ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
21 CFR 900.3	6	1	6	60	360
21 CFR 900.4(b)	834	1	834	1	834
21 CFR 900.4(d)	10,000	1	10,000	8	80,000
21 CFR 900.4(e)	1,000	1	1,000	14.5	14,500
21 CFR 900.4(g)	6	1	700	6	4,200
Total					99,894

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

CFR section	No. of Recordkeepers	Annual hours per Recordkeeping	Total annual burden hours
21 CFR 900.4(f)	10,000	1	10,000
Total Annual Burden			109,894

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA has analyzed together the economic consequences of this rule and the accompanying rule on quality standards. It has tentatively concluded that the pair of rulemakings do not constitute an economically significant rule as defined in Executive Order 12866. It is possible, but not certain, that there will be significant economic effects on a substantial number of small entities. The preamble to the interim rule on quality standards and certification requirements for mammography facilities published elsewhere in this issue of the **Federal Register** contains a Regulatory Flexibility Analysis dealing with those effects. We welcome comments on both costs and benefits, and on alternatives or options which may be more cost-effective.

VII. Comments

Interested persons may, on or before January 20, 1994, submit to the Dockets Management Branch (address above) written comments regarding this interim rule. 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.

List of Subjects in 21 CFR Part 900

Electronic products, Mammography, Medical Devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

1. Subchapter I consisting of new part 900 is added to read as follows:

SUBCHAPTER I—MAMMOGRAPHY QUALITY STANDARDS ACT

PART 900—MAMMOGRAPHY

Subpart A—Accreditation

Sec.
900.1 Scope.
900.2 Definitions.
900.3 Application for approval as an accrediting body.
900.4 Responsibilities of accrediting bodies.
900.5 Evaluation.
900.6 Withdrawal of approval.
900.7 Hearings.

Subpart B—[Reserved]

Authority: Secs. 519, 537, and 704(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i, 360nn, and 374(e)); sec. 354 of the Public Health Service Act (42 U.S.C. 263b).

§ 900.1 Scope.

The regulations set forth in this part implement 42 U.S.C. 263b(b) through (f). The intent of subpart A of this part is to establish application procedures for accrediting bodies and to establish requirements and standards for such bodies to ensure that all mammography facilities in the United States are

adequately and consistently evaluated for compliance with quality standards for mammography. The intent of subpart B of this part is to establish procedures for facility certification and to establish quality standards for mammography facilities to assure safe, reliable, and accurate mammography on a nationwide level.

§ 900.2 Definitions.

The following definitions apply to subparts A and B of this part:

(a) *Accrediting body* or *body* means an entity that has been approved by FDA under 42 U.S.C. 263b(e)(1)(A) to accredit mammography facilities.

(b) *Certificate* means the certificate described in 42 U.S.C. 263b(b)(1).

(c) *Certification* means the state of approval of a facility by FDA to provide screening and diagnostic mammography services.

(d) *Clinical image* means a mammogram.

(e) *Facility* means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis through mammography activities, including any or all of the following: The operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

(f) *Interpreting physician* means a physician who interprets mammograms made during screening or diagnostic mammography procedures and who meets the requirements of § 900.14(a)(1).

(g) *Mammogram* means a radiographic image produced through mammography.

(h) *Mammography* means radiography of the breast.

(i) *Medical physicist* means a person meeting the qualifications for a medical physicist set forth in § 900.12(a)(3).

(j) *Patient* means any individual who undergoes clinical evaluation in a mammography facility, regardless of whether the person is referred by a physician or is self-referred.

(k) *Phantom* means a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(l) *Phantom image* means a radiographic image of a phantom.

(m) *Provisional certificate* means the provisional certificate described in 42 U.S.C. 263b(c)(2).

(n) *Radiographic equipment* means X-ray equipment used for the production of static X-ray images.

(o) *Radiological technologist* means an individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations and who meets the requirements in § 900.12(a)(2).

(p) *Qualified practicing physician* means a physician meeting the requirements of an interpreting physician as specified under § 900.12(a)(1).

(q) *Survey* means an on-site physics consultation and evaluation of a facility performed by a medical physicist.

§ 900.3 Application for approval as an accrediting body.

(a) *Eligibility.* Private nonprofit organizations or State agencies capable of meeting the requirements of this subpart A may apply for approval as accrediting bodies.

(b) *Application.* One copy of an application for approval as an accrediting body shall be submitted to the Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and should be marked ATTENTION: Mammography Program. Applications for approval as an accrediting body should include the following information:

(1) Name, address, and phone number of body and evidence of nonprofit status (i.e., of fulfilling Internal Revenue Service requirements as a nonprofit organization) if the body is not a State agency;

(2) Standards the body agrees to impose on facilities pursuant to 42 U.S.C. 263b(e)(3);

(3) Methods for performing clinical image review as required in 42 U.S.C. 263b(e)(1)(B)(i)(I);

(4) Methods for monitoring and evaluation of annual surveys of facilities by medical physicists as required in 42 U.S.C. 263b(e)(1)(B)(v);

(5) Methods for performing on-site inspections of facilities as required in 42 U.S.C. 263b(e)(4);

(6) Fee schedules, with supporting cost data; and

(7) Satisfactory assurances that the body will comply with the requirements of § 900.4.

(c) *Ruling on application.* FDA will approve an accrediting body if FDA determines upon review of the application that the body substantially meets (or will substantially meet when it begins to evaluate facilities) the requirements of this subpart, and the body's standards are substantially the same as the quality standards published under subpart B of this part in accordance with 42 U.S.C. 263b(f). If the applicant fails to substantially meet the requirements set forth in this subpart A, or if the applicant's standards are determined not to be substantially the same as the quality standards published under subpart B of this part, or if FDA determines that the applicant has not provided satisfactory assurances that it is capable of meeting the requirements established in this subpart A, FDA will notify the applicant of any problems it has identified with the application and request that the applicant resolve such problems within 90 days of receipt of notice. If the problems are substantially resolved to the satisfaction of FDA within the 90-day time period, the body will be approved as an accrediting body. If the problems are not substantially resolved to the satisfaction of FDA within the 90-day time period, the application for approval as an accrediting body will be rejected and the applicant so notified. A rejected application that has been modified so as to render it satisfactory is subject to resubmission at any time.

§ 900.4 Responsibilities of accrediting bodies.

(a) *Facility standards.* The accrediting body shall require that each facility it accredits meet standards for the performance of quality mammography that are substantially the same as those promulgated in subpart B of this part under 42 U.S.C. 263b(f). The requirements set forth by the body for accreditation of a facility shall address, at a minimum, the following aspects of performing quality mammography:

(1) Physician training, experience, certification, and continuing education;

(2) Technologist training, experience, certification, and continuing education;

(3) Medical physicist training, experience, certification, and continuing education;

(4) X-ray equipment characteristics, including a requirement that the X-ray equipment be specifically designed for mammography;

(5) Quality assurance and quality control programs for ensuring that quality mammography is practiced by the facility;

(6) Phantom image quality testing and objective criteria to be used for passing the image quality test;

(7) Maximum radiation dose for a single view for specific imaging systems;

(8) Information update provisions that require accredited facilities to update at least annually the information listed in this section that they have provided the accrediting body; and

(9) Medical recordkeeping and patient notification requirements.

(b) *Clinical image review.* The accrediting body shall review clinical images from each facility accredited by the body at least once every 3 years and shall also review a random sample of clinical images from each facility accredited by the body in each 3-year period beginning October 1, 1994. These clinical image reviews shall be conducted by a qualified practicing physician not associated with the facility. The clinical image reviews shall ensure that quality clinical images are produced in the facility on a routine basis, as measured by proper breast positioning and compression and overall image quality. Any qualified practicing physicians who conduct clinical image quality reviews shall not have a financial interest in the facilities they review for the accrediting body, nor shall such physicians have any other interest that would constitute an apparent or real conflict of interest, other than receiving a service fee from the accrediting body itself related solely to the work performed in conducting the clinical review.

(c) *Fees.* Fees charged to facilities for accreditation shall be reasonable. FDA will usually find fees to be reasonable if they are limited to recovering costs to the accrediting body, including overhead incurred proportionately in accrediting a given facility. Accrediting bodies may adjust fees annually for inflation in accordance with the Consumer Price Index (CPI).

(d) *Reports of physics survey.* (1) The accrediting body shall require every facility applying for accreditation to submit to the accrediting body, with its accreditation application, a report of a survey by a medical physicist to assess the facility's compliance with the accrediting body's standards established under paragraph (a) of this section. The accrediting body shall require that every facility it accredits undergo an annual survey by a medical physicist to assure continued facility compliance with applicable standards and to provide continued oversight of the facility's quality assurance program. The accrediting body shall require that the results of this survey be transmitted to the accrediting body, together with quality control records and any other information the body may require, as a part of the annual report about the facility.

(2) The accrediting body shall review the report of the annual physicist's survey, the quality control records of the facility, and other information that may come to its attention to determine if all the accrediting body's standards are being met by the facility. If the results of the survey or other information create doubt as to the quality of clinical images produced by the facility, then the accrediting body shall investigate by examination of recent clinical images from that facility to verify that the images meet the evaluation criteria of the accrediting body. If the accrediting body determines that the images are not of sufficient quality, the body shall determine necessary corrective measures to be taken by the facility, establish a schedule for implementation of such measures, and notify the facility that it must implement these measures within the specified schedule in order to retain accreditation. The accrediting body shall verify that the appropriate and necessary steps are taken by the facility within the schedule specified and that all accrediting body standards are being substantially met or will be substantially met. However, the responsibility for compliance remains with the facility.

(e) *On-site inspections.* On an annual basis, in accordance with methods specified in the accrediting body's application for approval, the accrediting body shall make on-site visits to a sufficient number of facilities accredited by the body to assess overall compliance with the accrediting body standards and the quality of performance of mammography. The accrediting body shall prepare and submit one copy of a report of the findings of each of these visits to FDA at the address specified in § 900.3(b). The facility may be given advance notice at the discretion of the accrediting body.

(f) *Complaints.* The accrediting body shall require all facilities it accredits to publish an address where complaints can be filed with the accrediting body, shall investigate such complaints within 90 days of receipt, and shall maintain records of all of such complaints for a period of 3 years from the time of completion of the investigation. Complaint records shall include a summary of the complaint and of the results of the accrediting body's investigation.

(g) *Reporting and recordkeeping.* All reporting requirements listed in this section shall be fulfilled by the accrediting body by sending reports to FDA at the address specified in § 900.3(b). Reports required within 48 hours may be made by phone initially but must be followed by a written notification within 5 days. The accrediting body shall:

(1) Comply with any reporting and recordkeeping requirements specified in paragraphs (a) through (f) of this section;

(2) submit to FDA the names of any facilities for which the accrediting body denies, suspends, or revokes accreditation, and the basis for the action, within 48 hours of the action;

(3) Obtain FDA authorization for any change the accrediting body proposes to make in the standards of the body under § 900.3(c);

(4) collect the information required by 42 U.S.C. 263b(d) for each facility accredited by the body and submit it to FDA within 5 days of the date of accreditation;

(5) accept applications containing the information required in 42 U.S.C. 263b(c)(2) for provisional certificates and in § 900.11(b)(2) for extensions of provisional certificates, on behalf of FDA and notify FDA within 5 working days of the successful completion of the initial application; and

(6) provide to FDA any information requested by FDA about any particular facility accredited by the body within 5 days of receipt of the request.

§ 900.5 Evaluation.

FDA will evaluate annually the performance of each approved accrediting body by:

(a) Inspecting a sample of the facilities accredited by the body and evaluating the reports of inspections to ascertain whether the facilities accredited by the accrediting body are in compliance with the standards promulgated by the agency in subpart B of this part, and

(b) Evaluating a sample of the body's clinical image and phantom image reviews, evaluating the body's speed and efficiency in accrediting facilities, evaluating the body's ability to file reports within deadlines, and reviewing the body's records and recordkeeping processes.

§ 900.6 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.5 or through other information that comes to the attention of the agency, that an accrediting body is not in substantial compliance with this subpart, FDA shall initiate enforcement actions as follows:

(a) *Major deficiencies.* If FDA determines that the accrediting body has major deficiencies in performance, such as commission of fraud, or material false statements, or failure to perform a major accreditation function satisfactorily, or significant noncompliance with the requirements of this subpart A, FDA will withdraw its approval of that accrediting body and notify such body of the grounds on which the approval was withdrawn.

(b) *Minor deficiencies.* If FDA determines that the accrediting body has

minor deficiencies in the performance of an accreditation function, including minor failure to comply with this subpart A, FDA will notify the body that it has 90 days to submit to FDA a plan of corrective action addressing the problems specified by FDA. This plan must include a summary of planned corrective actions and a schedule for their implementation.

(1) If the corrective action plan is received within the 90-day time period specified and is satisfactory to FDA, FDA will notify the body that it is on probationary approval status until further notice. This probationary status will remain in effect until such time as the body can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and the corrective actions taken have substantially eliminated all identified problems. When such determination of restoration of satisfactory performance is made, FDA will restore the body to full approval status.

(2) If the body does not submit a satisfactory corrective action plan within the designated 90-day time period or does not implement an FDA-approved corrective action plan within the time interval specified in the corrective action plan (as amended, with FDA approval, if necessary) FDA will withdraw approval of the body as an accrediting body. In cases of withdrawal of approval of accrediting bodies, if FDA finds that there are satisfactory assurances that the unacceptable performance of the accrediting body has been substantially resolved, on application by the accrediting body, FDA may reinstate the approval of the accrediting body, unless there have been fraud or material false statements.

§ 900.7 Hearings.

Opportunities to challenge final adverse actions taken by FDA regarding approval of accrediting bodies, withdrawal of approval of accrediting bodies, or rejection of a proposed fee shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

Dated: December 9, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-30992 Filed 12-16-93; 10:51 am]

BILLING CODE 4160-01-F

21 CFR Part 900

[Docket No. 93N-0351]

Quality Standards and Certification Requirements for Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to implement the Mammography Quality Standards Act of 1992 (the MQSA), which requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. This rule establishes requirements for certification of mammography facilities, including quality standards for mammography. This action is being taken to assure safe, accurate, and reliable mammography on a nationwide basis. The agency requests comments on the contents of this document.

DATES: These regulations are effective February 22, 1994. Written comments by January 20, 1994. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 900.12(d)(1)(i), effective February 22, 1994.

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: Charles K. Showalter, Center for Devices and Radiological Health (HFZ-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-3311.

SUPPLEMENTARY INFORMATION:

I. Background

Breast cancer is a leading cause of death among women and is most treatable in the early stages (Ref. 1). Research indicates that, with widespread use of high-quality mammography, breast cancer mortality could be significantly reduced through the identification of early cancerous lesions and early implementation of treatment, especially in older women. However, the quality of mammography at some facilities has been found to be inadequate, resulting in missed diagnosis of early lesions, delayed treatment, and otherwise avoidable increases in mortality (Refs. 2 and 3). Concerns about mammography quality and breast cancer prompted the establishment of various private, State, and Federal programs for assuring quality mammography. Disadvantages of such programs are that they are either voluntary, such as the Mammography Accreditation Program of the American College of Radiology (ACR), or are mandatory but do not apply to all facilities in the United States, such as State programs and programs administered by the Health Care Financing Administration (HCFA). Also, most of these programs lack important mammography quality evaluation criteria or oversight mechanisms, such as clinical image review and on-site inspections of facilities. Therefore, on a nationwide level, there are no universal mandatory standards for providing safe, accurate, and reliable mammography services.

In order to rectify this situation, the MQSA (Pub. L. 102-539) was enacted to establish uniform, national quality standards for mammography. The MQSA amends part F of Title III of the Public Health Service Act (the PHS Act) (42 U.S.C. 262 *et seq.*) by adding new section 354 (42 U.S.C. 263b) to establish a comprehensive statutory mechanism for certification and inspection of all mammography facilities under the regulatory jurisdiction of the United States. Under the MQSA, only those facilities which are in compliance with uniform Federal standards for safe, high-quality mammography services may lawfully continue operation after October 1, 1994. Operation after that date is contingent on receipt, after application, of a certificate from the Secretary of Health and Human Services (HHS) (the Secretary), and by delegation, FDA, that the facility meets the minimum mammography quality standards promulgated under section 354(f) of the PHS Act. This requirement applies to all facilities producing, processing, or interpreting mammograms, whether for screening or diagnostic purposes, except for facilities of the Department of Veterans Affairs.

The authority to implement the MQSA was delegated by HHS to FDA. FDA is issuing this interim rule to establish regulations implementing provisions of section 354(b), (c), (d), (e), and (f) of the PHS Act pertaining to certification procedures and quality standards for mammography. A more detailed legislative history and clinical rationale for this regulation is provided in the preamble for the accreditation

regulations published elsewhere in this issue of the **Federal Register**.

Specifically, the MQSA requires the following:

1. Accreditation of mammography facilities by private, nonprofit organizations or State agencies which have met the standards established by the Secretary for accrediting bodies and have been approved by the Secretary. The MQSA requires a direct Federal audit of the accrediting bodies through facility inspections by Federal officers. It also requires that, as a part of the overall accreditation process, clinical mammograms from each facility be evaluated for quality.

2. An annual mammography facility physics survey, consultation, and evaluation performed by a certified or State-licensed/approved medical physicist.

3. Annual inspection of mammography facilities, to be performed by Federally-certified or State-certified inspectors. The MQSA requires a Federal audit of the facility inspection program by inspections of a sample of facilities.

4. Establishment of qualification standards for interpreting physicians, mammography technologists, medical physicists, and mammography facility inspectors.

5. Specification of boards or organizations eligible to certify the adequacy of training and experience of particular mammography personnel.

6. Establishment of quality standards for mammography equipment and practices, including quality assurance and quality control programs.

7. Establishment by the Secretary of a National Mammography Quality Assurance Advisory Committee. Among other things, the advisory committee will advise the Secretary on the appropriate quality standards for the mammography facilities and the accrediting bodies.

8. Establishment of standards governing recordkeeping for patient files and requirements concerning mammography reporting and patient notification by physicians.

II. Provisions of the Rule

The MQSA requires the Secretary to set quality standards for certification of mammography facilities. The Senate report on the MQSA states that such standards must be no less stringent than those established by ACR (Ref. 4). The legislative history indicates that Congress intended that the standards established by the ACR program serve as the starting point for quality standards, although Congress also intended that, over time, the standards should undergo improvements stimulated by Federal oversight. Thus, FDA has reviewed the ACR standards and procedures in arriving at the content of this interim rule (Refs. 5 and 6). FDA has also reviewed standards and procedures developed by HCFA, a part of HHS which operates a system of certification for facilities under Medicare (December 31, 1990, 55 FR 53510). FDA's review has also included relevant State accreditation programs.

On December 14, 1993, the President signed legislation (H. Rept. 2202) granting interim rule authority to the Secretary for promulgation of standards required by the MQSA under section 354(e) pertaining to accreditation bodies and under section 354(f) pertaining to quality standards. FDA, in this interim rule, is also establishing some regulations under section 354(b), (c), and (d) because, in FDA's judgment this is necessary for a full implementation of section 354(e) and (f). The interim rule authorization was provided in recognition of the fact that the certification deadline of October 1, 1994, could not be met without streamlining the process for initial promulgation of standards. Granting of this interim rule authority, rather than extension of the deadline to develop standards, was decided on because of the perceived urgent public health need for Federal mammography standards. FDA has chosen to use this authority in order to meet the October 1, 1994, deadline for certification of facilities. While FDA believes that there is an urgent public health need for standards to be in effect, the agency also wants to provide time for facilities to meet the standards so that they can continue lawfully to operate and so that quality mammography will be available.

Under the interim rule legislation, the Secretary is authorized to issue temporary, interim rules setting forth standards for approving accrediting bodies and quality standards for mammography facilities, under sections 354(e) and (f) of the PHS Act. Under the abbreviated process, the Secretary is required to adopt existing standards to the maximum extent feasible, such as those established by HCFA, private voluntary accreditation bodies (e.g., ACR) and some States. Also, in developing the interim rules, the Secretary is not required to consult the National Mammography Quality Assurance Advisory Committee. However, following issuance of the initial standards, Congress intends that the Secretary proceed with the more extensive rulemaking procedures envisioned by the original enactment of the MQSA, including the statutorily required consultation with the Advisory Committee.

Thus, the interim rule authority permits the Secretary to expedite establishment of legally binding initial accreditation and quality standards based on standards currently in use. These initial standards will be used to accredit and certify facilities before the October 1, 1994, deadline, while the Secretary simultaneously continues to evaluate and develop the final standards under section 354(e) and (f) of the PHS Act. This second set of final regulations will supersede the initial regulations.

Because these regulations fall short of implementing the entire MQSA, FDA expects, in the future, to propose for notice and comment further implementing regulations not made necessary by section 354(e) and (f) of the PHS Act, such as regulations implementing section 354(r) concerning funding.

The certification regulations implemented by this interim rule are consistent with the congressional intent to incorporate existing standards to the maximum extent possible. Significant provisions of the certification regulations are summarized below.

A. General

Subpart B of a new part 900 has been established for regulations pertaining to certification of mammography facilities. Section 900.10 of new subpart B sets forth the applicability of certification requirements. As specified by the MQSA, covered facilities include all facilities under the regulatory jurisdiction of the United States that provide mammography services, except facilities of the Department of Veterans Affairs.

B. Requirements for Certification

Section 354(b) of the PHS Act requires that, by October 1, 1994, facilities obtain and prominently display an HHS-issued certificate or provisional certificate in order to: (1) Operate radiological equipment for mammography, (2) provide for processing of film used in mammography (at the facility or elsewhere), and (3) provide for interpretation of mammograms (at the facility or elsewhere). Section 354(c) and (d) of the PHS Act specify application, issuance and renewal requirements for certificates and provisional certificates as follows: certificates may be issued or renewed with an effective period of up to 3 years, and provisional certificates may be in effect for up to 6 months, with a one-time 90-day extension allowance for extenuating circumstances. Also, in section 354(d) of the PHS Act it is

stipulated that applicants for certificates should not be required to provide in an application to the Secretary any information which the applicant has already supplied to the body which accredited the applicant, except as required by the Secretary.

Certification requirements and procedures are set forth in new § 900.11. To implement the certification requirements before the statutory deadline, FDA envisions the likelihood of issuing certificates automatically to facilities already accredited by organizations whose existing accreditation program substantially meets the requirements of subpart A of part 900. For example, ACR would meet these criteria, since the ACR includes the statutorily mandated clinical image review as part of its accreditation process, among other requirements. Therefore, if the ACR applies to FDA for approval as an accrediting body and is so approved, ACR-accredited facilities (over 6,000 of the estimated 10,000 or more facilities in the United States) would qualify for automatic certification. In addition, if, based on their existing standards, other existing accrediting organizations are approved as accrediting bodies by FDA, facilities already accredited by such bodies under such standards would also receive automatic certification. However, in order for any facility to receive automatic certification, it will first be necessary that the body which accredited the facility successfully apply to FDA for approval as an accrediting body in accordance with subpart A of part 900.

Because facilities must be accredited in order to obtain a certificate, FDA provides procedures in new § 900.11(a) for obtaining a list of FDA-approved accrediting bodies. Facilities should note that, because of the concurrent publication of regulations for accreditation and certification, such a list will not be available until such time as FDA receives, evaluates, and rules on applications from potential accrediting bodies.

In keeping with the provision to limit duplicative submission of application information, FDA has established a certificate application system whereby a facility need only submit the statutorily mandated certificate application information to the accrediting body from which it obtained accreditation. In accordance with subpart A of part 900, accrediting bodies will then be required to notify FDA of the names and addresses of facilities they accredit within 5 days of the date of accreditation. FDA will issue certificates to facilities on the basis of such notifications from accrediting bodies, with no further action required on the part of facilities. FDA believes that this is the most efficient means of issuing certificates, eliminating the need for a special FDA application form and minimizing information collection and dissemination requirements.

A similar procedure has been established for provisional certificates. Facilities that have not obtained a certificate by October 1, 1994, but have applied for accreditation from an approved accrediting body will be eligible to receive a provisional certificate. To obtain a provisional certificate, a facility must submit the statutorily mandated application information to the accrediting body from which the facility has applied for accreditation. New facilities may also submit such information directly to FDA. If the accrediting body cannot act on a final certification application by the October 1, 1994 deadline, the accrediting body must then be required to notify FDA of having received an acceptable application, and FDA will issue a provisional certificate on the basis of such notification, with no further action required on the part of the facility. To request an additional 90-day extension to a provisional certificate, prior FDA approval is required because of differing statutory criteria. A facility should submit to the accrediting body a statement of what it is doing to obtain certification and information documenting that a significant adverse impact on the regional availability of mammography would result if such extension was not granted. That information must be forwarded by the accrediting body to FDA, which will determine whether such an extension would be justified.

FDA has designed the certificate issuance and renewal system so that future applications for renewal of certificates will be submitted, received and acted upon steadily over time, rather than all together. Although section 354(c)(1) of the PHS Act allows FDA to issue certificates with an effective period of up to 3 years, FDA believes that to set such an effective period for initial certificates would result in FDA having to process and renew over 10,000 certificates during a short time period within each renewal cycle. To avoid such a situation, FDA has established the expiration date for initial certificates to be 30 days after the expiration date of a facility's existing accreditation, with subsequent certification renewals then having an effective period of 3 years. This system will spread certification renewals over time because the thousands of facilities that are expected to be eligible for automatic certification, as discussed above, were accredited steadily over a period of years. Therefore, under the certification system established, since the expiration of facilities' accreditation is staggered over time, expiration of certificates will be similarly staggered, allowing more efficient use of FDA resources. This system offers the additional advantage for facilities, accrediting bodies, and FDA of closely coupling the accreditation and certification periods.

C. Quality Standards

Section 354(f) of the PHS Act requires the establishment by the Secretary (and by delegation, FDA) of quality standards that facilities must meet in order to become certified. Comparable standards must be adopted and imposed by accrediting bodies in accordance with subpart A of part 900. The quality standards that must be established include: (1) Standards that require establishment and maintenance of a quality assurance and quality control program, which must be overseen by a qualified medical physicist; (2) standards that require use of radiological equipment specifically designed for mammography; (3) requirements for training, licensure, certification and experience of personnel involved with mammography, including interpreting physicians, radiologic technologists, and medical physicists; (4) requirements that facilities maintain mammograms in the permanent medical records of a patient for specified time periods and prepare written reports of the results of any mammogram, as well as communicate those results to the patient in lay terms if the patient has no physician; and (5) standards relating to special techniques for mammography of patients with breast implants.

In § 900.12 of this interim rule, FDA has established standards for personnel, equipment, and practices which are substantially the same as those of the ACR; in fact, FDA has incorporated by reference the ACR's standards for quality assurance and quality control. FDA participated in the development of the ACR standards and believes that they are based on sound scientific principles and clinical judgment gained through extensive experience developing mammography quality assurance practices. The rationale for the ACR standards incorporated in this regulation is provided in a report from the National Council on Radiation Protection and Measurements, which formed the basis for the ACR standards (Ref. 7). FDA believes that the use of the

ACR standards in implementing the MQSA will substantially improve the overall level of mammography quality in the United States, while also allowing FDA to meet the statutory deadlines established by Congress, although FDA believes that improvements in the standards may be necessary over time. FDA solicits comments on what those improvements should be.

For mammography personnel, FDA has established training, certification, education and experience requirements which FDA believes are sufficiently stringent to ensure quality mammography, while allowing needed flexibility to certain organizations with highly mobile personnel, such as the military and Indian Health Service. FDA has also established alternative criteria to the requirements for licensing and certification of medical physicists, in accordance with section 354(f)(1)(E)(iii) of the PHS Act. This provision allows such alternatives in the first 5 years after the date of enactment of the MQSA in order to minimize initial problems with medical physicist shortages that could otherwise arise.

Standards for equipment, dose, quality assurance and quality control are consistent with ACR requirements, and the rationale for these requirements is provided in Ref. 7. Quality assurance and quality control (QA/QC) standards have been addressed partially with an incorporation by reference. FDA has incorporated by reference the most recent ACR QA/QC standards for equipment, rather than develop and codify separate such FDA standards, because, for now, the ACR standards are acceptable without alteration, and the incorporation by reference enables FDA to substantially reduce the volume of material published in the **Federal Register** and Code of Federal Regulations (CFR). FDA has codified its own standards for other aspects of QA/QC pertaining to phantom images, clinical images, clinical image interpretation, and medical physicist surveys.

Requirements established for reporting and recordkeeping are consistent with the requirements of the PHS Act. As discussed in the regulations for subpart A of part 900, FDA does not believe that sufficient information is presently available with regard to special requirements for mammography of patients with breast implants. FDA requests comments on the appropriate contents of such standards for consideration in development of the final rule for subpart B (and for subpart A).

D. Revocation of Facility Accreditation or Accrediting Body Approval

In accordance with section 354(e)(2) and (e)(5) of the PHS Act, FDA has established regulations in new § 900.13 pertaining to the effects on certification of: (1) Revocation of a facility's accreditation by an accrediting body, and (2) withdrawal of the approval of an accrediting body by the Secretary. In cases of revocation of a facility's accreditation, the facility's certificate will remain in effect until such time as determined by the agency. This will allow the agency to evaluate the basis for revocation and determine what further action may be required, such as an inspection, corrective action plan, or revocation of the facility's certificate. Withdrawal of approval of an accrediting body may have no bearing on the quality of mammography being performed at facilities accredited by that body. Therefore, FDA believes that such facilities should be allowed a reasonable amount of time (1 year) to become reaccredited and recertified, subject to FDA's determination that the facilities continue to perform quality mammography.

As specifically authorized by the legislation signed by the President on December 14, 1993 (H. Rept. 2202), this interim rule implementing section 354(b), (c), (d), (e), and (f) of the PHS Act is being issued without proceeding through the normal notice-and-comment rulemaking process in order to enable FDA to meet the statutory deadline of October 1, 1994, for certification of all certifiable mammography facilities. Comments on this interim rule can be submitted to FDA and will be considered in the development of the final rule. The value of these comments will be enhanced by the extent to which the comments reflect an understanding of the MQSA and support their statements with: (1) Scientific and technical data from the scientific literature and from their own experience, and/or (2) detailed rationale and justification. In addition to considering comments received on this interim rule, the FDA will consult the National Mammography Quality Assurance Advisory Committee (which has been chartered and whose members are in the process of being selected) in the development of final regulations, as required by section 354(n) of the PHS Act.

III. References

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

1. "The National Strategic Plan for the Early Detection and Control of Breast and Cervical Cancers," U.S. Department of Health and Human Services, 1993.

2. Conway, B. J., J. L. McCrohan, F. G. Rueter, and O. H. Suleiman, "Mammography in the Eighties," *Radiology*, 177:335–39, 1990.

3. "Screening Mammography—Low Cost Services Do Not Compromise Quality," U.S. GAO, GAO/HRD–90–32, January 1990.

4. "Report on the Mammography Quality Standards Act of 1992," U.S. Senate, Report 102–448, October 1, 1992.

5. American College of Radiology, "American College of Radiology Mammography Accreditation Program," July 1993.

6. American College of Radiology, "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual, and Medical Physicist's Manual," February, 1992.

7. National Council on Radiation Protection and Measurements, "Mammography—User's Guide," NCRP Report No. 85, August, 1987.

IV. Paperwork Reduction Act of 1980

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Quality Standards and Certification Requirements for Mammography Facilities under Pub. L. 102–539—General Requirements.

Description: FDA is issuing an interim rule to implement the certification and quality standards provisions of the MQSA. This rule establishes requirements for certification of mammography facilities, including quality standards for mammography. This action is being taken to assure safe, accurate, and reliable mammography on a nationwide basis.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this interim rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for

reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, D.C. 20503, Attention: Desk Officer for FDA.

ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
21 CFR 900.11(b)(2)	25	1	25	2	50
Total					50

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

CFR Section	No. of recordkeepers	Annual hours per recordkeeping	Total annual burden hours
21 CFR 900.11(c)(1)	1,000	1	1,000
21 CFR 900.12(e)(1)	10,000	1	10,000
Total Annual Burden			11,050

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

Executive Order 12866 requires us to assess the costs and benefits of proposed rules. For those rules which have an annual effect on the economy of $100 million or more, or have certain adverse effects on the economy such as a reduction in productivity or competition, a benefit cost analysis must be prepared. We do not believe that these rules are economically significant under the Executive Order criteria. However, the voluntary Regulatory Flexibility Analysis (RFA) presented below covers both benefits and costs. We have complied with other requirements of the Executive Order (e.g., consistency with a statutory mandate, avoidance of interference with State, local, or tribal functions).

The Regulatory Flexibility Act requires us to prepare an RFA if a rule has a significant effect on a substantial number of small entities. For purposes of the act, FDA classifies nearly all mammography facilities as small entities. We do not have sufficient information to determine conclusively whether or not this test is met. Regardless, in the spirit of the act we have prepared the following RFA.

There are approximately 10,000 mammography facilities in the United States. These rules will impose on many of them incremental costs of meeting quality standards relating to personnel, equipment, quality assurance, and medical records.

For purposes of our analysis, we assume that approximately 8,200 facilities already have accreditation or have applied for accreditation and will not incur significant additional costs. Because our interim standards are largely based on and consonant with ACR standards, these facilities should face little additional cost. Moreover, most of these facilities have already been regulated under HCFA rules governing screening mammography under Medicare, and those rules impose similar requirements in a number of areas.

For the remaining 1,800 facilities, we have estimated costs for each substantive requirement (these estimates are available in the Threshold Analysis on file with the docket clerk). In total, we estimate that personnel standards will impose one-time costs of about $2 million, and recurring costs of about $3 million. One-time equipment costs are likely to be about $23 million. Recurring quality assurance costs are likely to total about $19 million. Recurring medical record costs are likely to be about $5 million. In total, the quality standards rule is likely to create one-time costs of about $26 million and recurring costs of about $27 million. Amortizing the one-time costs, the annual cost of the interim rule is about $33 million. Across 1,800 facilities, the average cost will be about $18,000 a year. (A copy of the detailed calculations underlying these numbers is on file with the Dockets Management Branch).

There are 23.5 million mammograms performed annually in the United States, at an average reimbursement of about $100. Total revenues are approximately $2.35 billion, or an average of $235,000 per facility. Thus, expected costs of meeting the quality standards are likely to be about 8 percent of revenues.

In addition, we expect that accreditation costs, borne overwhelmingly by facilities, will be approximately $9 million a year, less than $900 a facility. Most of this cost is due to the requirement for an annual physics survey.

Thus, for those facilities facing involuntary costs, we expect annual costs to average about $19,000 a facility to upgrade under the new regulatory system. Assuming average annual revenues of $235,000, this cost would average about 8 percent of revenues. However, it is possible that this group of facilities may perform fewer mammograms than average, and cost impacts may be proportionately higher. It is also likely that at least some facilities, those with obsolete equipment and low volume, will elect to stop performing mammography rather than upgrade, particularly in areas where there are competing facilities that meet these standards. We do not have any data on likely numbers facing unusually high costs, and welcome comments on the scope and magnitude of such problems.

There are several benefits associated with the uniform national oversight of mammography facilities provided for by this interim rule. First, as discussed in the preamble, research indicates that widespread use of high-quality mammography could significantly reduce breast cancer mortality, especially in older women; however, at some mammography facilities, the quality of service does not permit accurate, reliable detection of early carcinoma. Because the MQSA requires all facilities in the United States to be accredited and to meet quality standards

established by FDA, there should be improvement in the detection rate of early disease. This improvement may be in part due to the clinical image review aspect of the MQSA, which will provide quality monitoring at a level not previously achieved. In addition, by requiring periodic inspections of mammography facilities, the MQSA provides greater assurance of facility adherence to appropriate quality assurance practices.

Improved mammography quality could allow more patients to enjoy the benefits of early detection and thereby reduce the morbidity associated with treating later stage disease. There may also be a reduction in the number of malpractice claims filed for failure to diagnose early breast cancer.

Unfortunately, there are insufficient data available to quantify the potential benefits of the MQSA. Such quantification would require an estimate of the number of lives that could be saved, the number of patients that could be treated at earlier stages, and the number of malpractice claims that could be eliminated as a direct result of the MQSA. The MQSA has a provision for evaluating the functioning and effectiveness of breast cancer screening in the United States, including the role of the MQSA in this process, and such an evaluation will contribute scientific knowledge about these topics. This in turn could contribute quantifiable information about the benefits of the MQSA.

While we do not now have the data that would allow a precise estimate of benefits, their potential magnitude is substantial. For example, if 1 percent of the roughly 13.6 million women screened annually in fact have cancer, if as few as 1 percent of these get false negative results, if these rules could prevent one-half of those false negatives, and if one-fourth of those women's lives could be saved by early treatment, then about 170 lives annually would be saved by these rules. Using any conventional method of valuing lives saved, this would be many times higher than the costs of these regulations. In fact, saving even a handful of lives annually—and we expect far greater effects—would justify the costs of this regulatory approach.

The statute is prescriptive in establishing the new regulatory system. By design, it does not permit a substantially different regulatory approach than the one we have presented. However, it does allow for discretion on details of the individual standards. In devising these standards we sought to avoid unnecessary burden. For example, we allow training and experience, rather than a credential, as qualification for interpreting mammograms. It is possible that there are other changes in details that would either improve the effectiveness of these standards or reduce costs without compromising effectiveness. We welcome comments on any such options and will consider them carefully in revising these rules. We would particularly welcome comment on potential problems for small facilities or for rural areas and on workable solutions for these.

VII. Comments

Interested persons may, on or before January 20, 1994, submit to the Dockets Management Branch (address above) written comments regarding this interim rule. 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.

List of Subjects in 21 CFR Part 900

Electronic products, Incorporation by reference, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: Secs. 519, 537, and 704(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i, 360nn, and 374(e)); sec. 354 of the Public Health Service Act (42 U.S.C. 263b).

2. New subpart B, consisting of §§ 900.10 through 900.14, is added to read as follows:

Subpart B—Quality Standards and Certification

Sec.
900.10 Applicability.
900.11 Requirements for certification.
900.12 Quality standards.
900.13 Revocation of accreditation and accrediting body approval.
900.14 Hearings regarding certification decisions.

Subpart B—Quality Standards and Certification

§ 900.10 Applicability.

The provisions of this subpart are applicable to all facilities under the regulatory jurisdiction of the United States that provide screening and/or diagnostic mammography services, with the exception of facilities of the Department of Veterans Affairs.

§ 900.11 Requirements for certification.

(a) *General.* After October 1, 1994, a certificate issued by FDA will be required for lawful operation of all facilities. In order to obtain a certificate from FDA, facilities are required to meet the quality standards in § 900.12 and to be accredited by an accrediting body approved by FDA. On request from a facility, FDA will provide such facility with a current list of approved accrediting bodies. Any request for such list shall include the name and address of the facility and must be sent to the address provided in § 900.3(b).

(b) *Application*—(1) *Certificates.* When applying for accreditation to an approved accrediting body, a facility shall submit to such accrediting body the information required in 42 U.S.C. 263b(d)(1). If and when the facility becomes accredited, information required for certification of the facility shall be forwarded to FDA by the accrediting body, in accordance with § 900.4(g)(4).

(2) *Provisional certificates.* Facilities that have not obtained a certificate by October 1, 1994, but have applied for accreditation to an approved accrediting body by then are eligible to receive a provisional certificate. To receive a provisional certificate, a facility shall submit the information required in 42 U.S.C. 263b(c)(2) to an approved accrediting body. New facilities may also submit such information directly to FDA. If and when the accrediting body determines that such application is sufficiently complete for review purposes, this fact shall be communicated to FDA by the accrediting body in accordance with § 900.4(g)(5). To apply for a 90-day extension to a provisional certificate, a facility shall submit to the accrediting body a statement of what the facility is doing to obtain certification and evidence that a significant adverse impact on the regional availability of mammography would result if such facility did not obtain an extension. Such information shall be forwarded to FDA by the accrediting body in accordance with § 900.4(g)(5).

(c) *Issuance and renewal of certificates*—(1) *Certificates.* FDA will issue a certificate to a facility within 30 days of receipt of notification from an approved accrediting body of the accreditation of such facility. The initial certificate for a facility shall remain in effect until 30 days after the date of expiration of the facility's existing

accreditation unless certification and/or accreditation of the facility is revoked prior to such deadline. FDA will issue a renewed certificate to a previously certified facility within 30 days of receipt of notification from an approved accrediting body of renewal of the accreditation of such facility. A renewed certificate shall be effective for a period of 3 years from the date of issuance, unless certification and/or accreditation of the facility is revoked prior to such deadline.

(2) *Provisional certificates.* FDA will issue a provisional certificate to a facility within 10 days of receipt of notification from an approved accrediting body of satisfaction of the requirements of paragraph (b)(2) of this section. A provisional certificate shall be effective for 6 months from the date of issuance. FDA will issue a 90-day extension for a provisional certificate within 10 days of receipt from the accrediting body of the information required in paragraph (b)(2) of this section, provided that FDA determines that the statutory prerequisites for the extension as set forth in section 354(c)(2) of the Public Health Service Act have been met. No renewal of a provisional certificate beyond the 90-day extension can occur.

§ 900.12 Quality standards.

The following requirements establish the minimum quality standards that must be met by a facility to be eligible for certification to provide screening and/or diagnostic mammography services:

(a) *Personnel.* The following requirements apply to personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities. Lists of personnel certifying bodies approved by FDA and referenced in this section may be obtained by submitting to FDA at the address specified in § 900.3(b) a request containing the information needed and the name and address of the facility.

(1) *Interpreting physician.* Interpreting physicians shall meet the following requirements:

(i) Be licensed to practice medicine in the State or facility in which they are practicing; and

(ii) Have the following training:

(A) Be certified by one of the bodies approved by FDA to certify interpreting physicians; or

(B) Have had at least 2 months of documented full-time training in the interpretation of mammograms, including instruction in radiation physics, radiation effects, and radiation protection; and

(C) Have 40 hours of documented continuing medical education in mammography. Time spent in residency specifically devoted to mammography will be accepted, if documented in writing by the radiologist; and

(iii) Have the following initial experience:

(A) Have read and interpreted the mammograms from the examinations of at least 240 patients in the 6 months preceding application; or

(B) Read and interpret mammograms as specified in paragraph (a)(1)(iii)(A) of this section under the direct supervision of a fully qualified interpreting physician; and

(iv) Have the following continuing experience:

(A) Continue to read and interpret mammograms from the examination of an average of at least 40 patients per month over 24 months; and

(B) Continue to participate in education programs, either by teaching or completing an average of at least five continuing medical education credits in mammography per year.

(2) *Radiological technologist.* Radiological technologists shall meet the following requirements:

(i) Have a license to perform radiographic procedures in the State or facility where they are practicing; or

(ii) Have certification by one of the bodies approved by FDA to certify radiologic technologists; and

(iii) For those radiological technologists associated with facilities applying for accreditation before October 1, 1996:

(A) Have undergone training specific to mammography, either through a training curriculum or special mammography course, and accumulate at least an average of five continuing education units per year related to mammography; or

(B) Have 1 year of experience in the performance of mammography and by October 1, 1996, meet the training requirements of paragraph (a)(2)(iii)(A) of this section; and

(iv) For those radiological technologists associated with facilities applying for accreditation on and after October 1, 1996, meet the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this section and undergo specific training in mammography through documented curriculum and on-the-job training under the direct supervision of experienced mammographers; and

(v) Participate in formal continuing education programs and accumulate an average of at least five continuing education units in mammography per year.

(3) *Medical physicist.* Medical physicists shall meet the following requirements:

(i) Have a license or approval by a State to conduct evaluations of mammography equipment and procedures as required under the Public Health Service Act; or

(ii) Have certification in an accepted specialty area by one of the bodies approved by FDA to certify medical physicists; or

(iii) For those medical physicists associated with facilities applying for accreditation before October 27, 1997, meet the following criteria:

(A) Have a masters, or higher, degree in physics, radiological physics, applied physics, biophysics, health physics, medical physics, engineering, radiation science, or in public health with a bachelor's degree in the physical sciences; and

(B) Have 1 year of training in medical physics specific to diagnostic radiological physics; and

(C) Have 2 years of experience in conducting performance evaluation of mammography equipment; and

(iv) Participate in continuing education programs related to mammography, either by teaching or completing an average of at least five continuing education units per year.

(b) *Equipment*—(1) Radiographic equipment designed for conventional radiographic procedures that have been modified or equipped with special attachments for mammography shall not be used for mammography.

(2) Radiographic equipment used for mammography shall:

(i) Be certified pursuant to § 1010.2 of this chapter as meeting the applicable requirements of §§ 1020.30 and 1020.31 of this chapter in effect at the date of manufacture;

(ii) Be specifically designed for mammography;

(iii) Incorporate a breast compression device; and

(iv) Have the provision for operating with a removable grid, except for xeromammography systems.

(c) *Dose.* The average glandular dose delivered during a single cranio-caudal view of an accepted phantom simulating a 4.5 centimeter thick, compressed breast consisting of 50 percent glandular and 50 percent adipose tissue, shall not exceed 3.0 milliGray (0.3 rad) per exposure for screen-film mammography procedures and 4.0 milliGray (0.4 rad) per exposure for xeromammography procedures. The dose shall be determined at least annually under the technique factors and conditions that

are used to produce the phantom images submitted for accreditation.

(d) *Quality assurance*—(1) *Equipment.* Each facility shall establish and maintain a quality assurance program to assure the adequate performance of the radiographic equipment and other equipment and materials used in conjunction with such equipment sufficient to assure the reliability and clarity of its mammograms. The program shall also require periodic monitoring of the dose delivered by the facility's examination procedures to ensure that it does not exceed the limit specified in paragraph (c) of this section and is appropriate for the image receptor used. Such quality insurance program shall:

(i) For screen-film systems, be substantially the same as that described in the 1992 edition of "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual, and Medical Physicist's Manual," prepared by the American College of Radiology, Committee on Quality Assurance in Mammography, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American College of Radiology, Mammography Accreditation Program, 1891 Preston White Dr., Reston, VA 22091–5431; and may be inspected at the Center for Devices and Radiological Health, Division of Mammography and Radiation Programs (HFZ–200), 5600 Fishers Lane, Rockville, MD 20857; or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC; or

(ii) For systems with alternate image receptor modalities, be substantially the same as the quality assurance program recommended by the image receptor manufacturer, which, if followed, will allow a facility to maintain high image quality; and

(iii) For all image receptors, provide for the maintenance of log books documenting compliance with the applicable requirements in paragraph (d)(1) of this section and recording corrective actions taken.

(2) *Phantom images.* Each facility shall establish and maintain a program to assess the performance of the mammography system through the evaluation of radiographic images obtained with a phantom. The phantom must be of a type approved or accepted by the American College of Radiology or of an equivalent type accepted by FDA. The phantom images must score at least the minimum required by the accrediting body.

(3) *Clinical images.* Each facility shall establish and maintain a clinical image quality control program, including:

(i) Monitoring of mammograms repeated due to poor image quality; and

(ii) Maintenance of records, analysis of results, and a description of any remedial action taken on the basis of such monitoring.

(4) *Clinical image interpretation.* Each facility shall establish a system for reviewing outcome data from all mammography performed, including followup on the disposition of positive mammograms and correlation of surgical biopsy results with mammogram reports.

(5) *Surveys.* As a part of its overall quality assurance program, each facility shall have a medical physicist establish, monitor, and direct the procedures required by paragraphs (d)(1), (d)(2), and (d)(3) of this section and perform a survey of the facility to assure that it meets the quality control and equipment standards as specified in paragraph (b)(2) of this section. Such surveys shall be performed at least annually, and reports of such surveys shall be prepared and transmitted to the accrediting body in accordance with § 900.4(d)(1). Each such report shall be retained by the facility until such time as the next annual survey is satisfactorily completed.

(e) *Medical records.* (1) Each facility shall maintain mammograms and associated records in a permanent medical record of the patient as follows:

(i) For a period of not less than 5 years, or not less than 10 years, if no additional mammograms of the patient are performed at the facility, or longer if mandated by State or local law; or

(ii) Until requested by the patient to permanently transfer the records to a medical institution, or to a physician of the patient, or to the patient herself, and the records are so transferred.

(2) Each facility shall prepare a written report of the results of any mammography examination. Such report shall be completed as soon as reasonably possible and shall:

(i) Be signed by the interpreting physician; and

(ii) Be provided to the patient's physicians (if any); or

(A) If the patient's physician is not available or if the patient does not have a physician, the report shall be sent directly to the patient; and

(B) If such report is sent to the patient, it shall include a summary written in language easily understood by a lay person; and

(iii) Be maintained in the patient's record in accordance with paragraph (e)(1) of this section.

§ 900.13 Revocation of accreditation and accrediting body approval.

(a) *Accreditation.* If a facility's accreditation is revoked by an accrediting body, the facility's certificate shall remain in effect until such time as determined by the agency on a case-by-case basis after an investigation into the reasons for the revocation. If FDA determines that the revocation was justified by violations of applicable quality standards, FDA will revoke or suspend the facility's certificate and/or require the submission and implementation of a corrective action plan, whichever action will protect the public health in the least burdensome way.

(b) *Accrediting body approval.* If the approval of an accrediting body is revoked by FDA, the certificates of the facilities accredited by such body shall remain in effect for a period of 1 year after the date of such revocation subject to FDA's determination that the facility continues to perform quality mammography. By the end of a year following revocation of approval of a facility's accrediting body, the facility must obtain accreditation by another accrediting body.

§ 900.14 Hearings regarding certification decisions.

Opportunities to challenge final adverse actions taken by FDA regarding denials of certification or suspension or revocations of certification of facilities will be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

Dated: December 10, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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Part VIII

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AB01

Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate musculoskeletal impairments of adults and children who claim Social Security or Supplemental Security Income (SSI) benefits based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating musculoskeletal impairments.

DATES: To be sure that your comments are considered, we must receive them no later than February 22, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. You may direct comments by telefax to (410) 966-0869. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 966-0512.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to individuals insured under the Act. Title II also provides child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are disabled and have limited income and resources. For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. For a child under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) substantially reduces the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

The listings contained in appendix 1 to subpart P of part 404 are referenced in subpart I of part 416. The listings are divided into part A and part B. The criteria in part A are applied in evaluating impairments of persons age 18 or over. The criteria in part A may also be applied in evaluating impairments in children (persons under age 18) if the disease processes have a similar effect on adults and children. Part B contains criteria for evaluating impairments of children under age 18 when the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for children using the listings, we first use the criteria in part B and, if the criteria in part B do not apply, we use the criteria in part A. See §§ 404.1525 and 416.925.

When the musculoskeletal listings were last revised and published in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advances in disability evaluation and treatment and program experience would require that we periodically review and update the medical criteria in the listings. Accordingly, we published termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory paragraphs of the listings and provide that the current listings in part A and part B of the musculoskeletal system will no longer be effective on December 6, 1993. We are now proposing revisions to update the listings for the musculoskeletal system in 1.00 (part A) and 101.00 (part B) and to make the revised listings effective for 7 years from the date of publication of the final rules.

In developing these proposed revisions to the listings for the musculoskeletal system and related listings, we obtained the individual views of members of various professional organizations, including the American Academy of Orthopedic Surgeons, the American College of Physicians, the American Rheumatism Association, the Arthritis Foundation, the Lupus Research Institute, the American Academy of Physical Medicine and Rehabilitation, and the National Institutes of Health, and with the individual help of Federal and State representatives who have expertise in the evaluation of disability claims involving musculoskeletal impairments. Likewise, in developing the proposed revisions to the part B criteria, we obtained the individual views of experts in the fields of pediatric rheumatology and orthopedics, including a pediatric medical consultant from our Office of Disability.

These proposed rules revise the musculoskeletal listings in 1.00 and 101.00 to bring them up to date and to broaden their scope. Also, because rheumatoid arthritis is a connective tissue disorder that should be grouped with the other connective tissue disorders, we are proposing to remove the criteria for rheumatoid arthritis currently in listings 1.02 and 101.02 and to establish new listings 14.09 and 114.09 in the Immune System listings. Proposed new listings 14.09 and 114.09 would cover all the inflammatory arthritides, including rheumatoid arthritis. We are also proposing to remove listings in 4.00 and 9.00 that include musculoskeletal criteria that are no longer applicable because of medical and technical advances.

The proposed listings put less emphasis on disease labeling, or diagnosis, and emphasize the functional impact of impairments on a person's ability to work, or, in the case of a child under age 18, on the child's ability to perform age-appropriate activities, as defined in § 416.924ff. The proposed listings recognize that musculoskeletal impairments result from many causes. Some of the listings recognize that musculoskeletal impairments may have effects on other organs or body systems which cumulatively lead to severe functional deficits. In children, chronic illness may also impact upon many of the mental domains and behaviors, and significantly restrict age-appropriate activities.

The following is a detailed summary of the proposed changes in the musculoskeletal system listings (1.00ff and 101.00ff), immune system listings (14.00ff and 114.00ff) and related

changes in 4.00 and 9.00 of part A, and our reasons for proposing these changes.

Revisions to Appendix 1

We propose to revise the second paragraph of the introduction to Appendix 1 to show that the part A and part B musculoskeletal system listings will expire 7 years after publication of the final regulations in the **Federal Register**.

Revisions to Part A of Appendix 1

1.00 Musculoskeletal System

We propose to reorganize and revise 1.00, the preface to part A of the musculoskeletal listings, to bring it up to date, to reflect the proposed new listings, and to facilitate its use by our disability evaluators and members of the public.

1.00A Disorders of the Musculoskeletal System

We propose to add a new brief introductory section to describe the pathologic processes that may cause musculoskeletal impairments.

1.00B Loss of Function

We propose to renumber the section on loss of function from 1.00A to 1.00B and to expand the section to provide more information about the causes of, and ways to evaluate, loss of function resulting from musculoskeletal impairment. The opening paragraph expands the first sentence of current 1.00A to include a wider range of causes for musculoskeletal dysfunction than in the current rule, which mentions only amputation and deformity. The proposed revisions would also add to this paragraph the following impairments that are in the current listings: Bone or joint deformity or destruction due to any cause, miscellaneous disorders of the spine with or without radiculopathy or other neurologic deficits, amputation, and fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. These proposed additions make the list of possible causes of functional loss due to musculoskeletal impairments correspond to the listed impairments. We also propose to expand the guidance about musculoskeletal "deformity" to clarify that the term refers to joint deformity due to any cause. A new second sentence would be added to explain that musculoskeletal impairments may also result from inflammatory peripheral joint or axial arthritis or sequelae, and to provide a cross-reference to proposed listing 14.09, which would be used to evaluate these disorders.

The proposed second paragraph is new. It is based in part on current 1.00A, but it also contains new material. It explains that, regardless of the underlying cause of a musculoskeletal impairment, the functional loss that must result from certain listed impairments is defined in terms of an "inability to ambulate effectively on a sustained basis" or an "inability to perform fine and gross movements effectively on a sustained basis" for any reason, including pain. The terms represent new criteria we are proposing for the measurement of loss of function in several of the proposed listings. Because our intent in the proposed listings is to emphasize the impact of the impairment(s) on a person's ability to perform gainful activity, these proposed criteria would clarify the degree of musculoskeletal functional limitations required to establish a listing-level impairment. We also propose to use the same criteria in part B, which, in the case of a child claiming SSI benefits based on disability, describes the child's ability to perform age-appropriate activities.

The proposed criteria are measurements to be considered from a physical standpoint alone. Functional limitations resulting from a mental impairment(s) are to be considered under the mental disorders criteria in 12.00ff.

Proposed 1.00B1 and 1.00B2 define what we mean by "inability to ambulate effectively" and "inability to perform fine and gross movements effectively." Both sections describe "extreme" functional loss, consistent with our other listings. However, as in our other listings, the proposed criteria do not require that an individual be entirely unable to walk or to use his or her upper extremities because we recognize that, even though individuals may have functional limitations of such severity that they are unable to engage in any gainful activity, they may still have some residual ability to function in their daily activities.

Proposed 1.00B1 addresses only an individual's ability to walk, not the ability to stand. This is because standing as a functional measure is a presupposed condition for walking; that is, before a person can walk, he or she must be able to stand. Furthermore, standing is not an accurate gauge of functioning. Even profoundly impaired individuals can often stand for a period of time, although they may not be able to walk effectively.

In 1.00B3, we propose to clarify the statement about pain that is in the second sentence of current 1.00A. The current provision may give the erroneous impression that there must be objective medical findings that directly support the severity of a person's pain. The proposed language, which is consistent with our rules for the evaluation of symptoms, including pain, in §§ 404.1529 and 416.929 and §§ 404.1525(f) and 416.925(f), clarifies that there need only be objective medical evidence of the existence of an impairment which could reasonably be expected to cause pain or other symptoms. It also explains the importance of evaluating the intensity and persistence of an individual's pain or other symptoms to determine their impact on functioning in those of the proposed musculoskeletal listings that include symptoms.

1.00C Diagnosis and Evaluation

Proposed 1.00C expands the guidance in the third sentence of current 1.00A. The first sentence of the proposed new paragraph corresponds to the current rule. We propose to expand it to say that both the evaluation and the diagnosis of musculoskeletal impairments should be supported by detailed clinical and laboratory findings. Although several of the proposed listings are geared toward evaluating function in order to determine impairment severity, diagnosis may be important for predicting duration, including expected response to any treatment an individual may be receiving. Chronic conditions must be differentiated from short-term, reversible disorders, and it is sometimes necessary to be able to predict response to current treatment.

We also propose to revise the reference to x-ray evidence to include other, modern imaging techniques. Requirements for x-ray evidence appear in numerous places in the current listings. Because there have been significant medical advances in imaging techniques, such as computerized axial tomography (CAT scan) and magnetic resonance imaging (MRI), we propose to expand the criteria in 1.00C and throughout the preface and listings to include all medically acceptable imaging techniques.

We also move the seventh paragraph in current 1.00B to 1.00C and make some minor, nonsubstantive changes in the paragraph. The paragraph would be revised to state that electrodiagnostic and myelographic procedures may be useful for establishing a diagnosis but do not constitute alternative criteria to the requirements in proposed listing 1.04, the listing for disorders of the spine, which corresponds to current listing 1.05C. We are proposing this revision because neither electrodiagnostic testing nor

myelography provides information about the particular effects of an individual's impairment on his or her functioning; they only provide information about the existence of an impairment that could be the cause of such limitations. We propose to move this paragraph because it fits more logically with the discussion of evaluation techniques in 1.00C.

1.00D The Physical Examination

Proposed 1.00D draws extensively from the fourth and fifth paragraphs of current 1.00B. Those paragraphs are currently included under the heading, "Disorders of the spine," even though much of the information they contain is relevant to examinations for any musculoskeletal impairments. We, therefore, propose a new section headed, "The physical examination," to make clear that these criteria are not to be confined to disorders of the spine. We have moved parts of the fourth paragraph that are relevant only to examinations of the spine to proposed 1.00E, "Examination of the spine." In addition, we have made a number of nonsubstantive editorial changes for clarity and precision.

In the next-to-the last sentence of the proposed 1.00D, which corresponds to the third sentence of the fifth paragraph of the current rule, we propose to change the reference from "a record of ongoing treatment" to "a record of ongoing management and evaluation." We propose this change because not all individuals with disorders of the spine receive treatment even though they may be seen by a medical source. In some cases, the abnormalities may temporarily, or even permanently, improve with the passage of time, even if the individual is not receiving treatment; in others, there may not be any formal treatment, only such conservative measures as bedrest, curtailed activities, or over-the-counter medications. The provision is also meant to underscore the need for a longitudinal record because musculoskeletal impairments are often characterized by exacerbations and remissions whether there is treatment or not.

We also propose to include the last sentence from the third paragraph of current 1.00B as the last sentence of proposed 1.00D. We believe that a correlation of examination findings with an individual's daily activities is important not only for evaluation of pain, as the current rule suggests, but also for the assessment of the claimant's overall ability to function.

1.00E Examination of the Spine

As pointed out in the explanation for proposed 1.00D, we have retained the sentences from the fourth paragraph of current 1.00B that pertain only to examinations of the spine in the proposed section that describes examinations for disorders of the spine, now proposed 1.00E. We have also defined more precisely how measurements of motion of the spine and straight-leg raising are to be made, based on guidance in the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association.

The last sentence of the second paragraph of the proposed rule is based on the last sentence of the second paragraph of current 1.00B, which explains that neurological impairments are to be evaluated under the neurological listings in 11.00. The reference to "neurological abnormalities" in the current paragraph is not a general reference to all neurological abnormalities that may not completely subside after treatment or with the passage of time. Rather, it is a reference to neurological abnormalities of such severity that they could be considered to meet or equal the severity of a neurological listing. We have, therefore, clarified the statement and provided examples of residual neurological abnormalities that would be disabling under the neurological listings. We are also proposing to delete the second and third sentence of the second paragraph of current 1.00B because they would be redundant in the context of the proposed rules.

1.00F Duration of Impairment

We propose to add a new 1.00F to explain that musculoskeletal impairments usually improve with time or treatment. Therefore, we propose that documentation include a longitudinal clinical record covering at least 3 months of management and evaluation. We provide a similar requirement in a number of listings in other body systems (see, e.g., the listings in 4.00, for cardiovascular impairments, and 14.00, for immune system disorders, including connective tissue disorders). In proposed 1.00D, the phrase "management and evaluation" provides for the possibility that an individual will not receive treatment, but will only be followed by a medical source. We have also provided that a 3-month record is not invariably required. If it is clear from the evidence that the individual is disabled (for instance, if the individual has a permanent disabling impairment that will not improve) or continues to be disabled (in a continuing disability review), it will not be necessary to establish a 3-month record. Of course, other supplemental evidence, such as a consultative examination, may be obtained as necessary to establish a longitudinal record.

1.00G Effects of Treatment

Proposed 1.00G is a new section that discusses the effects of treatment, including surgery. It explains the importance of considering a person's treatment because treatment can have beneficial effects or adverse side effects that in themselves can cause limitations. The section explains that some people can experience full or partial improvement of their conditions with a given treatment, while others may not experience improvement with the same treatment. However, even though some treatments may result in improvement in a condition, their beneficial effects may be counterbalanced by adverse side effects, such as in the case of pain medication that relieves the symptom of pain but causes symptoms of drowsiness, dizziness, or disorientation.

1.00H Orthotic, Prosthetic, or Assistive Devices

We propose a new section 1.00H to discuss how orthotic, prosthetic, or assistive devices are to be considered in evaluating musculoskeletal impairments. The new section would explain that individuals with musculoskeletal impairments should be evaluated with and without any medically necessary orthotic, prosthetic, or assistive devices in place. This proposed rule is consistent with clinical practice; if there is an amputation, examination without the prosthesis provides information about the site of amputation, and the length and condition of the stump.

This section would also explain that when an individual has an impairment that affects the lower extremities and uses a hand-held assistive device, such as a cane or a walker, the evaluation must take into consideration how the individual is able to function both with and without the hand-held device. When an individual uses a hand-held device, he or she does not have both hands free, and this will obviously have some effect on the individual's ability to lift and carry, as well as to push and pull in some situations. We, therefore, need to know whether a person has some ability to walk without the hand-held device, and the extent of any such ability, in order to obtain an accurate picture of all of the person's functional capacities.

The proposed rule does not require evaluation of the individual's ability to walk without the use of other devices. When a person wears a lower limb prosthesis because of an amputation, it is obviously unnecessary to evaluate his or her ability to walk without the prosthesis. Also, an evaluation of the ability of a person who uses an orthosis to walk is not necessary for the same reason that we do not require measurements of vision without spectacles; that is, we want to know the individual's maximum functional ability. However, if an individual who wears a prosthesis or uses an orthosis also uses a hand-held device, we will evaluate his or her ability to ambulate without the hand-held device, but with the prosthesis or orthosis in place.

1.00I Disorders of the Spine

Proposed 1.00I would revise current 1.00B. We have reorganized and expanded the current rules.

The first sentence of the opening paragraph corresponds to the first sentence of current 1.00B. In the proposed revision, we explain that various abnormalities may result in nerve root impingement (including impingement on those in the cauda equina) or impingement on the spinal cord, from a herniated nucleus pulposus, spinal arachnoiditis, or lumbar spinal stenosis resulting in pseudoclaudication. We have also expanded the sentence to include other causes of limitations that should be evaluated under proposed listing 1.04. However, we do not describe every possible impairment that can cause neurological involvement because the effects of some of the impairments are identical to those we have described.

The second sentence of the paragraph corresponds to the last sentence of the second paragraph in current 1.00B, and is a brief restatement of the principles in 1.00E. No substantive change is intended from the current rule.

Proposed 1.00I1 through 1.00I4 describe the various impairments we refer to in the opening paragraph: Herniated nucleus pulposus (proposed 1.00I1), spinal arachnoiditis (proposed 1.00I2), lumbar spinal stenosis resulting in pseudoclaudication (proposed 1.00I3), and other miscellaneous conditions (proposed 1.00I4). In these sections, we provide information about the causes of the conditions, the findings one should look for on clinical and laboratory examination, and the functional effects of the impairments. We also provide guidance about certain conditions, such as spinal dysraphism, diastematomyelia, and tethered cord syndrome, that are more appropriately evaluated under the neurological listings.

1.00J Abnormal Curvatures of the Spine

We are proposing a new section designated 1.00J to discuss evaluation of abnormal curvatures of the spine, including scoliosis, kyphosis, and kyphoscoliosis. We propose to focus on the impact of the abnormal curvature on the individual's ability to function, in keeping with our approach in revising the current listings. Thus, we explain that abnormal curvatures may impair ambulation, restrict breathing, or result in an associated mental impairment. Evaluation should, therefore, be done by reference to the listing for inflammatory spondyloarthropathy, proposed listing 14.09, which describes impaired ambulation resulting from a deformed spine, or by reference to the respiratory listings or the mental disorder listings.

1.00K Continuing Medical Management

We propose to add 1.00K to explain what we mean by the term "under continuing surgical management," which is a term we use in proposed listings 1.07 and 1.08 and in current listing 1.12. The proposed provision explains that "surgical management" includes more than the surgery itself. It includes various procedures post-surgery, complications of surgery (such as infections) and other factors associated with surgery that may limit functioning and contribute to a finding of disability.

1.00L After Maximum Benefit From Therapy

Proposed 1.00L, which discusses evaluation after the achievement of maximum benefit from surgical or medical therapy in certain situations, corresponds to current 1.00C. We propose to revise and expand the current provision to clarify our policy that an individual can have an impairment that meets the criteria of current listings 1.12 and 1.13 (proposed listings 1.07 and 1.08) because of functional limitations resulting from the impairment itself and because of the effects of the surgery or other surgical management including recovery time following intervention and any complications from the intervention.

1.00M Surgical Procedures

Proposed 1.00M is substantively the same as the sixth paragraph of current 1.00B. It states that the documentation should include a copy of operative notes and pathology reports when surgery has been performed.

1.00N Major Joints

This proposed section corresponds to current 1.00D. Current 1.00D explains that the wrist and hand are considered together as one major joint, but it does not have a similar provision for the ankle and foot; instead, it refers only to the ankle and does not mention the foot. The proposed section would correct this inadvertent omission. We have also simplified the provisions.

1.00O Measurements of Joint Motion

Proposed 1.00O corresponds to current 1.00E. We propose to revise the current section to bring it up to date and to broaden its scope. We propose to delete the reference to the "Joint Motion Method of Measuring and Recording" published by the American Academy of Orthopedic Surgeons because it has not been revised or updated since 1965. For the measurement of joint motion, therefore, the proposed rule refers only to the "Guides to the Evaluation of Permanent Impairment", which is used throughout the country by physicians and surgeons. The proposed rule does not include a date of publication but instead refers to the "current edition" in order to ensure that only the most current standards are used in the future.

1.01 Category of Impairments, Musculoskeletal

In addition to moving current listing 1.02 to 14.00, we propose to delete two of the current listings. We propose to delete the criteria in current listing 1.05B, which is met with generalized osteoporosis with pain, limitation of motion, paravertebral muscle spasm, and vertebral fracture. Our experience has shown the listing to be unclear. Moreover, osteoporosis of the severity indicated in the current listing is most often encountered in women over the age of 65; inasmuch as benefits based on disability under both titles II and XVI are not paid after the age of 65, the listing does not apply to the majority of people who have an impairment of listing-level severity.

Nevertheless, the proposed listings would include individuals under age 65 who do have osteoporosis of listing-level severity. We have included "vertebral fractures" in the list of examples of conditions that are included under proposed listing 1.04, for disorders of the spine resulting in compromise of a nerve root, which would be the most common reason that vertebral fractures would be of listing-level severity. Proposed listing 1.02A would cover the situations in which there is hip involvement resulting in

impaired ability to walk, a situation that is not included in the current listing.

We also propose to delete current listing 1.08, "Osteomyelitis or septic arthritis." With advances in treatment and surgical techniques, both osteomyelitis and septic arthritis are much rarer than they were when we last issued these listings. More importantly, fundamental advances in antibiotic therapy have meant that, when they do occur, these conditions are not usually expected to last for 1 year. Therefore, we believe that cases of osteomyelitis and septic arthritis must be evaluated on a case-by-case basis to determine whether they are equivalent in severity to a listed impairment or reduce residual functional capacity sufficiently to result in a finding of disability at the last step of the sequential evaluation process, including a determination whether the impairment has lasted or can be expected to last for at least 12 months. Residuals of these impairments may also result in disability; any residuals (such as a fused hip joint in a bad position or a knee joint in a bad position) may be evaluated under the appropriate listings, or later in the sequential evaluation process when we make a residual functional capacity assessment. Septic arthritis that is associated with human immunodeficiency virus (HIV) infection is listed separately in our current rules, under listing 14.08M.

1.02 Deficit of Musculoskeletal Function of a Major Joint(s)

This proposed listing would consolidate into one listing paragraph A of current listing 1.03, "Arthritis of a major weight-bearing joint (due to any cause)," and current listing 1.04, "Arthritis of one major joint in each of the upper extremities (due to any cause)," because both current listings describe gross anatomical deformities. We also propose to expand the scope of the listing to include deficits of musculoskeletal function from any cause of deformity, not just arthritis. Current listing 1.03B, for reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, would be retained as a separate listing 1.03, described below.

In keeping with the overall functional approach in our listings, this proposed listing would encompass any musculoskeletal condition that affects a major joint in one lower extremity and results in an inability to ambulate effectively (proposed listing 1.02A), or that affects a major joint in each of the upper extremities and results in an inability to perform fine and gross movements effectively (proposed listing 1.02B). As in the current rules, the proposed listing requires deformity, such as subluxation, contracture, bony or fibrous ankylosis, or instability, and chronic joint pain and stiffness with limitation of motion of the affected joints. We propose to delete the example of "ulnar deviation" because it is no longer germane in this context.

We propose to broaden the range of conditions that would be disabling under proposed listing 1.02 for reasons similar to the proposed broadening of current listing 1.02, explained below. Although diagnosis may be necessary to resolve duration issues, the common denominator in all of the medical conditions with similar mechanical problems is whether they cause functional restrictions that are disabling.

Because proposed listing 1.02 is based on a criterion for anatomical deformity, it would also replace some of the criteria of current listing 1.09. Current listing 1.09 is met with amputation "or anatomical deformity" of both hands (current listing 1.09A), both feet (current listing 1.09B), or one hand and one foot (current listing 1.09C). Proposed listing 1.02A, requires gross anatomical deformity of one major weight-bearing joint and would, therefore, replace the requirement for deformity of two feet now in listing 1.09B with a less anatomically based, more functionally based criterion; moreover, the proposed criterion does not require involvement of both lower extremities or even specifically of the feet. Proposed listing 1.02B would replace the requirement for involvement of both hands with a requirement for involvement of any major joint in each upper extremity and, again, a functional criterion. There is no provision to correspond to current listing 1.09C, however, because we believe that individuals who have deformities of one hand and one foot should have their claims evaluated on a case-by-case basis. Such individuals do not always have impairments of listing-level severity, and to determine if they are disabled, we may have to assess their residual functional capacity.

Also, for reasons explained above under proposed 1.00N, we propose to add a reference to the "ankle-foot" in proposed listing 1.02A as another major weight-bearing joint in which arthritis can be an impairment of listing-level severity. As throughout these listings, we propose to update the criterion for x-ray evidence by replacing it with a reference to "medically acceptable imaging techniques."

We also propose to delete the term "significant," used to describe the amount of joint space narrowing or bony destruction caused by the arthritis in current listings 1.03A and 1.04A, because there is a relative lack of correlation between findings on imaging techniques and function of the joint. Furthermore, since proposed listing 1.02 would ultimately be met because of functional limitations resulting from the arthritis or any other condition, the term "significant" is unnecessary in the revised rule. We believe that the objective requirement for gross anatomical deformity and the other requirements in the listing are sufficient in themselves.

1.03 Reconstructive Surgery or Surgical Arthrodesis

Proposed listing 1.03 corresponds to current listing 1.02B. The current listing describes individuals who have undergone reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, and return to full weight-bearing status did not occur, or is not expected to occur within 12 months of onset. The proposed listing would change the criterion for failure to return to "full weight-bearing status" to the criterion for inability to ambulate effectively used in proposed listing 1.02 and other proposed listings. We are proposing this change because, with advances in surgical techniques and post-surgical treatment, some individuals who are not able to bear full weight on a lower extremity nevertheless have sufficient ability to ambulate to be able to work. The proposed revision would, therefore, ensure that this proposed listing is set at the same level of functional severity as the other proposed listings.

We believe that it is more logical to list separately the criterion in current listing 1.03B, instead of in proposed listing 1.02, which is normally for arthritis, because inability to ambulate effectively could result for reasons other than arthritis. The listing is more akin to current listing 1.11 (proposed listing 1.06), which is for nonunion of a fracture.

1.04 Disorders of the Spine

This proposed listing corresponds to current listing 1.05C, which we use for evaluating impairments like herniated nucleus pulposus and lumbar spinal stenosis. We have expanded the list of examples in the opening sentence to show that other conditions are also included, such as spinal arachnoiditis, osteoarthritis, degenerative disc disease, and facet arthritis; these are all examples of conditions that may compromise nerve roots (including the cauda equina) or the spinal cord. As already stated, we also describe several—though not all—of these

conditions and their effects in proposed 1.00I. We do not propose to describe every possible impairment that can cause neurological involvement because the effects of some of the impairments are identical to those we have described.

Consistent with the discussions in proposed 1.00I, we propose three separate sets of criteria under listing 1.04, for nerve root compression (proposed listing 1.04A), spinal arachnoiditis (proposed listing 1.04B), and lumbar spinal stenosis resulting in pseudoclaudication (proposed listing 1.04C). We propose to list spinal arachnoiditis and lumbar spinal stenosis with pseudoclaudication separately because they present different signs and symptoms than does nerve root compression (which has many causes, including spinal stenosis) and neither condition is adequately covered by the current rule.

Of the criteria proposed for listing 1.04, proposed listing 1.04A corresponds most closely to current listing 1.05C. We propose to replace the examples in the current rule with the examples in proposed listing 1.04 and the discussions in proposed 1.00I. We also propose to add a criterion for positive straight-leg raising in the sitting and supine positions when there is involvement of the lower back. We also propose to delete the requirement for muscle spasm in current listing 1.05C because the finding usually reflects an acute condition that will not persist for a year. Moreover, because spasm is often an intermittent finding, it may not be present on a given examination even though an individual might otherwise be significantly limited.

We also propose to remove the requirement in current listing 1.05C that limitation of motion of the spine be "significant." The requirement is imprecise and, more importantly, we would consider any limitation of motion to be significant if it were accompanied by the other requirements of the proposed listing. We also would no longer require anatomic or radicular distribution of both sensory and reflex abnormalities, but would require only that one or the other be present. This is because sensory and reflex abnormalities are not concurrent in all cases of nerve root compression that would nonetheless be disabling at the listing level. Depending on the level of the compression, both sensory and reflex abnormalities may not occur anatomically. However, we do propose to require an "anatomic distribution" of pain to make clear that the nerve root compression would have to be reasonably expected to cause the pain. This proposed requirement is consistent with our evaluation of pain and other symptoms pursuant to §§ 404.1529 and 416.929 of our rules. We also propose to clarify what we mean by "motor deficit"—that is, atrophy or muscle weakness. We explain in proposed 1.00E, discussed earlier, what we require to show atrophy.

Finally, proposed listing 1.04A does not contain the criteria in current listing 1.05C for persistence of signs and symptoms "for at least 3 months despite prescribed therapy" and that they be "expected to last 12 months." This is because we have moved the requirement to proposed 1.00F, where it is a general requirement that is to be applied to all of the listings. Therefore, there is no change in this requirement from the current rules in listing 1.05C.

Proposed listings 1.04B, for spinal arachnoiditis, and 1.04C, for lumbar spinal stenosis resulting in pseudoclaudication, list the characteristic signs and symptoms of their respective impairments and require appropriate limitations of function. Thus, proposed listing 1.04B describes severe burning or painful dysesthesia resulting in the need for frequent changes in position or posture, and proposed listing 1.04C describes chronic nonradicular pain and weakness resulting in an inability to ambulate effectively.

1.05 Amputation

We propose to combine current listings 1.09 and 1.10, which both deal with amputations, into a single listing 1.05 for amputations. As stated earlier, the "anatomical deformity" criterion of current listing 1.09 would be evaluated under proposed listing 1.02.

Proposed listing 1.05A, amputation of both hands, corresponds to current listing 1.09A, and is unchanged.

We propose to replace the listings that currently include a criterion for amputation of the foot (current listings 1.09B and 1.09C) with listings based on inability to ambulate effectively, and to delete one listing that provides a criterion for amputation "at or above the tarsal region" as a result of peripheral vascular disease or diabetes mellitus (current listing 1.10B). Since we last published these listings, significant refinements in surgical techniques for developing soft tissue flaps to cover the bone stump have been made. This has resulted in more durable stumps. Engineering advances have produced prosthetic devices which minimize and distribute stress so that some individuals wearing artificial limbs after amputation above the tarsal level for any reason (including diabetes mellitus, and vascular and arterial disease) are able to work. Although some individuals with these impairments will, of course, be disabled, the proposed revisions and deletions recognize that this is not a certainty, and that we must assess the impairments of such individuals and how well these individuals are able to adapt to their impairments on a case-by-case basis.

Accordingly, proposed listing 1.05B would replace current listings 1.09B (amputation of both feet) and 1.10B and 1.10C (amputation of one lower extremity at or above the tarsal region due to peripheral vascular disease or diabetes mellitus, or inability to use a prothesis effectively) with a requirement for inability to ambulate effectively due to stump complications regardless of the cause of the amputation, the level of the amputation, or whether there is amputation of one or both limbs. Similarly, proposed listing 1.05C would replace current listing 1.09C (amputation of one hand and one foot) with a requirement for amputation of one hand and one lower extremity at or above the tarsal region resulting in an inability to ambulate effectively without an obligatory hand-held assistance device. (We have also added an exception to the definition of "inability to ambulate effectively" in 1.00B1 to take this listing into account, inasmuch as individuals with amputation of a hand will not generally use bilateral upper limb assistance.) Because current listing 1.10B (amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus) would be deleted, we are also proposing to delete the redundant listings in other body systems, listing 4.12C ("Amputation at or above the tarsal region due to peripheral arterial disease") and listing 9.08C ("Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease").

Proposed listing 1.05D, for hemipelvectomy or hip disarticulation with amputation of the other lower extremity at or above the tarsal region, corresponds to current listing 1.10A but adds a requirement for amputation of the other lower extremity at or above the tarsal region. With modern advances in treatment, a hemipelvectomy or hip disarticulation is no longer in itself sufficient to establish the existence of an impairment of listing-level severity; however, it is still a sufficiently severe impairment that amputation of the foot on the remaining lower extremity would establish disability.

1.06 Fracture of a Lower Extremity

Proposed listing 1.06 corresponds to current listing 1.11, We propose to revise the criterion for inability to return

to full weight-bearing status within 12 months of onset to a criterion for inability to ambulate effectively for the same (current listing 1.03B). Internal fixation devices (such as intramedullary rods) and external fixators can in some cases return an individual to effective ambulation even though the lower extremity is not fully weight-bearing.

Because of the above revision, we propose to restructure the listing for clarity. We are also changing the reference to the "tarsal bone" in the heading of the listing to "one or more tarsal bones" for technical reasons. There are a number of tarsal bones.

1.07 Fracture of an Upper Extremity

Proposed listing 1.07 is identical to current listing 1.12 except for minor editorial changes.

1.08 Soft Tissue Injury

Proposed listing 1.08 corresponds to current listing 1.13. We have revised the heading to make clear that the listing is appropriate for the evaluation of burns. We also propose to expand the scope of the rule to include soft tissue injuries to the trunk, face, and head. The criteria for "surgical management" are the same as in proposed listing 1.07. Therefore, we would no longer require surgical procedures to be "staged." The surgical procedures required to restore function in injuries of the type covered by this listing are not always planned in advance and are, therefore, not necessarily "staged."

14.00 Immune System

For reasons explained above, we propose to move the criteria in 1.00 that address rheumatoid arthritis and other inflammatory arthritides to the immune system listings so that these conditions can be grouped together with the other connective tissue disorders. We are, therefore, proposing to establish new sections in the preface to 14.00 and a new listing 14.09 which corresponds to current listing 1.02. We are also proposing to revise and broaden our current criteria, as explained below.

14.00B6 Inflammatory Arthritis

Proposed 14.00B6 is a new section we propose to add to address the inflammatory arthritides; it has no counterpart in current 1.00. Even though the primary feature of these disorders is joint involvement, they are connective tissue disorders, like systemic lupus erythematosus and scleroderma, and they cause extra-articular manifestations that may be disabling, just as the other connective tissue disorders do.

The proposed section explains that, even though the term "inflammatory arthritis" connotes a vast array of disorders which differ in cause, course, and outcome, all the chronic forms have one thing in common: They can result in limitations in the ability to do work-related activities. The section provides examples of some of the disorders that affect the spine (inflammatory spondyloarthropathies). It also provides examples of disorders that affect the peripheral joints. Among the first group of disorders are ankylosing spondylitis, Reiter's syndrome, and Behcet's disease. The second group includes rheumatoid arthritis, Sjögren's syndrome, and psoriatic arthritis. We also provide a description of some of the factors that can cause functional deficit. In addition, we have provided a reminder that when the conditions are quiescent but have caused musculoskeletal deformity, it is still appropriate to use proposed listing 1.02, which describes gross anatomical deformity due to any cause, or proposed listing 1.03, which describes reconstructive surgery or surgical arthrodesis of a major weight-bearing joint.

In the subparagraphs of proposed 14.00B6, we provide explanations to make clear that the provisions in listing 14.09 use the same terms and definitions that are in the proposed musculoskeletal listings. Thus, the terms "major joints," "inability to ambulate effectively," and "inability to perform fine and gross movements effectively" have the same meaning as they do in proposed 1.00. In addition, in proposed 14.00B6c, we do not provide a functional criterion for ankylosing spondylitis and other ankylosing spondyloarthropathies (proposed listing 14.09B) because the medical findings in that listing would invariably cause such functional limitations. Thus, once the requisite objective medical findings are established, the individual will have functional limitations that result in an impairment of listing-level severity.

In proposed 14.00B6d, we provide guidance about establishing the existence of an impairment of listing-level severity based upon extra-articular findings. We also provide examples of kinds of extra-articular findings that may be seen with the inflammatory arthritides in the various different body systems. Although many of the extra-articular findings are the same as those that may be seen in other extra-articular disorders, some (such as keratoconjunctivitis sicca, which is seen in Sjögren's syndrome, and amyloidosis of the kidney, which is seen in rheumatoid arthritis) are specific to the disorders in listing 14.09.

In addition to proposing new 14.00B6, we are also proposing to make minor, nonsubstantive revisions to two of the paragraphs of current 14.00B. In the fourth paragraph of current 14.00B, we propose to add a reference to the inflammatory arthritides to the list of disorders summarized in the section. In the first sentence of the sixth paragraph of the section, we have added joint pain and stiffness to the list of significant constitutional symptoms and signs to recognize the characteristic symptoms and signs of inflammatory arthritides.

14.09 Inflammatory Arthritis

For reasons explained above, we propose to redesignate current listing 1.02 as listing 14.09. We also propose to change its heading from "Active rheumatoid arthritis and other inflammatory arthritis" to "Inflammatory arthritis," to emphasize that we include a host of syndromes characterized by chronic joint inflammation, not just rheumatoid arthritis. The proposed change also emphasizes the functional consequences of joint inflammation as a determinant of disabling impairment rather than focusing on specific etiologic diagnoses. The proposed change would recognize that, although etiologic diagnosis is needed to distinguish chronic disorders from short-term disorders as well as from other connective tissue disorders that are listed elsewhere, at bottom it is joint inflammation and its sequelae, and other symptoms and signs of these disorders, not etiologic diagnosis, that result in work-related functional limitations.

The proposed revision, therefore, provides several bases for determining whether an impairment is of listing-level severity. It advances the concept of graded severity of the joint (i.e., articular) process, which can result in disability because of the severity of the joint involvement itself or because of joint involvement coupled with major signs and symptoms of the illness not involving the joints (extra-articular features) which together impair an individual's functioning to the degree described in these proposed listings. Thus, proposed listings 14.09A and 14.09B would be met with articular findings that are of such severity that they alone result in inability to ambulate effectively or to perform fine and gross movements effectively, whereas proposed listings 14.09C, 14.09D, and 14.09E would be met with less severe joint findings than in proposed listings 14.09A and 14.09B, but with extra-articular features that

establish the existence of an impairment of listing-level severity.

Proposed listing 14.09A would replace current listing 1.02A. It describes inflammatory arthritis of the major peripheral joints (i.e., the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot) which is of such severity that in itself it results in disability. With one important exception described in the next paragraph, the proposed listing is essentially unchanged from the current rule. We are proposing to clarify and simplify the current provisions and to replace the requirement for involvement of "multiple" major joints with the more precise requirement for "two or more" major joints. Consistent with other proposed listings, we propose to replace the criterion for "significant restriction of function of the affected joints," with the more precise standard of inability to ambulate effectively or inability to perform fine and gross movements effectively. We also propose to remove the requirement for existence of the listed findings despite prescribed therapy for at least 3 months and clinical activity expected to last at least 12 months. This is because we have already provided a general requirement for these findings, applicable to all of the connective tissue disorder listings, in the third paragraph of current 14.00B. Thus, we have not eliminated the criterion but only moved it from the listing to the preface.

The exception noted above is that we propose to delete the requirements in current listing 1.02B for corroboration of the existence of the impairment by specific laboratory tests, except for medically acceptable imaging techniques. We propose this change because inflammatory arthritis with the findings described in proposed listing 14.09 is sufficient to establish the existence of an impairment of listing-level severity. Moreover, the laboratory findings described under current listing 1.02B are neither specific for diagnosis nor indicators of a level of functional restriction.

Ankylosing spondylitis, currently evaluated under listing 1.05A, would be evaluated under proposed listing 14.09B, which would list "ankylosing spondylitis and other spondyloarthropathy." Because the emphasis in these proposed listings is on function, the proposed listing would not require the extensive x-ray evidence of calcification of spinal ligaments and abnormal apophyseal articulations, and bilateral ankylosis of the sacroiliac joints now required in current listing 1.05A, but would provide for a degree of ankylosis of the cervical and dorsolumbar spines that correlates with an inability to ambulate effectively. We also propose to broaden the current criterion for a finding of bilateral sacroiliac ankylosis to include those disorders that are characterized by either unilateral or bilateral sacroilitis.

Proposed listing 14.09C is based on the other connective tissue disorders listings in 14.00, and provides for a finding of disability when an extra-articular feature of any inflammatory arthritis is disabling, as shown by reference to listings in other body systems. The proposed listing is similar to current listing 14.06, "Undifferentiated connective tissue disorder," which cross-refers to the list of body systems established in current listing 14.02A so that repetition of that long list is unnecessary.

Proposed listing 14.09D is a listing for the inflammatory arthritides that affect the peripheral joints which would be met with less severe joint findings than in listing 14.09A and less severe extra-articular findings than in listing 14.09C. It provides the same kind of criteria as in current listings 14.02B, 14.03B, 14.04B, and 14.06; that is, significant, documented constitutional symptoms and signs with involvement of at least two other body systems, at least one of which must be involved to at least a moderate level of severity. To reflect the symptoms of these particular disorders, we would also include joint pain and morning stiffness of at least 2 hours' duration in addition to the list of symptoms and signs we include for the other connective tissue disorders.

Similarly, proposed listing 14.09E is a listing for inflammatory spondyloarthropathies that do not meet the deformity requirements of proposed listing 14.09B or the extra-articular requirements of proposed listing 14.09C. The severity requirements are the same as those for proposed listing 14.09D.

Revisions to Part B of Appendix 1

101.00 Musculoskeletal System

We propose to reorganize, revise, and expand 101.00, the preface to part B of the musculoskeletal listings, to be consistent with the proposed revisions in part A. We propose additional criteria in proposed 101.00 to give appropriate consideration to the particular effects of the disease processes in children. For example, in 101.00B1 and 101.00B2, we propose specific definitions of the terms "inability to ambulate effectively" and "inability to perform fine and gross movements effectively" for infants and young children in terms that are appropriate to these children. Thus, proposed 101.00B1 would define ineffective ambulation for children who would not yet be expected to walk in terms of a failure to achieve skills or performance involving the lower extremities at no greater than one-half of age-appropriate expectations based on an overall developmental assessment. Extreme limitations on use of the upper extremities would be defined by reference to the descriptions of motor dysfunction in the current listing for multiple body dysfunction, listing 110.07A.

In other instances, we would alter in part B the criteria proposed in part A to address children, in order to underscore the importance of the criteria in childhood cases and to eliminate any question about their applicability to children.

As in part A, we propose to move current listing 101.02, for juvenile rheumatoid arthritis, to the immune system listings in 114.00. For this reason, we propose to delete current 101.00A, which addresses the documentation of juvenile rheumatoid arthritis. We do not propose to move it into the preface of 114.00 because it explains that the documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, and we propose to expand the listings to address all forms of inflammatory arthritis in children. As in the proposed adult rules, however, proposed listing 114.09A includes the findings of joint pain, swelling, tenderness, and inflammation noted in current 101.00A, but goes on to address the functional impact of any form of severe inflammatory arthritis by acknowledging that it may result in the inability to ambulate effectively or the inability to perform fine and gross movements effectively with the upper extremities.

We also propose to delete the discussion currently in 101.00C. This section of the current rules explains that degenerative arthritis may be the end stage of many skeletal diseases and conditions. The discussion, though correct, has no special relevance to the proposed rules, which are functionally based.

101.01 Category of Impairments, Musculoskeletal

We propose to delete current listings 101.05B, 101.05C, and 101.08 for the reasons set forth below.

We propose to delete listing 101.05B, "Scoliosis," and listing 101.05C, "Kyphosis or lordosis," and to add to the preface a new section 101.00J, "Abnormal curvatures of the spine," which corresponds to proposed 1.00J in

the adult rules. We propose to delete the criteria for a spinal curve measuring 60 degrees or greater in current listing 101.05B1 and for kyphosis or lordosis measuring 90 degrees or greater in current listing 101.05C because these measurements represent arbitrary findings which do not focus on the functional impact of the abnormal curvature. We are proposing instead a provision which parallels the provision being proposed for the adult listings, and focuses evaluation on the functional impact of abnormal curvatures; i.e., impaired ambulation, ventilatory restriction, or emotional withdrawal or isolation. As in the adult rules, we propose a reference to listing 114.09B when the spinal deformity is so severe that it results in ineffective ambulation; the reference is to the respiratory listings in 103.00 when there is restricted breathing because of the deformity, and to the mental disorder listings in 112.00 when there are emotional effects.

We propose to delete current listing 101.05B2, which provides for a finding of "meets" when a child has undergone spinal fusion of six or more levels, because improvements in medical technology have shortened the period of recuperation following spinal fusion to less than a year so that it is no longer possible to assume that the duration requirement will be met. Improved techniques with internal fixation devices (e.g., Harrington rods, Cotrel-Dubousset, and other fixation devices) have eliminated the need for turnbuckle casts and lengthy immobilization in plaster following spinal fusion. With the use of these improved techniques, a return to normal activities of daily living can now be expected in less than one year following spinal fusion.

The proposed deletion of current listing 101.05B would also correct a printing error. The current listing provides for "FEV (vital capacity)" of 50 percent or less of predicted normal. The abbreviation "FEV," however, does not stand for "vital capacity," but for "forced expiratory volume," a measurement of obstructive lung disease, not of restrictive dysfunction. Our intent has always been to measure the restrictive breathing dysfunction that may be caused by the musculoskeletal deformity, the "VC," or vital capacity.

Finally, consistent with the proposed revisions to the listings in part A, we also propose to delete listing 101.08, "Chronic osteomyelitis." We provide our reasons for the proposed deletion in the explanation under part A for the proposed deletion of listing 1.08.

Proposed listings 101.02 through 101.08 are in most instances the same as the corresponding proposed adult rules explained above. Proposed listings 101.03 and 101.05 through 101.08 are new, and are the same as the corresponding proposed adult listings, 1.05 through 1.08. We are proposing them to maintain structural and content consistency with the adult listings. The following is an explanation of proposed listings 101.02 and 101.04, which would revise current listings 101.03 and 101.05.

101.02 Deficit of Musculoskeletal Function of a Major Joint(s) (Due to Any Cause)

This proposed listing corresponds to current listing 101.03, "Deficit of musculoskeletal function." The proposed rule is the same as the corresponding adult rule. As in the adult rule, the proposal would broaden the listing to include deficit of functioning due to any cause, with involvement of either one major weight-bearing joint or one major joint in each upper extremity.

The functional limitations in the proposed listing encompass the criteria of current listings 101.03A, 101.03B, and 101.03C, and provide a uniform functional measure which applies to all children within their respective age-appropriate functional expectations. We believe the listing will be easier to use with the better-defined term, "inability to ambulate effectively." Current listing 101.03A ("Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices") and current listing 101.03B ("Ambulation is possible only with obligatory bilateral upper limb assistance * * *") would be subsumed under the definition of "inability to ambulate effectively." Current listing 101.03C ("Inability to perform age-related personal self-care activities * * *") would be subsumed under the definition of "inability to perform fine and gross movements effectively."

101.04 Disorders of the Spine

This proposed listing corresponds to current listing 101.05. Proposed listing 101.04 focuses on disorders that involve compromise of a nerve root(s) (including the cauda equina) or the spinal cord. Although the listing would be consistent with the proposed adult listing, it does not include criteria for spinal arachnoiditis or lumbar spinal stenosis resulting in pseudoclaudication. These conditions generally develop over time and with age and are, therefore, rarely seen in children. Should a child need to be evaluated for spinal arachnoiditis or lumbar spinal stenosis, the part A listings should be used.

We are proposing to delete current listing 101.05A, for fracture of a vertebra with spinal cord involvement, because it describes a spinal cord injury and is, therefore, more appropriately a neurological disorder than a musculoskeletal disorder. Current listing 111.06 describes the limitations resulting from such an injury.

114.00 Immune System

For reasons we have given under the explanation of the corresponding adult rules, 14.00 of the preface to the immune system listings in part A and proposed listing 14.09, we propose to change the heading of listing 101.02 from "Juvenile rheumatoid arthritis" to "Inflammatory arthritis" to provide more comprehensive consideration of the features and functional impact of any of the inflammatory arthritides and to move all of the criteria for juvenile rheumatoid arthritis and the inflammatory arthritides into 114.00. In proposed 114.00E, we provide essentially the same provision for children that we proposed for the inflammatory arthritides for adults, with appropriate changes to address the particular presentation and effects of the disorders in children. The difference in numbering of the sections in part A and part B reflects the differences between the current part A and part B sections. Proposed 114.00E1 and 114.00E6, however, have no counterparts in proposed part A. Proposed 114.00E1 explains the importance of differentiating the inflammatory arthritides from other connective tissue disorders in children and of determining whether the disorder is chronic or short-term, because children have limited antigenic exposure and immune reactivity.

For reasons we explain below, we are proposing to delete current listing 101.02B, which provides for a finding of "meets" when a child with rheumatoid arthritis is dependent on steroids. In proposed 114.00E6, we explain why steroid dependence in and of itself is insufficient to establish an impairment of listing-level severity.

We propose to revise 114.00B, which currently refers to the descriptions of the connective tissue disorders in 14.00B, to add a cross-reference to proposed 114.00E. We are also proposing technical revisions to 114.00B so that it will parallel 14.00B. The changes we are proposing conform the two sections, but do not substantively change the rules; rather, they would remove any question that might arise from our using slightly

different language in two sections that are intended to say the same thing.

We propose to add a new second sentence in 114.00C2, which describes growth impairments resulting from connective tissue disorders. The new provision would explain that many children with inflammatory arthritides have growth impairments because of the diseases' effects on the immature skeleton, open epiphyses, and young cartilage and bone.

The proposed listing criteria in 114.09 are the same as the corresponding adult listing in part A and would replace the criteria in current listing 101.02A.

We are proposing to delete current listing 101.02B, which provides for a finding of "meets" when a child with rheumatoid arthritis is dependent on steroids. Although this was an appropriate listing when we first published it, advances in treatment have made the listing obsolete. Advances in the administration of steroids have corrected some of the previously disabling consequences of continuous steroid use, and it is no longer appropriate to assume that every child who is dependent on steroids will have an impairment of listing-level severity. Moreover, there are few instances when systemic corticosteroids are used in the long-term management of children with inflammatory arthritis. When steroid treatment is indicated, it is usually given only on a short-term basis, with the drug dosage being gradually reduced and discontinued within a few weeks or months.

Other Changes

As previously explained, because we are proposing to delete current listing 1.10B in part A, "Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus," we are also proposing changes to the cardiovascular system and endocrine system listings to conform with the proposed deletion. Thus, we are also proposing to delete listing 4.12C, for peripheral arterial disease resulting in amputation at or above the tarsal region, and listing 9.08C, for diabetes mellitus with amputation at or above the tarsal region due to diabetic necrosis or peripheral arterial disease. Current listing 9.08D will become listing 9.08C under this proposal. We propose these changes because experience has shown that many individuals who have undergone amputation at or above the tarsal level for vascular disease or diabetes mellitus are able to return successfully to gainful work. Significant refinements in surgical techniques for developing soft tissue flaps to cover the stump, as well as engineering advancements, which have produced prosthetic devices which minimize and distribute stress, permit some individuals with amputation above the tarsal level to work. Those individuals who are unable to ambulate effectively due to stump complications may still have their impairments evaluated under proposed listing 1.05B.

In addition, we are proposing a technical change to the current listing for systemic lupus erythematosus. Current listing 14.02A provides cross-references to ten body systems in which impairments of listing-level severity that result from the primary condition are described. We inadvertently omitted from this list an eleventh possibility, hematologic disorders, which would be evaluated under the listings in 7.00.

As we explain in current 14.00B1, systemic lupus erythematosus frequently results in anemia, leukopenia, and thrombocytopenia, and it is, therefore, possible that an individual would have an impairment of listing-level severity based on a hematologic disorder. We, therefore, propose to add a reference to the hemic and lymphatic body system. In keeping with the format of listing 14.02A, which lists the body systems in their order of appearance in appendix 1, the new provision would become listing 14.02A8. This would require renumbering current listings 14.02A8 through 14.02A10 as listings 14.02A9 through 14.02A11.

No similar change is required in part B. Current listing 114.02A includes a reference to the hemic and lymphatic listings.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 because they do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations contain reporting requirements which are subject to approval by the Office of Management and Budget (OMB). The revised listing of impairments describes the kinds of disorders the Social Security Administration (SSA) considers severe enough to meet the definition of "disabled" for benefit purposes, and lists the types of evaluations and documentation needed to support such disorders.

However, SSA already has OMB clearance to collect this information using forms such as the SSA–831 (OMB No. 0960–04–0437), SSA–832 (OMB No. 0960–04–0443) and the SSA–833 (OMB No. 0960–0442).

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only disability claimants and beneficiaries under title II and title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: August 20, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: October 4, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 404—[AMENDED]

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

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

2. The second introductory paragraph in appendix 1 to subpart P—Listing of Impairments is revised to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The musculoskeletal system listings in 1.00 and 101.00 will no longer be effective on (7 YEARS AFTER THE DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **Federal Register**) unless extended or revised and promulgated again.

* * * * *

3. Listing 1.00, Musculoskeletal System, of part A of appendix 1 of subpart P of part 404 is revised to read as follows:

1.00 Musculoskeletal System

A. *Disorders of the musculoskeletal system* may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. *Loss of function* under this section may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurologic deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. Inflammatory arthritides, which may result in loss of function because of inflammatory peripheral joint or axial arthritis or sequelae, or because of extra-articular manifestations, are to be evaluated under 14.09.

Regardless of the underlying cause(s), functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used.

1. *Inability to ambulate effectively* means an extreme limitation of the ability to walk. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00H) to permit independent ambulation without the use of a hand-held assistive device that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to afford them the ability to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk a block on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

2. *Inability to perform fine and gross movements effectively* means an extreme loss of function of both upper extremities. To use their upper extremities effectively, individuals must be capable of sustaining reasonable use of both upper extremities to perform such functions as reaching, pushing, pulling, grasping, and fingering to afford them the ability to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, or the inability to place files in a file cabinet at or above waist level. The need for intermittent assistance for the purposes of buttoning or tying does not, in and of itself, constitute ineffective functioning.

3. *Pain or other symptoms* may be an important factor contributing to functional loss. In order for pain or other symptoms to be found to affect an individual's ability to perform work activities, medical signs or laboratory findings must show the existence of a medical impairment(s) that could reasonably be expected to produce the pain or other symptoms. The musculoskeletal listings that include pain or other symptom among their criteria also include criteria for limitations in functioning as a result of the listed impairment, including limitations caused by pain. It is, therefore, important to evaluate the intensity and persistence of such pain or other symptoms carefully in order to determine their impact on the individual's functioning under these listings. See also §§ 404.1525(f) and 404.1529 of this part, and §§ 416.925(f) and 416.929 of this chapter.

C. *Diagnosis and evaluation* of musculoskeletal impairments should be supported, as applicable, by detailed descriptions of the joints, including ranges of motion, condition of the musculature (i.e., weakness, atrophy), sensory or reflex changes, circulatory deficits, and laboratory findings, including findings on medically acceptable imaging techniques. Medically acceptable imaging techniques include, but are not limited to, x-ray imaging, computerized axial tomography (CAT scan) or magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans.

Electrodiagnostic procedures and myelographic procedures may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements of 1.04.

D. *The physical examination* must include a detailed description of the rheumatologic, orthopedic, neurological, and other findings appropriate to the specific impairment being evaluated. These physical findings must be determined on the basis of objective observation during the examination and not simply a report of the individual's allegation; e.g., "He says his leg is weak, numb." Alternative testing methods should be used to verify the abnormal findings; e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Because abnormal physical findings may be intermittent, their presence over a period of time must be established by a record of ongoing management and evaluation. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

E. *Examination of the spine* should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising, from the sitting and supine position (zero degrees), motor and sensory abnormalities, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examination table. Inability to walk on the heels or toes, to squat or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs, or both upper or lower arms, at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip and pinch strength.

Neurological abnormalities may not completely subside after treatment or with the passage of time. Therefore, residual neurological abnormalities that persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present will not satisfy the required findings in 1.04. Severe neurological

deficits (paraparesis, paraplegia) are to be evaluated under the criteria in 11.00.

F. *Duration of impairment.* Musculoskeletal impairments frequently improve with time or respond to treatment. Therefore, a longitudinal clinical record covering a period of at least 3 months of management and evaluation, and the expectation that the impairment will last for 12 months, are usually necessary for the assessment of severity and expected duration of impairment, unless the claim can be decided favorably on the basis of the current evidence.

G. *Effects of treatment.* Treatments for musculoskeletal disorders may have beneficial effects or adverse side effects. Therefore, medical treatment (including surgical treatment) must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the disorder, and in terms of any side effects that may further impair the individual.

Response to treatment and adverse consequences of treatment may vary widely. For example, a pain medication may relieve an individual's pain completely, partially, or not at all. It may also result in adverse effects, e.g., drowsiness, dizziness, or disorientation, which compromise the individual's ability to function. Therefore, each case must be considered on an individual basis, and include consideration of the effects of treatment on the individual's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long-term. As such, the finding regarding the impact of treatment must be based on a sufficient period of treatment to permit proper consideration.

H. *Orthotic, prosthetic, or assistive devices.* Musculoskeletal impairments should be examined with and without any medically necessary orthotic, prosthetic, or assistive devices in place. When an individual with an impairment involving a lower extremity or extremities uses a hand-held assistive device, the individual's ability to ambulate must be evaluated without the use of the device to determine whether, or the extent to which, the individual is able to ambulate without assistance. In this case, the requirement to use a hand-held assistive device may impact on the individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. If there has been an amputation, the condition of the stump should be evaluated. The medical basis for the use of any assistive device (e.g., instability, weakness) should be documented.

I. *Disorders of the spine,* listed in 1.04, result in limitations because of distortion of the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissues may result from a herniated nucleus pulposus, spinal stenosis, arachnoiditis, or other miscellaneous conditions. Neurological impairment resulting from these disorders may additionally be evaluated by referral to the neurological listings in 11.00.

1. *Herniated nucleus pulposus* is a common disorder associated with the impingement of a nerve root. Nerve root compression results in a specific anatomic distribution of symptoms and signs depending upon the nerve root(s) compromised.

2. *Spinal arachnoiditis* is a condition characterized by adhesive thickening of the arachnoid which may cause intermittent ill-defined burning pain and sensory dysesthesia, and may cause neurogenic bladder or bowel incontinence when the cauda equina is involved.

The cause of spinal arachnoiditis often remains obscure, but it may be related to chronic compression or irritation of nerve roots (including the cauda equina) or the spinal cord. For example, there may be evidence of spinal stenosis, or a history of spinal trauma or meningitis. Diagnosis must be confirmed at the time of surgery by gross description, microscopic examination of biopsied tissue, or by findings on medically acceptable imaging techniques. Arachnoiditis is sometimes used as a diagnosis when such a diagnosis is unsupported by clinical or laboratory findings. Therefore, care must be taken to ensure that the diagnosis is documented as described in 1.04B. Individuals with arachnoiditis are generally unable to sustain any given position or posture for more than a short period of time due to pain.

3. *Lumbar spinal stenosis* is a condition that may occur in association with degenerative processes, or as a result of a congenital anomaly or trauma, or in association with Paget's disease of the bone. *Pseudoclaudication,* which may result from lumbar spinal stenosis, is manifested as pain and weakness, and may impair ambulation. Symptoms are usually bilateral, in the low back, buttocks, or thighs, although some individuals may experience only leg pain, and in a few cases, the leg pain may be unilateral. The pain pattern is generally nonanatomical, i.e., it is distinctly different from the radicular type of pain seen with a herniated intervertebral disc, and the pain is often of a dull, aching quality, which may be described as "discomfort" or an "unpleasant sensation," or may be of even greater severity, usually in the low back and radiating into the buttocks region bilaterally. The pain is provoked by extension of the spine, as in walking or merely standing, but is reduced by leaning forward. The distance the individual has to walk before the pain comes on may vary. Pseudoclaudication differs from peripheral vascular claudication in several ways. Pedal pulses and Doppler examinations are unaffected by pseudoclaudication. Leg pain resulting from peripheral vascular claudication involves the calves, and the leg pain in vascular claudication is ordinarily more severe than any back pain that may also be present. An individual with vascular claudication will experience pain after walking the same distance time after time, and the pain will be relieved quickly by stopping walking.

4. *Other miscellaneous conditions* that may cause weakness of the lower extremities, sensory changes, areflexia, trophic ulceration, bladder or bowel incontinence, and that should be evaluated under 1.04 include, but are not limited to, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture. Disorders such as spinal dysrhaphism, diastematomyelia, and tethered cord syndrome may also cause such abnormalities. In these cases, there may be obvious gait difficulty and deformity of the lower extremities on a neurogenic basis. Therefore, these impairments should be evaluated on the basis of the neurological effects under the criteria in 11.00.

J. *Abnormal curvatures of the spine.* In addition to the musculoskeletal effects of abnormal curvatures of the spine (e.g., scoliosis, kyphosis, kyphoscoliosis), which can result in impaired ambulation, these conditions may also adversely affect an individual's ability to breathe or may result in marked disfigurement with emotional withdrawal or isolation. When there is impaired ambulation, evaluation of equivalence may be made by reference to 14.09B. When there is respiratory involvement or an associated mental disorder, evaluation may be made under 3.00 or 12.00, as appropriate.

K. *Under continuing surgical management,* as used in 1.07 and 1.08, refers to surgical procedures and any

other associated treatments related to the efforts directed toward the salvage or restoration of functional use of the affected part. It may include such factors as surgical complications, infections, or other medical complications, related illnesses, or related treatments that delay the individual's attainment of maximum benefit from therapy.

L. *After maximum benefit from therapy has been achieved* in situations involving fractures of an upper extremity (1.07), or soft tissue injuries (1.08), i.e., there have been no significant changes in physical findings or on medically acceptable imaging techniques for any 6-month period after the last definitive surgical procedure, evaluation must be made on the basis of the demonstrable residuals, if any. A finding that 1.07 or 1.08 is met must be based on a consideration of the symptoms, signs, and laboratory findings associated with recent or anticipated surgical procedures and the resulting recuperative periods, including any related medical complications, such as infections, illnesses, and therapies which impede or delay the efforts toward restoration of function. Generally, when there has been no surgical or medical intervention for a period of 6 months after the last definitive surgical procedure, i.e., maximum therapeutic benefit has been reached, then the symptoms, signs, and laboratory findings associated with such surgeries, complications, and recuperative periods are no longer the sole factors to be considered because maximal medical restoration will have been completed. Evaluation at this point must be made on the basis of the demonstrable residual impairment, if any, as demonstrated by the symptoms, signs, and laboratory findings, and other relevant evidence.

M. *When surgical procedures* have been performed, documentation should include a copy of the operative notes and available pathology reports.

N. *Major joints* are the hip, knee, shoulder, elbow, wrist-hand, or ankle-foot. The wrist and hand are considered together as one major joint, as are the ankle and foot.

O. *Measurements of joint motion* are based on the techniques described in the chapter on the extremities, spine, and pelvis in the current edition of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association.

1.01 Category of Impairments, Musculoskeletal

1.02 *Deficit of musculoskeletal function of a major joint(s) (due to any cause):* Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on medically acceptable imaging techniques of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major weight-bearing joint (i.e., hip, knee, or ankle-foot), resulting in inability to ambulate effectively, as defined in 1.00B1;

or

B. Involvement of one major joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2.

1.03 *Reconstructive surgery or surgical arthrodesis* of a major weight-bearing joint, with inability to ambulate effectively, as defined in 1.00B1, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Disorders of the spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by anatomic distribution of pain, limitation of motion of the spine, motor deficit (atrophy or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by medically acceptable imaging techniques, manifested by severe burning or painful dysesthesia, resulting in the need for frequent changes in position or posture;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on medically acceptable imaging techniques, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B1.

1.05 *Amputation.*

A. Both hands;

or

B. One or both lower extremities at or above the tarsal region, with inability to ambulate effectively, as defined in 1.00B1, due to stump complications which have lasted or are expected to last for at least 12 months from onset;

or

C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 1.00B1, without an obligatory hand-held assistive device;

or

D. Hemipelvectomy or hip disarticulation with amputation of the other lower extremity at or above the tarsal region.

1.06 *Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones.* With:

A. Solid union not evident on medically acceptable imaging techniques and not clinically solid, when such determination is feasible;

and

B. Inability to ambulate effectively, as defined in 1.00B1, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 *Fracture of an upper extremity* with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months after onset.

1.08 *Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk, face, or head,* under continuing surgical management directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months after onset.

4. Listing 4.12, Cardiovascular System, of part A of appendix 1 of subpart P is revised to read as follows:

4.00 Cardiovascular System

* * * * *

4.12 *Peripheral arterial disease.* With one of the following:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity;

or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at the ankle on exercise (see 4.00E4) of

50 percent or more of pre-exercise level at the ankle, and requiring 10 minutes or more to return to pre-exercise level.

5. Listing 9.08, Endocrine System, of part A of appendix 1 of subpart P is amended by removing paragraph 9.08C and redesignating paragraph 9.08D as paragraph 9.08C.

Listing 14.00, Immune System, of part A of appendix 1 of subpart P of part 404 is amended as follows:

6. In listing 14.00B, the fourth and sixth paragraphs are revised to read as follows:

14.00 Immune System

* * * * *

B. * * *

* * * * *

To permit appropriate application of a listing, the specific diagnostic features that should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SLE), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, undifferentiated connective tissue disorders, and the inflammatory arthritides.

* * * * *

These disorders may preclude performance of any gainful activity by reason of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss, joint pain, and stiffness. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

* * * * *

7. A new paragraph 14.00B6 is added to read as follows:

6. *Inflammatory arthritis (14.09)* includes a vast array of disorders which differ in cause, course, and outcome. For example, inflammatory spondyloarthropathies include ankylosing spondylitis, Reiter's syndrome and other reactive arthropathies, psoriatic arthropathy, Behçet's disease, and Whipple's disease, as well as undifferentiated spondylitis. Inflammatory arthritis of peripheral joints likewise comprises many disorders, including rheumatoid arthritis, Sjögren's syndrome, psoriatic arthritis, crystal deposition disorders, and Lyme disease. However, all the chronic forms (i.e., disorders that are expected to last clinically for at least 12 months) have the potential to result in functional loss that may preclude the performance of any gainful activity. Clinically, inflammation of major joints may be the dominant problem causing difficulties with ambulation or fine and gross movements, or the arthritis may involve other joints or cause less restriction of ambulation or other movements but be complicated by extra-articular features which cumulatively result in functional deficit. When deformity without ongoing inflammation is the dominant manifestation of the impairment, it should be evaluated under 1.02, or, if there has been surgical reconstruction, 1.03.

a. In 14.09A, the term *major joints* refers to the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot. The wrist and hand are considered together as one major joint, as are the ankle and foot.

b. The terms *inability to ambulate effectively* and *inability to perform fine and gross movements effectively* in 14.09A have the same meaning as in 1.00B1 and 1.00B2.

c. Inability to ambulate effectively is implicit in 14.09B. Even though individuals who demonstrate the findings of 14.09B will not ordinarily require bilateral upper limb assistance, the required ankylosis of the cervical and dorsolumbar spines will result in inability to see ahead and to the side.

d. As in 14.02 through 14.06, extra-articular findings of an inflammatory arthritis may satisfy the criteria for an involved extra-articular body system, and should be evaluated under 14.09C. Extra-articular findings of lesser severity should be evaluated under 14.09D and 14.09E. Commonly occurring extra-articular impairments include keratoconjunctivitis sicca, uveitis, iridocyclitis, pleuritis, pulmonary fibrosis or nodules, restrictive lung disease, pericarditis, myocarditis, cardiac arrhythmias, aortic valve insufficiency, coronary arteritis, Raynaud's phenomena, systemic vasculitis, amyloidosis of the kidney, chronic anemia, thrombocytopenia, hypersplenism with compromised immune competence (Felty's syndrome), peripheral neuropathy, radiculopathy, spinal cord or cauda equina compression with sensory and motor deficit, and heel enthesopathy with functionally limiting pain.

* * * * *

8. In listing 14.02, paragraphs 14.02A8 through 14.02A10 are redesignated as paragraphs 14.02A9 through 14.02A11, respectively, and a new paragraph 14.02A8 is added to read as follows:

14.02 *Systemic lupus erythematosus.* Documented as described in 14.00B1, with:

A. One of the following:

* * * * *

8. Hematologic involvement, as described under the criteria in 7.00ff; or

* * * * *

9. A new listing 14.09 is added to read as follows:

14.09 *Inflammatory arthritis.* Documented as described in 14.00B6, with one of the following:

A. History of joint pain, swelling, and tenderness, and signs on current physical examination of joint inflammation or deformity in two or more major joints resulting in inability to ambulate effectively or inability to perform fine and gross movements effectively, as defined in 14.00B6b and 1.00B1 and B2.

or

B. Ankylosing spondylitis or other spondyloarthropathy, with diagnosis established by findings of unilateral or bilateral sacroiliitis (e.g., erosions or fusions), shown by medically acceptable imaging techniques, with both:

1. History of back pain, tenderness, and stiffness, and

2. Findings on physical examination of ankylosis (fixation) of the dorsolumbar and cervical spines at 45° or more of flexion measured from the vertical position (zero degrees).

or

C. With an impairment as described under the criteria in 14.02A.

or

D. Inflammatory arthritis, with signs of peripheral joint inflammation on current examination, but with lesser joint involvement than in A and lesser extra-articular findings than in C, and:

1. Significant, documented constitutional symptoms and signs (e.g., joint pain, morning stiffness of at least 2 hours' duration, fatigue, fever, malaise, weight loss), and

2. Involvement of two or more organs/body systems (see 14.00B6). At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

E. Inflammatory spondylitis or other inflammatory spondyloarthropathies, with lesser deformity than in B and lesser extra-articular findings than in C, with signs of unilateral or bilateral sacroiliitis on medically acceptable imaging techniques, and the extra-articular findings described in 14.09D.

10. Listing 101.00, Musculoskeletal System, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

101.00 Musculoskeletal System

A. *Disorders of the musculoskeletal system* may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. *Loss of function* under this section may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurologic deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. Inflammatory arthritides, which may result in loss of function because of inflammatory peripheral joint or axial arthritis or sequelae, or because of extra-articular manifestations, are to be evaluated under 114.09.

Regardless of the underlying cause(s), functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 112.00ff are to be used.

1. *Inability to ambulate effectively* means an extreme limitation of the ability to walk. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 101.00H) to permit independent ambulation without the use of a hand-held assistive device that limits the functioning of both upper extremities. (Listing 101.05C is an exception to this general definition because the child has the use of only one upper extremity due to amputation of a hand.)

For children who are too young to be expected to walk independently, consideration of function must be based upon the inability to perform comparable age-appropriate activities with the lower extremities, given normal developmental expectations for given age ranges. For such children, an extreme level of limitation means skills or performance at no greater than one-half of age expectations based on an overall developmental assessment rather than on one or two isolated skills.

Older children, who would be expected to be able to walk when compared to their peers, must be capable of sustaining a reasonable walking pace over a sufficient distance to afford them the ability to carry out age-appropriate activities of daily living. They must have the ability to travel age-appropriately without extraordinary assistance to and from school or a place of employment. Therefore, examples of ineffective ambulation for older children include, but are not limited to, the inability to walk a block on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out age-appropriate school activities independently, and the inability to climb a few steps with the use of a single hand rail. The ability to walk independently about the child's home without the use of assistive devices will not, in and of itself, constitute effective ambulation.

2. *Inability to perform fine and gross movements effectively*, means an extreme loss of function of both upper extremities. To use their upper extremities effectively, individuals must be capable of sustaining reasonable use of both upper extremities to perform such functions as reaching, pushing, pulling, grasping, and fingering in an age-appropriate manner to afford them the ability to carry out age-appropriate activities of daily living.

For very young children, the consideration is the inability to perform comparable age-appropriate activities involving the upper extremities. Determinations of extreme limitations in such children should be made by comparison with the limitations for persistent motor dysfunction for infants and young children described in 110.07A.

For older children, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, or the inability to sort and handle papers or files, depending upon which activities are age-appropriate. The need for intermittent assistance for the purposes of buttoning or tying in a child for whom these are age-appropriate abilities does not, in and of itself, constitute ineffective functioning.

3. *Pain or other symptoms* may be an important factor contributing to functional loss. In order for pain or other symptoms to be found to affect a child's ability to perform work activities or to function in an age-appropriate manner, medical signs or laboratory findings must show the existence of a medical impairment(s) that could reasonably be expected to produce the pain or other symptoms. The musculoskeletal listings that include pain or other symptoms among their criteria also include criteria for limitations in functioning as a result of the listed impairment, including limitations caused by pain. It is, therefore, important to evaluate the intensity and persistence impact such pain or other symptoms carefully in order to determine their impact on the individual's functioning under these listings. See also §§ 404.1525(f) and 404.1529, of this part, and §§ 416.925(f) and 416.929 of part 416 of this chapter.

C. *Diagnosis and evaluation* of musculoskeletal impairments should be supported, as applicable, by detailed descriptions of the joints, including ranges of motion, condition of the musculature (i.e., weakness, atrophy), sensory or reflex changes, circulatory deficits, and laboratory findings, including findings on medically acceptable imaging techniques. Medically acceptable imaging techniques include, but are not limited to, x-ray imaging, computerized axial tomography (CAT scan) or magnetic resonance imaging (MRI), with or without contrast material, and radionuclear bone scans.

Electrodiagnostic procedures and myelographic procedures may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements of 101.04.

D. *The physical examination* must include a detailed description of the rheumatologic, orthopedic, neurological, and other findings appropriate to the specific impairment being evaluated. These physical findings must be determined on the basis of objective observation during the examination and not simply a report of the individual's allegation; e.g., "He says his leg is weak, numb." Alternative testing methods should be used to verify the abnormal findings; e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Because abnormal physical findings may be intermittent, their presence over a period of time must be established by a record of ongoing management and evaluation. Care must be taken to ascertain that the reported examination findings are consistent with the child's daily activities.

E. *Examination of the spine* should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising, from the sitting and supine position (zero degrees), motor and sensory abnormalities, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she

gets on and off the examination table. Inability to walk on the heels or toes, to squat or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs, or both upper or lower arms, at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip and pinch strength. However, because of the unreliability of such measurement in younger children, these data are not applicable to children under 5 years of age.

Neurological abnormalities may not completely subside after treatment or with the passage of time. Therefore, residual neurological abnormalities that persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present will not satisfy the required findings in 101.04. Severe neurological deficits (paraparesis, paraplegia) are to be evaluated under the criteria in 111.00.

F. *Duration of impairment.* Musculoskeletal impairments frequently improve with time or respond to treatment. Therefore, a longitudinal clinical record covering a period of at least 3 months of management and evaluation, and the expectation that the impairment will last for 12 months, are usually necessary for the assessment of severity and expected duration of impairment, unless the claim can be decided favorably on the basis of the current evidence.

G. *Effects of treatment.* Treatments for musculoskeletal disorders may have beneficial effects or adverse side effects. Therefore, medical treatment (including surgical treatment) must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the disorder, and in terms of any side effects that may further impair the individual.

Response to treatment and adverse consequences of treatment may vary widely. For example, a pain medication may relieve an individual's pain completely, partially, or not at all. It may also result in adverse effects, e.g., drowsiness, dizziness, or disorientation, which compromise the individual's ability to function. Therefore, each case must be considered on an individual basis, and include consideration of the effects of treatment on the individual's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long term. As such, the finding regarding the impact of treatment must be based on a sufficient period of treatment to permit proper consideration.

H. *Orthotic, prosthetic, or assistive devices.* Musculoskeletal impairments should be examined with and without any medically necessary orthotic, prosthetic, or assistive devices in place. When an individual with an impairment involving a lower extremity or extremities uses a hand-held assistive device, the individual's ability to ambulate must be evaluated without the use of the device to determine whether, or the extent to which, the individual is able to ambulate without assistance. In this case, the requirement to use a hand-held assistive device may impact on the individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. If there has been an amputation, the condition of the stump should be evaluated. The medical basis for the use of any assistive device (e.g., instability, weakness) should be documented.

I. *Disorders of the spine,* listed in 101.04, result in limitations because of distortion of the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissues may result from a herniated nucleus pulposus or other miscellaneous conditions. Neurological impairment resulting from these disorders may additionally be evaluated by referral to the neurological listings in 111.00.

1. *Herniated nucleus pulposus* is a common disorder associated with the impingement of a nerve root, but occurs infrequently in children. Nerve root compression results in a specific anatomic distribution of symptoms and signs depending upon the nerve root(s) compromised.

2. *Other miscellaneous conditions* that may cause weakness of the lower extremities, sensory changes, areflexia, trophic ulceration, bladder or bowel incontinence, and that should be evaluated under 101.04 include, but are not limited to, lysomal disorders, metabolic disorders, vertebral osteomyelitis, vertebral fractures and achondroplasia. Disorders such as spinal dysrhaphism, diastematomyelia, and tethered cord syndrome may also cause such abnormalities. In these cases, there may be obvious gait difficulty and deformity of the lower extremities on a neurogenic basis. Therefore, these impairments should be evaluated on the basis of the neurological effects under the criteria in 111.00.

J. *Abnormal curvatures of the spine.* In addition to the musculoskeletal effects of abnormal curvatures of the spine (e.g., scoliosis, kyphosis, kyphoscoliosis), which can result in impaired ambulation, these conditions may also adversely affect an individual's ability to breathe or may result in marked disfigurement with emotional withdrawal or isolation. When there is impaired ambulation, evaluation of equivalence may be made by reference to 114.09B. When there is respiratory involvement or an associated mental disorder, evaluation may be made under 103.00 or 112.00, as appropriate.

K. *Under continuing surgical management,* as used in 101.07 and 101.08, refers to surgical procedures and any other associated treatments related to the efforts directed toward the salvage or restoration of functional use of the affected part. It may include such factors as surgical complications, infections, or other medical complications, related illnesses, or related treatments that delay the individual's attainment of maximum benefit from therapy.

L. *After maximum benefit from therapy has been achieved* in situations involving fractures of an upper extremity (101.07), or soft tissue injuries (101.08), i.e., there have been no significant changes in physical findings or on medically acceptable imaging techniques for any 6-month period after the last definitive surgical procedure, evaluation must be made on the basis of the demonstrable residuals, if any. A finding that 101.07 or 101.08 is met must be based on a consideration of the symptoms, signs, and laboratory findings associated with recent or anticipated surgical procedures and the resulting recuperative periods, including any related medical complications, such as infections, illnesses, and therapies which impede or delay the efforts toward restoration of function. Generally, when there has been no surgical or medical intervention for a period of 6 months after the last definitive surgical procedure, i.e., maximum therapeutic benefit has been reached, then the symptoms, signs, and laboratory findings associated with such surgeries, complications, and recuperative periods are no longer the

sole factors to be considered because maximal medical restoration will have been completed. Evaluation at this point must be made on the basis of the demonstrable residual impairment, if any, as demonstrated by the symptoms, signs, laboratory findings, and other relevant evidence.

M. *When surgical procedures* have been performed, documentation should include a copy of the operative notes and available pathology reports.

N. *Major joints* are the hip, knee, shoulder, elbow, wrist-hand, or ankle-foot. The wrist and hand are considered together as one major joint, as are the ankle and foot.

O. *Measurements of joint motion* are based on the techniques described in the chapter on the extremities, spine, and pelvis in the current edition of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association.

101.01 Category of Impairments, Musculoskeletal

101.02 *Deficit of musculoskeletal function of a major joint(s) (due to any cause):* Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on medically acceptable imaging techniques of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major weight-bearing joint (i.e., hip, knee, or ankle-foot), resulting in inability to ambulate effectively, as defined in 101.00B1;

or

B. Involvement of one major joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 101.00B2.

101.03 *Reconstructive surgery or surgical arthrodesis* of a major weight-bearing joint, with inability to ambulate effectively, as defined in 101.00B1, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

101.04 *Disorders of the spine* (e.g., lysomal disorders, metabolic disorders, vertebral osteomyelitis, vertebral fracture, achondroplasia) resulting in compromise of a nerve root (including the cauda equina) or the spinal cord, with evidence of nerve root compression characterized by anatomic distribution of pain, limitation of motion of the spine, motor deficit (atrophy or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

101.05 *Amputation.*

A. Both hands;

or

B. One or both lower extremities at or above the tarsal region, with inability to ambulate effectively, as defined in 101.00B1, due to stump complications which have lasted or are expected to last for at least 12 months from onset;

or

C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 101.00B1, without an obligatory hand-held assistive device;

or

D. Hemipelvectomy or hip disarticulation with amputation of the other lower extremity at or above the tarsal region.

101.06 *Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones.* With:

A. Solid union not evident on medically acceptable imaging techniques, and not clinically solid, when such determination is feasible;

and

B. Inability to ambulate effectively, as defined in 101.00B1, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

101.07 *Fracture of an upper extremity* with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months after onset.

101.08 *Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk, face, or head* under continuing surgical management directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months after onset.

11. Listing 114.00, Immune System, of part B of appendix 1 of subpart P of part 404 is amended by revising the first and sixth paragraphs of 114.00B, by revising 114.00C2, and by adding new 114.00E to read as follows:

114.00 Immune System

* * * * *

B. *Dysregulation of the immune system* may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. These disorders are described in part A, 14.00B; inflammatory arthritis is also described in 114.00E.

* * * * *

In children the impairment may affect growth, development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be the result of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss, joint pain, and stiffness. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

C. *Allergies, growth impairments and Kawasaki disease.*

* * * * *

2. If growth is affected by the disorder or its treatment by immunosuppressive drugs, 100.00, Growth impairment, may apply. Many children may have growth impairment as a result of the inflammatory arthritides because of the diseases' potential effects on the immature skeleton, open epiphyses, and young cartilage and bone. In such situations, the growth impairment should be evaluated under 100.00.

* * * * *

E. *Inflammatory arthritis (114.09)* includes a vast array of disorders which differ in cause, course, and outcome. For example, in children inflammatory spondyloarthropathies include juvenile ankylosing spondylitis, reactive arthropathies, psoriatic arthropathy, and Behçet's disease, as well as undifferentiated spondylitis. Inflammatory arthritis of peripheral joints likewise comprises many disorders, including juvenile rheumatoid arthritis, Sjögren's syndrome, psoriatic arthritis, crystal deposition disorders, and Lyme disease. However, all the chronic forms (i.e., disorders that are expected to last clinically for at least 12 months) have the potential to result in functional loss that may preclude a child from functioning independently, appropriately, and effectively in an age-appropriate manner. Clinically, inflammation of major joints may be the dominant problem causing difficulties with ambulation or fine and gross movements, or the arthritis may involve

other joints or cause less restriction of age-appropriate ambulation or other movements but be complicated by extra-articular features which cumulatively result in functional deficit. When deformity without ongoing inflammation is the dominant manifestation of the impairment, it should be evaluated under 101.02, or, if there has been surgical reconstruction, 101.03.

1. Because the manifestations of inflammatory connective tissue diseases in children are modified by such factors as the child's limited antigenic exposure and immune reactivity, the acute inflammatory connective tissue diseases must be differentiated from each other in order to evaluate duration factors and responses to specific treatments. Chronic conditions must be differentiated from short-term reversible disorders, and also from other connective tissue diseases.

2. In 114.09A, the term *major joints* refers to the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot. The wrist and hand are considered together as one major joint, as are the ankle and foot.

3. The terms *inability to ambulate effectively* and *inability to perform fine and gross movements effectively* in 114.09A have the same meaning as in 101.00B1 and 101.00B2.

4. Inability to ambulate effectively is implicit in 114.09B. Even though children who demonstrate the findings of 114.09B will not ordinarily require bilateral upper limb assistance, the required ankylosis of the cervical and dorsolumbar spines will result in inability to see ahead and to the side.

5. As in 114.02 through 114.06, extra-articular findings of an inflammatory arthritis may satisfy the criteria for an involved extra-articular body system, and should be evaluated under 114.09C. Extra-articular findings of lesser severity should be evaluated under 114.09D and 114.09E. Commonly occurring extra-articular impairments include keratoconjunctivitis sicca, uveitis, iridocyclitis, pleuritis, pulmonary fibrosis or nodules, restrictive lung disease, pericarditis, myocarditis, cardiac arrhythmias, aortic valve insufficiency, coronary arteritis, Raynaud's phenomena, systemic vasculitis, amyloidosis of the kidney, chronic anemia, thrombocytopenia, hypersplenism with compromised immune competence (Felty's syndrome), peripheral neuropathy, radiculopathy, spinal cord or cauda equina compression with sensory and motor deficit, and heel enthesopathy with functionally limiting pain.

6. The fact that a child is dependent on steroids, or any other drug, for the control of the adverse effects of an inflammatory arthritis is, in and of itself, insufficient to find disability. Advances in the treatment of inflammatory connective tissue disease and in the administration of steroids for its treatment have corrected some of the previously disabling consequences of continuous steroid use. Therefore, each case must be evaluated on its own merits, taking into consideration the severity of the underlying impairment and any adverse effects of treatment.

12. A new listing 114.09 is added to read as follows:

114.09 *Inflammatory arthritis.* Documented as described in 114.00E, with one of the following:

A. History of joint pain, swelling, and tenderness, and signs on current physical examination of joint inflammation or deformity in two or more major joints resulting in inability to ambulate effectively or inability to perform fine and gross movements effectively, as defined in 114.00E3 and 101.00B1 and B2.

or

B. Ankylosing spondylitis or other spondyloarthropathy, with diagnosis established by findings of unilateral or bilateral sacroiliitis (e.g., erosions or fusions), shown by medically acceptable imaging techniques, with both:

1. History of back pain, tenderness, and stiffness, and

2. Findings on physical examination of ankylosis (fixation) of the dorsolumbar and cervical spines at 45° or more of flexion measured from the vertical position (zero degrees).

or

C. With an impairment as described under the criteria in 114.02A.

or

D. Inflammatory arthritis, with signs of peripheral joint inflammation on current examination, but with lesser joint involvement than in A and lesser extra-articular findings than in C, and:

1. Significant, documented constitutional symptoms and signs (e.g., joint pain, morning stiffness of at least 2 hours' duration, fatigue, fever, malaise, weight loss), and

2. Involvement of two or more organs/body systems (see 114.00E). At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

E. Inflammatory spondylitis or other inflammatory spondyloarthropathies, with lesser deformity than in B and lesser extra-articular findings than in C, with signs of unilateral or bilateral sacroiliitis on medically acceptable imaging techniques, and the extra-articular findings described in 114.09D.

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Part IX

Department of Labor

Office of Labor-Management Standards

29 CFR Part 402
Labor Organization Annual Financial Reports; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 402

RIN 1294-AA07

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Office of the American Workplace, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations pertaining to the filing, by labor organizations, of annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (hereinafter the LMRDA), and revises the annual financial reporting forms, Forms LM-2, LM-3, and LM-4, which are prescribed by the Secretary to implement the LMRDA reporting requirements and incorporated by reference in the applicable regulations. The regulations and annual reporting forms which are revised by this final rule were established in two final rules issued on October 30, 1992, which were to become effective on December 31, 1994. The major revisions made by this final rule are the rescission of the requirement that labor organizations report certain expenditures by functional categories, and the rescission of the option to complete the reporting forms on either the cash or the accrual basis of accounting and the reinstatement of the previous requirement that the forms be completed on the cash basis of accounting. This rule also eliminates Form LM-1A, on which labor organizations report changes in their constitutions and bylaws or changes in certain practices or procedures reported on Form LM-1, and makes a number of other changes in the reporting requirements, forms, and instructions.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., room N-5605, Washington, DC 20210, (202) 219-7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The following is the outline of this discussion.

I. Background and Overview
II. Comments on the Proposal
A. Rescission of the Functional Reporting Requirement
B. Rescission of the Cash/Accrual Reporting Option and Reinstatement of the Cash Reporting Requirement
C. Retention of New Form LM-4 with Ceiling of $10,000 and Increase in Form LM-3 Ceiling to $200,000
D. New Questions
E. Elimination of Form LM-1A
F. Incorporation of Department's Positions on Certain Reporting Requirements
G. Other Proposed Changes
H. General Comments on the NPRM
III. Additional Recommendations in the Comments
IV. Changes to the Proposed Reporting Forms and Instructions
A. Form LM-2
B. Form LM-3
C. Form LM-4
V. Administrative Notices
A. Executive Order 12866
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I. Background and Overview

Section 201(a) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (Pub. L. 86-257, 73 Stat. 519) (LMRDA), requires each covered labor organization to adopt a constitution and bylaws and to file a copy with the Secretary of Labor, at the time it becomes subject to the LMRDA, along with a report, signed by its president and secretary or corresponding principal officers, containing information relating to its organization and to the provisions made and procedures followed with respect to certain matters. Section 201(a) also requires each covered labor organization to report any changes in that information to the Secretary at the time it files the annual financial report required by LMRDA section 201(b).

Section 201(b) of the LMRDA requires each covered labor organization to file annually with the Secretary of Labor a financial report, signed by its president and treasurer or corresponding principal officers, containing information in the detail necessary to disclose accurately its financial condition and operations for the preceding fiscal year.

The Secretary of Labor has delegated authority under the LMRDA to the Assistant Secretary for the American Workplace. See Secretary's Order No. 2-93 (58 FR 42578, August 10, 1993).

The requirements of LMRDA sections 201(a) and 201(b) apply to all labor organizations in the private sector. In addition, section 1209(b) of the Postal Reorganization Act (Pub. L. 91-375, 84 Stat. 737) makes the LMRDA applicable to labor organizations which represent employees of the U.S. Postal Service. Finally, the Department's regulations, at 29 CFR 458.3, which implement the provisions of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 92 Stat. 1192) and the Foreign Service Act of 1980 (Pub. L. 96-465, 94 Stat. 2140) relating to standards of conduct for Federal sector labor organizations, 5 U.S.C. 7120 and 22 U.S.C. 1017, respectively, extend the LMRDA reporting requirements to labor organizations which represent certain employees of the federal government.

Section 208 of the LMRDA authorizes the Secretary to issue, amend, and rescind rules prescribing the form and publication of the information and annual financial reports required by sections 201(a) and 201(b), and to provide simplified reports for labor organizations for whom the Secretary finds that by virtue of their size a detailed report would be unduly burdensome.

The Secretary has prescribed in the regulations at 29 CFR 402.2 and 402.3 that the information required by LMRDA section 201(a) be filed on Form LM-1. The Secretary has prescribed, in the currently applicable regulations at 29 CFR 402.4, that Form LM-1A be filed by labor organizations to update the information filed in Form LM-1 and to transmit copies of revised constitutions and bylaws. With regard to the annual financial reports, in the currently applicable regulations at 29 CFR 403.3 and 403.4(a), the Secretary has prescribed Form LM-2 for labor organizations with total annual receipts of $100,000 or more and simplified Form LM-3 for labor organizations with total annual receipts of less than $100,000. (The currently applicable regulations at 29 CFR 403.4(b) also provide that for a labor organization which has no assets, liabilities, receipts, or disbursements, the parent national or international labor organization may fulfill that organization's reporting obligation by filing basic information on its behalf in a simplified format. That provision is not affected by this final rule.)

On April 17, 1992, the Department of Labor published a proposed rule in the **Federal Register**, 57 FR 14244, to revise the regulations implementing the labor organization annual financial reporting requirements of the LMRDA and to revise the annual financial reporting forms and instructions prescribed by the Secretary and incorporated by reference in the regulations. In particular, the Department proposed to make two major changes in the reporting requirements of Forms LM-2 and LM-3. The first major proposed change required labor organizations to utilize functional categories to report their expenses in addition to the object class categories currently used in Forms LM-2 and LM-3. (Object class categories

represent actual financial transactions such as payments for officer salaries or rent; functional reporting requires that the actual expenditures be allocated among activities and programs, such as collective bargaining or organizing.) The second major proposed change would have required labor organizations to report financial information on an accrual basis using generally accepted accounting principles (GAAP) rather than the current, predominantly cash, basis of accounting.

In addition, the Department proposed to raise the ceiling for filing the simplified Form LM–3 from the current $100,000 in total annual receipts to $200,000 and substantially increase the reporting required in Form LM–3. Finally, the Department asked for comments on whether an additional abbreviated reporting form should be developed for very small labor organizations.

On September 10, 1992, the Department published another proposed rule in the **Federal Register**, 57 FR 41634, to further revise the LMRDA reporting regulations and to issue an abbreviated labor organization financial report, Form LM–4, for labor organizations with total annual receipts of less than $10,000.

On October 30, 1992, the Department published two final rules in the **Federal Register**, 57 FR 49292 and 57 FR 49356. The first final rule revised the regulations implementing the LMRDA labor organization reporting requirements, and revised Forms LM–2 and LM–3; the second final rule further revised the regulations and issued the new Form LM–4. The final rules adopted the proposed rules and forms with some modifications, including the functional reporting requirement. The major change from the proposed rules and forms was that the final rules allowed labor organizations the option of completing the forms on either the accrual or the cash basis of accounting. The effective date of the final rules was December 31, 1993. Thus, labor organization financial reports covering fiscal years beginning on and after January 1, 1993 would have had to be completed on the newly revised forms.

Subsequent to publication of the October 30, 1992 final rules, the Department received many comments and questions from labor organizations and accountants concerning their difficulties in adopting recordkeeping and accounting systems to comply with the new reporting requirements. In addition, the Department itself found that the short time period for implementation made it more difficult than anticipated to prepare staff to respond to inquiries and to develop educational and compliance assistance materials for labor organizations. Consequently, on February 19, 1993, the Department published a proposed rule in the **Federal Register**, 58 FR 9418, to extend the effective date of the final rules for one year, to December 31, 1994. The proposal was made in order to alleviate the compliance problems associated with the short time period provided by the effective date set in the final rules of October 30, 1992. The proposal was also made in order to allow the Department time to reevaluate the final rules to determine whether modification or rescission of some or all of the revisions made by those rules would be appropriate. A 30-day comment period was provided.

On May 12, 1993, the Department published a final rule postponing the effective date of the October 30, 1992 rules for one year. The notice discussed a number of the problems which labor organizations were having in attempting to comply with the functional reporting requirement and the Department's difficulties in providing guidance and compliance assistance.

After completing the reevaluation of the October 30, 1992 final rules, the Department published a notice of proposed rulemaking (NPRM) on September 23, 1993. The NPRM proposed to (1) rescind the requirement that labor organizations report certain expenditures in functional categories, and (2) rescind the option to complete the reports on either the accrual or the cash basis and reinstate the requirement to report on the cash basis. These proposed revisions to the final rules of October 30, 1992 would have the effect of retaining the general format and scope of the LMRDA labor organization reporting requirements as they have been since 1960.

The Department also proposed to retain the new abbreviated Form LM–4 for small labor organizations with total annual receipts of less than $10,000, to retain the increase in the ceiling for eligibility to file simplified Form LM–3 from $100,000 to $200,000, and to modify the information required to be reported on both Forms LM–3 and LM–4. Finally, the Department proposed a number of other changes to the labor organization reporting forms and regulations.

First, in order to enhance disclosure, (1) proposed Forms LM–2, LM–3, and LM–4 had a new item for reporting the number of members, (2) proposed Forms LM–2 and LM–3 had new items for reporting whether any officers had paid positions in other labor organizations or employee benefit plans, whether an outside audit was conducted, and whether the labor organization had a political action committee fund; and (3) proposed Form LM–2 had a new schedule for reporting details on office and administrative expenses.

Second, the instructions for proposed Forms LM–2 and LM–3 were revised to incorporate the Department's position on several reporting requirements, such as the reporting of travel advances as loans under certain conditions, the reporting of all labor organization special funds, including funds of political action committees unless financial reports on those funds are filed with another Federal or state agency, and the reporting of lost time payments as disbursements to employees.

Third, the Department proposed to revise the requirements for reporting changes in labor organization constitutions and bylaws and in their practices and procedures with respect to certain matters. Under the present regulations, when a labor organization has changes to report, it must file Form LM–1A at the time it files its annual financial report to (1) transmit dated copies of its revised constitution and bylaws, and/or (2) report changes in the practices and procedures enumerated in LMRDA section 201(a)(5) (A) through (M) (previously reported in Item 18 of Form LM–1 and Item 10 of Form LM–1A) which are not contained in its constitution and bylaws. Under the proposed rule, Form LM–1A is eliminated; when a labor organization has changes to report, it must (1) file dated copies of its revised constitution and bylaws with its annual financial report, and/or (2) file an amended Form LM–1, at the time it files its annual financial report, to report changes in the practices and procedures enumerated in LMRDA section 201(a)(5) (A) through (M) (previously reported in Item 18 of Form LM–1 and Item 10 of Form LM–1A) which are not contained in its constitution and bylaws. The proposed rule did not change the provision which allows a parent body to file, on behalf of its subordinate bodies, copies of a uniform constitution and bylaws to which those subordinate bodies are subject.

The Department proposed to make these changes effective on December 31, 1994, so that covered labor organizations would be required to use the newly revised Forms LM–2, LM–3, and LM–4 for reports covering fiscal years beginning on or after January 1, 1994. In the Department's view, this would provide sufficient time for labor organizations to make any necessary preparations for complying with the proposed new reporting requirements

because the reporting changes would require minimal, if any, change in the records which labor organizations now maintain to comply with the currently applicable reporting requirements of Forms LM–2 and LM–3.

Public comment on the proposed rule was invited, with the comment period ending on October 25, 1993. The comments and the Department's responses are discussed below. The Department has decided to adopt all the proposed revisions in the NPRM of September 23, 1993 with the modifications discussed below.

II. Comments on the Proposal

Fifteen comments were received from the public. (Two of these comments were received on October 26, one day after the end of the comment period, but were nevertheless considered. Two additional comments were received over a week later and were not considered.) The following eleven labor organizations submitted comments:

—AFL–CIO;
—Seafarers International Union;
—International Ladies' Garment Workers' Union;
—Utility Workers Union of America;
—United Food & Commercial Workers International Union;
—Aluminum, Brick & Glass Workers International Union;
—International Chemical Workers Union;
—International Association of Fire Fighters;
—Sheet Metal Workers' International Association;
—American Postal Workers Union; and
—Sign & Pictorial Painters Local Union 550.

Two comments were received from the following accounting firms:

—Potter & Company; and
—Daniel A. Winters & Company.

Finally, two comments were received from the following organizations:

—Public Citizen Litigation Group; and
—National Right to Work Foundation.

The Department has carefully reviewed and considered all statements made in the comments in developing this final rule. The following is a summary of the comments and the Department's responses.

A. Rescission of the Functional Reporting Requirement

The first major change to the final rule of October 30, 1992 proposed in the NPRM of September 23, 1993 was to rescind the functional reporting requirement. Of the thirteen organizations which commented on this issue, twelve supported the proposed rescission, either with specific comments or with general statements supporting the changes proposed in the NPRM of September 23, 1993. Several of these comments referred to their earlier comments opposing the functional reporting requirement proposed in the NPRM of April 17, 1992 (and subsequently adopted in the final rule of October 30, 1992).

One organization opposed the proposed rescission. This organization made a number of general assertions regarding the benefits of the functional reporting required by the final rule of October 30, 1992, and took issue with the Department's conclusion in the NPRM of September 23, 1993 that the claimed benefits of that functional reporting requirement are uncertain, especially with regard to the actual significance of that information in fostering union democracy (as opposed to assisting non-members in exercising their individual rights). 58 FR 49675–76.

The NPRM set forth the reasons for the Department's conclusion that the benefits and utility of the functional reporting required by the October 30, 1992 final rule were questionable. That discussion contained facts and analysis based upon not only the detailed comments from the public which opposed the functional reporting requirement when it was originally proposed, but also the Department's experience in attempting to implement that requirement. In contrast, the comment which opposed the rescission of the functional reporting requirement did not provide specific facts or analyses either to support its assertions regarding the benefit of the functional reporting required by the October 30, 1992 final rule, or to counter the facts and analysis set forth in the NPRM of September 23, 1993.

This organization also stated that the Department has not explained "why union members should receive less valuable information from 'their' labor organization than *Beck* requires for nonmembers." (In *Communication Workers of America* v. *Beck*, 487 U.S. 735 (1988), a case involving the National Labor Relations Act (NLRA), which is administered by the National Labor Relations Board (NLRB), the Supreme Court held (as described in this organization's comment) that "a labor organization which has a union security clause may not exact more from objecting employees than the costs of activities germane to collective bargaining, contract administration, and grievance adjustment." Under *Beck* and related rulings, labor organizations must provide information to non-members regarding expenditures which are chargeable to objecting non-members and those which are nonchargeable.)

However, as stated above and in the NPRM of September 23, 1993, there are a number of serious questions regarding the issue of how valuable the information required by the final rule of October 30, 1992 would in fact be, and no comments were received which contained facts or analyses to support the claimed value of that information.

In addition, to the extent that this organization's statement quoted above implies that the final rule of October 30, 1992 would in fact provide members with the same (or equally valuable) information which unions are required to provide non-members under *Beck*, that final rule of October 30, 1992 itself clearly states that this is not the case:

> * * * the Department did not intend to imply that the purpose of the functional reporting [required in the proposed rule] was to implement *Beck*. In the Department's view, it would be impractical to require on Forms LM–2/3 that expenditures be reported in terms of whether they are chargeable to objecting nonmember employees because this would require frequent modification of the categories contained in the reporting forms in response to decisions of the courts and the NLRB, and because some functional categories may contain both chargeable and nonchargeable expenditures. In addition, the Department believes that decisions regarding the chargeability of expenditures are the province of the courts and the NLRB.
>
> A number of comments correctly observed that the functional categories in the proposed rule are not necessarily consistent with the categories that have been and may be required by the courts and the NLRB, and that information provided on Forms LM–2/3 will not substitute for the notice to objecting nonmember employees that is required by *Beck* and the other Court decisions. 57 FR 49284.

Thus, as recognized in the final rule of October 30, 1992, *Beck* deals with the NLRA, which is administered by the NLRB, and the Department is not in a position to implement directly or indirectly the NLRA or *Beck*.

This organization also stated that the "Department seems to believe union members need to know how their dues money is spent, through functional accounting, only if there is a 'union security' agreement in place." This statement is apparently based on a misinterpretation of the discussion of union security clauses in the NPRM of September 23, 1993 at 58 FR 49677. That discussion dealt with a statement in the final rule of October 30, 1992, made in response to comments concerning the costs of functional reporting, that "the costs of functional reporting * * * should not be exaggerated * * * [since] some form of

functional reporting is already required of many labor organizations under Supreme Court decisions," i.e., those labor organizations with union security clauses. The point made in the NPRM of September 23, 1993 is that the response to the concerns about the costs of functional reporting contained in the October 30, 1992 final rule was inadequate; as stated therein: (1) There was "no indication in the record of how many labor organizations have union-security clauses;" (2) it is not clear that the number of labor organizations with union security clauses is relevant because "[t]he fact that a labor organization is already subject to one type of functional reporting does not necessarily mean that the difficulties of complying with a different type of functional reporting would be substantially reduced;" and (3) "if it is true that many labor organizations are already subject to a form of functional reporting, then the need for and benefits from another, related type of functional reporting are correspondingly reduced."

Finally, this organization stated that the Department is imposing unique preconditions on LMRDA enforcement by not requiring functional reporting "because it involves subjective judgments, estimates, and cumbersome recordkeeping." It further stated that "such an 'enforcement strategy' would shut down the Internal Revenue Service altogether, and many of the enforcement programs the Department is engaged in under other statutes."

This organization's statement is apparently based on a misunderstanding of the discussion in the NPRM which dealt with the claimed benefits of the functional reporting required in the October 30, 1992 final rule. The context of the sentence from which this organization took the quotation is as follows:

> [A]fter reevaluation [of the October 30, 1992 final rule], the Department questions how useful [the functional reporting] information [required by that rule] will in fact be.
>
> Functional reporting has a number of inherent limitations and uncertainties because, unlike reporting in object class categories which represent actual expenditures, it allocates those expenditures based on factors which often involve subjective judgments, estimates, and cumbersome recordkeeping." 58 FR 49676.

The discussion in the NPRM went on to state that the final rule of October 30, 1992 explicitly recognized that functional reporting is based on subjective factors and is inherently imprecise, and concluded, therefore, that the information disclosed by the functional reporting required in that rule will be of limited value and may in fact be misleading.

Given the context of the statement quoted by this organization, it is clear that the Department was not setting preconditions to law enforcement, but was merely giving serious consideration to the claimed benefits of the new and substantial burden that was imposed by the October 30, 1992 final rule. The sentence from the NPRM of September 23, 1993 which was quoted in the comment clearly describes the Department's understanding of the factors and processes involved in making allocations under functional reporting, and the ensuing discussion focuses on the inherent problems and imprecision of functional reporting, which were recognized in the October 30, 1992 final rule which imposed that burden and which this organization does not dispute.

After reviewing the comments, the Department has decided to rescind the requirement that certain disbursements be reported in functional categories. The Department's reevaluation of this requirement, as discussed in detail in the NPRM of September 23, 1993, identified a number of problems with the requirement in terms of questions regarding its claimed benefits and the extent of its costs for both labor organizations and the Department. Only one comment opposed the rescission, and that comment provided no specific facts or analyses that demonstrate the benefits claimed for the requirement or that any such benefits would outweigh its costs.

B. Rescission of the Cash/Accrual Reporting Option and Reinstatement of the Cash Reporting Requirement

The second major change to the final rule of October 30, 1992 proposed in the NPRM of September 23, 1993 was the rescission of the option to report on either the cash or the accrual basis of accounting and the reinstatement of the requirement to report on the cash basis. Eleven organizations commented on this issue. Nine organizations stated general support for the changes made by the NPRM, opposition to accrual reporting, and/or support of cash reporting.

One organization expressly opposed the rescission of the option. This comment stated that the option would be helpful for the larger labor organizations which prepare their financial statements using the accrual method, although it agreed that for most labor organizations there is very little difference between cash and accrual reporting, cash reporting is adequate and much easier, and presenting instructions for both cash and accrual reporting would be more complex and confusing.

Finally, one organization, which opposed the proposed rescission of the functional reporting requirement, made a number of statements in support of accrual reporting but did not clearly support the option to report on either the cash or the accrual basis. Rather, this organization stated that accrual reporting was encouraged in the final rules of October 30, 1992, and in some statements it appeared to imply that accrual reporting was required by those final rules (e.g., it stated that "[t]he Department must reinstate the October 30 Rules as final, so that union members have the right to * * * financial information about 'their' union that [is] based upon functional accounting and accrual accounting."

Although the NPRM of April 17, 1992 proposed to require accrual reporting, this requirement was not adopted in the final rule of October 30, 1992 because, "taking cognizance of the comments [opposing the proposed requirement], the Department has decided that reporting on either a cash or an accrual basis would provide sufficiently accurate information." 57 FR 49286. Moreover, although the final rule stated the belief that "accrual reporting provides better and more accurate information generally and especially for larger unions," 57 FR 49286, the Department does not consider this statement to "encourage" accrual reporting and, in any case, nothing in the forms and instructions established in the October 30, 1992 final rules can be said to encourage accrual reporting.

After reviewing the comments, the Department has decided to rescind the option to report on either the cash or the accrual basis of accounting and reinstate the requirement for reporting on the cash basis that existed prior to the October 30, 1992 final rules. The Department's reevaluation of this option, as discussed in detail in the NPRM of September 23, 1993, identified both problems with providing the option and advantages of requiring cash reporting. The one organization which clearly supported the option specifically agreed with several statements in the NPRM (i.e., cash and accrual reporting are equally informative, the option of accrual reporting would be advantageous for some larger labor organizations, and instructions providing for the option would be complex and confusing), but concluded that the benefits of having the option outweigh the disadvantages. However, the NPRM identified several additional advantages of requiring cash reporting (i.e., reports completed on the cash basis

of accounting are easier to understand for members and officers who are not trained in accounting, and having all reports completed on the same basis of accounting would facilitate comparisons). In the Department's view, the benefits of providing the option are minimal and limited to a relatively few larger labor organizations, and do not outweigh the disadvantages discussed in the NPRM.

C. Retention of New Form LM-4 With Ceiling of $10,000 and Increase in Form LM-3 Ceiling to $200,000

The NPRM of September 23, 1993 stated that the Department, after reevaluation of the changes made by the final rules of October 30, 1992, had decided to retain the new Form LM-4 for small labor organizations with total receipts less than $10,000 and to retain the increase in the ceiling for eligibility to file simplified Form LM-3 from $100,000 to $200,000 total annual receipts.

Ten comments were received on the ceilings for Forms LM-3 and LM-4. Two comments were made on the retention of the increase in the Form LM-3 ceiling, both of which supported the higher ceiling. Eight comments were made on the retention of the Form LM-4 with a ceiling of $10,000 total annual receipts. One of the eight comments stated that this form provides sufficient information for organizations with less than $10,000 total annual receipts. The other seven comments suggested that the Form LM-4 ceiling be increased to $25,000; several of these comments referred to Internal Revenue Service (IRS) rules under which labor organizations with less than $25,000 in gross receipts are not required to file tax returns.

Two of these comments also suggested that the Department make more frequent adjustments in the ceilings for eligibility to file Forms LM-3 and LM-4, either annually through an index or through the rulemaking process on an established schedule.

After reviewing these comments, the Department has decided to retain the ceilings for eligibility to file Forms LM-3 and LM-4 at $200,000 and $10,000, respectively. With regard to Form LM-3, no objection was made. With regard to Form LM-4, the Department believes that the ceiling should not be greater than $10,000 at this time and that experience with this new form is needed before consideration is given to increasing the ceiling. The new Form LM-4 will substantially reduce the reporting burden and the information disclosed for those labor organizations which will be eligible to use it, since it requires disclosure of significantly less information than the currently applicable Form LM-3 which they must now file; it is estimated that approximately 45% of all reporting labor organizations will be eligible to use Form LM-4. The analogy with the IRS reporting requirements is inappropriate since the purpose of the LMRDA reporting forms is disclosure. However, the Department intends to review this matter after two years experience with administering the new Form LM-4.

Finally, the Department believes that it would be inappropriate to establish a fixed schedule for considering increases in the ceiling, since these decisions should be made on the basis of many factors in addition to inflation or the passage of time.

D. New Questions

The NPRM of September 23, 1993 proposed four additional questions and one additional schedule. The first proposed new question required disclosure of the number of dues paying members at the end of the reporting year on Forms LM-2, LM-3, and LM-4. Nine organizations commented on this question, most of which objected to it. They observed that responses to this question would be ambiguous and uninformative in that there are many categories of dues paying members (e.g., full members in good standing, retired members, associate members, etc.), and the number of members may vary during the reporting year. One organization stated in addition that there is insufficient connection between the new question and the purpose of the reporting forms, which is to obtain financial information. One organization pointed out that the number of members reported in response to this question would not correspond to monies received because members may be in non-pay status because of unemployment, illness, maternity leave, etc. One organization stated that it would unfairly provide information that employers could use against labor organizations.

One organization supported the new question, stating that it is an important fact that members will want to have. This organization suggested that the instructions be revised to exclude associate members who pay a relatively small fee in order to participate in union health plans, credit card operations, etc., but do not have the right to vote and are not represented in dealings with employers.

After reviewing these comments, the Department has decided to retain the question on the number of dues paying members at the end of the reporting period. In the Department's judgment, the number of members in a labor organization is important for the disclosure purposes of the LMRDA. The number of members is one of the most fundamental pieces of information about a labor organization, dues payments of members are the primary source of income for most if not all labor organizations, and in the Department's experience this information is often requested by labor organization members and the public.

The Department recognizes the difficulties inherent in the fact that labor organizations have many different categories of members, they define the categories differently, and the number of members in each category varies during the reporting period. Nevertheless, in the Department's judgment, requiring labor organizations to report the total number of dues paying members at the end of the reporting period is the simplest and least burdensome way to provide clear disclosure of this important information. First, since there are many different categories of members which labor organizations define differently, it would be burdensome and confusing to attempt to require labor organizations to clarify the reported information by eliminating certain categories or breaking the total number of dues paying members into component parts.

Second, although the number of dues paying members may vary during the reporting period, other information required by the reporting forms also varies (e.g., encumbered assets and contingent liabilities, Items 23 and 24 of revised Form LM-2, and the different categories of assets and liabilities). Reporting such information at the end of the reporting period provides important information about labor organizations at that point in time, even though there is variation during the reporting period.

The second proposed new question required disclosure on Forms LM-2 and LM-3 of whether any officer of the reporting labor organization had a paid position with another labor organization or an employee benefit plan during the reporting year. Seven organizations commented on this question. One organization objected to this question on the grounds that it has no basis in the LMRDA. The other six organizations did not appear to object to this question in principle (and one comment supported the principle of reporting total officer compensation), but made a number of objections and recommendations. One organization stated that the Department had not explained the reason for this question. Five organizations stated that

information regarding wage and salary payments from other entities may be difficult to ascertain and verify. One organization stated that although it could canvass its officers for this information, it was concerned that the officers who sign Forms LM-2 and LM-3, verifying the accuracy of the information reported therein, should not be held responsible for statements in the report that were incorrect or incomplete if they were based on information received from other officers that was not 100% accurate. Six comments cited with approval a similar but more limited reporting requirement of the Internal Revenue Service, on its Form 990, which requires disclosure of the name of any officer who received more than $10,000 from related organizations and whose total compensation from related organizations and the reporting organization is more than $100,000. (As stated in the instructions for IRS Form 990, a "related organization" is one that the reporting organization directly or indirectly owns or controls, or that directly or indirectly owns or controls the reporting organization.)

After reviewing the comments, the Department has decided to retain the question in a modified form. Labor organizations will be required to disclose on Forms LM-2 and LM-3 the name of any officer who received $10,000 or more in salary, wages, and allowances from the reporting labor organization and $10,000 or more in salary and wages as an officer or employee of another labor organization or of an employee benefit plan. (As in the instructions for this question in the NPRM, labor organizations will also be required to report the name of the other entity and the officer's position in that entity but not the amount of the payments.)

This modification of the new question should alleviate many of the problems and concerns raised in the comments while still providing disclosure to members concerning the compensation received by their officers for service to their labor organizations in the context of any substantial compensation they may receive for services provided to other labor organizations and employee benefit plans. The threshold compensation amounts in the modified question will eliminate the minimal salary and wage payments that may be difficult to ascertain, thereby substantially reducing the reporting burden. With regard to the responsibility of the officers who are required to sign Forms LM-2 and LM-3, the declaration they make is simply that the information in the report is, to the best of their "knowledge and belief, true, correct, and complete." Finally, the IRS Form 990 definition of "related organization," with its elements of ownership and control, is clearly not applicable to labor organizations and employee benefit plans and is therefore not adopted.

The third proposed new question required disclosure on Forms LM-2 and LM-3 of whether an outside audit of the reporting labor organization's books and records had been conducted during the reporting year. Seven organizations commented on this question. Six of the organizations stated that the question was not clear because the word "audit" is a term of art whose specific meaning in the accounting profession may not be known by union officials. No other objections to this question were made, and two organizations expressly stated that they have no objection to this question.

After reviewing these comments, the Department has decided to retain this question in modified form and to clarify the instructions. The question is modified by asking whether the reporting organization's books and records have been reviewed or audited, not just whether they have been audited. The instructions are revised to clarify that the term "audit or review" means that the reporting labor organization's books and records were examined to verify their accuracy and validity, and does not include merely the development of a bookkeeping system, bookkeeping services, or the compilation of information to prepare a financial report.

The fourth proposed new question required disclosure on Forms LM-2 and LM-3 of whether the reporting labor organization had a political action committee (PAC) fund. The instructions provide that although the funds of a labor organization's PAC are considered to be funds of the labor organization itself, in order to avoid duplicate reporting PAC funds from voluntary contributions which are separate from the reporting labor organization's treasury need not be included in that organization's Form LM-2 or LM-3 if publicly available reports are filed with a Federal or state agency.

Five organizations commented on this issue. Three organizations stated their understanding, which is correct, that PAC funds would not have to be reported or included in the reporting labor organization's total annual receipts under the conditions stated in the instructions; one of these comments supported the addition of this question if its understanding were correct. Two organizations opposed this new question on the grounds that it would entail unnecessary duplicate reporting; this objection was evidently based on a misunderstanding of the provision made to exclude reporting of certain PAC funds in order to avoid duplicate reporting.

After reviewing these comments, the Department has decided to retain this new question in order to provide members and the public with important information about labor organization PAC funds. Although reports filed with Federal and state agencies may be publicly available, members and the public may not know that the reporting labor organization has a PAC or where reports may be filed (i.e., the Federal Election Commission for PACs involved in Federal elections, and state agencies for PACs involved in state elections). In order to clarify and emphasize the Department's intention to avoid duplicate reporting, the instructions are revised to state in both the general instructions and in the specific instructions for this question that PAC funds which are kept separate from the reporting labor organization's treasury need not be included in the labor organization's Form LM-2 or LM-3 if publicly available reports are filed with a Federal or state agency.

The final new proposed reporting requirement is the addition of a schedule on Form LM-2 for reporting details on office and administrative expenses. Three organizations commented on this issue. Two comments did not specifically support or oppose the new schedule, but suggested that provision be made for allowing minor and immaterial amounts to be reported as "miscellaneous" or "other." One comment supported the proposed new schedule, but repeated its general suggestion (discussed below in section III) that netting of related disbursements and refunds be allowed.

After reviewing these comments, the Department has decided to retain the proposed new schedule in order to provide improved disclosure of the disparate types of disbursements that are included in office and administrative expenses. The Department does not believe that a "miscellaneous" or "other" category should be used since any of the expenditures reported in this schedule can be included in a more descriptive broad bookkeeping category or general grouping. In addition, as discussed below, netting of related disbursements and receipts will continue to be generally prohibited.

E. Elimination of Form LM-1A

In the NPRM of September 23, 1993, the Department proposed to revise the

Department's regulations at 29 CFR 402.4 and the reporting forms and instructions regarding a labor organization's changes in its constitution and bylaws and in the practices and procedures followed with respect to certain matters set out in LMRDA section 201(a)(5), 29 U.S.C. 431(a)(5), originally reported on Form LM–1, "Labor Organization Information Report." The NPRM proposed to eliminate Form LM–1A, "Report of Current Status: Labor Organization Information Supplement," which is used for transmitting copies of revised constitutions and bylaws and reporting changes in practices and procedure regarding certain matters. Instead of using Form LM–1A, each labor organization would file copies of its revised constitution and bylaws with its annual financial report and file an amended Form LM–1 to report changes in its practices and procedures.

No comments were made on this proposed revision. The Department has, therefore, decided to adopt this proposal in order to eliminate a required reporting form and streamline the reporting requirements for updating information reported on Form LM–1.

F. Incorporation of Department's Positions on Certain Reporting Requirements

The NPRM of September 23, 1993 proposed to incorporate the Department's existing positions on several reporting requirements. The only area for which there were any comments, other than the reporting of political action committees discussed above, was the reporting of advances as loans. The instructions state that advances are considered to be loans; however, advances for travel expenses necessary for conducting official union business are not considered loans if certain conditions are met relating to the amount of the advance and the accounting or repayment of the advance.

Three organizations commented on this issue. One organization suggested that Form LM–2 itself should be revised to state that travel advances may be required to be reported as loans under certain conditions. This organization also suggested that the IRS rules regarding advances be adopted; those rules are generally more specific regarding the allowable time frames for making and repaying/accounting for advances. One organization suggested that the word "reasonably" and related terms, used in the instructions to describe the amount of a travel advance that will not be considered to be a loan, be deleted from the instructions since their meaning is not fixed; this organization also suggested revising the instructions to reflect its understanding that a vacation advance for previously earned vacation pay need not be reported as a loan. One organization stated its understanding of the reporting required by this instruction.

* * * * *

After reviewing these comments, the Department has decided to retain the instructions as stated in the NPRM and not to modify Form LM–2. The Department believes that the more flexible provisions of the proposed instructions, including the word "reasonably" and related terms, are appropriate and sufficient for the disclosure purposes of the LMRDA. The Department also believes that this reporting rule is not of sufficient importance to add to the form itself, and that it is not necessary to modify the instructions to clarify that previously earned payments are not advances.

G. Other Proposed Changes

The NPRM of September 23, 1993 contained a detailed list of additional proposed major changes made in Forms LM–2, LM–3, and LM–4, at 58 FR 49680. The only such change about which comments were made was the proposal to revise the instructions for Schedules 6 and 7 on Form LM–2 (purchase and sale of investments and fixed assets) to include a reduction for reinvestments of receipts from the sale of U.S. Treasury securities and other investments.

Four organizations commented on this issue. Three organizations objected to the portion of the instructions for Schedules 6 and 7 which provides that only those moneys from the sale and redemption of investments which were not deposited into the reporting labor organization's cash accounts may be deducted as reinvestments. These organizations stated that it is common accounting practice for banks to make rollover transactions by passing the receipts and disbursements through the organization's account. The other organization which commented on this proposed change simply noted its impact on labor organizations by reducing total receipts.

After reviewing the comments, the Department has decided to modify the instructions to respond to the suggestions made in the comments. The revised instructions provide that moneys from the sale or redemption of applicable investments may be deducted as reinvestments or rollovers if they were "promptly" reinvested in other applicable investments; there is no longer a reference to moneys deposited in the reporting labor organization's bank or other cash account.

H. General Comments on the NPRM

One organization, which had supported the final rules of October 30, 1992 and the earlier NPRM of April 17, 1992, made two general statements critical of the NPRM of September 23, 1993. First, this organization stated that the Department had taken a "non-traditional approach" in the NPRM of September 23, 1993 by not publishing "side-by-side comparisons" of the effect of the changes made by the NPRM or otherwise not providing "the usual detailed comparisons."

It is not clear what this organization means by its implication that the traditional approach taken in notices of proposed rulemaking is to publish side-by-side comparisons. This was not done in the NPRM of April 17, 1992, which this organization generally supported. In any case, the NPRM of September 23, 1993 contained a detailed list of every substantive addition, deletion, and revision proposed for the reporting forms so that the public was specifically informed of all proposed changes.

Second, this organization stated that the language of several sections of the NPRM indicated that the Department had "prejudged the issues" presented for public comment and "had already decided to scuttle functional accounting and accrual accounting." The Department strongly disagrees with this assertion.

With regard to functional reporting, this organization cited the following statement from the NPRM of September 23, 1993: "In summary, the Department's reevaluation of the functional reporting requirement established in the final rule of October 30, 1992, raises many serious *questions* about its benefits and costs. The benefits *do not appear* to be as great as originally believed, while the costs *appear* to be substantially greater than originally considered * * *" 58 FR 49677 (emphasis added). As is evident from the emphasized words, this quotation does not support this organization's contention that the Department had already determined to rescind functional reporting regardless of any comments from the public in response to the NPRM. In fact, the entire discussion in the NPRM, from which the quoted statement was taken, was intended to clearly and specifically advise the public of the questions the Department has regarding the benefits and costs of functional reporting so that the public could focus its comments in order to provide pertinent facts and analyses. As stated above, this

organization did not present specific facts or analyses to support the position regarding the benefits of functional reporting required by the final rule of October 30, 1992 or that those benefits outweigh its costs.

With regard to accrual accounting, this organization cited the following statement from the NPRM: "After reevaluation, the Department agrees with the comments of labor organizations and [their] accountants which criticized the reasons presented in the NPRM [of April 17, 1992] for requiring reporting on the accrual basis of accounting." 58 FR 49678. However, this statement was made in the context of the fact that the accrual reporting requirement proposed in the NPRM of April 17, 1992 had been rejected in the final rules of October 30, 1992, and the requirement was rejected because of the persuasiveness of the critical comments of labor organizations and accountants. Thus, the statement from the NPRM of September 23, 1993 quoted by this organization was an introduction to the discussion of whether the option to report on either the cash or accrual basis should be rescinded in view of the strength of the arguments against accrual reporting which had already been acknowledged in the final rules of October 30, 1992. Therefore, this quotation from the NPRM of September 23, 1993 also does not support the contention made by this organization.

Finally, it is also noted generally that when an agency publishes an NPRM, as with both the NPRM of September 23, 1993 and the NPRM of April 17, 1992, it has made a preliminary determination that certain changes are necessary or appropriate. Thus, the NPRM of April 17, 1992, which this organization supported, made a number of statements that may be construed as indicating that the agency had made a conclusion as to the merits of the proposed rule.

III. Additional Recommendations in the Comments

A number of additional recommendations regarding changes in Forms LM–2, LM–3, and LM–4 were made in the comments. Several of these recommendations would modify the reporting requirements to the extent that they could be adopted only after notice and comment. These recommendations and the Department's response are as follows.

First, five organizations recommended that the total annual receipts of a reporting labor organization should not include the amount of dues it collects for transmittal to an affiliate, such as per capita tax collected by a local union and passed on to a parent body. These comments stated that such funds are not the property of the reporting labor organization which collects and transmits them and should therefore not be included in its receipts.

This recommendation had also been made in response to the NPRM of April 17, 1992 and was specifically rejected in the final rule of October 30, 1992 at 57 FR 49286. It would therefore be inappropriate to adopt this recommendation at this time without specific notice and comment. In addition, it is noted that the standard for determining whether a labor organization may file a simplified reporting form has always been total receipts of all kinds, including funds which are collected on behalf of affiliates, in accordance with the purposes and legislative history of the LMRDA; and the ceilings for filing simplified reporting forms have already taken into account the fact that many labor organizations handle per capita payments and other "pass through" funds.

Second, two organizations commented on the prohibition on "netting" receipts and disbursements. For example, the instructions state that if an officer receives $1,000 for travel expenses, spends only $800, and returns $200, the report should show a $1,000 disbursement and a $200 receipt. The Department believes that it is appropriate to generally prohibit the netting of receipts and disbursements in view of the disclosure purposes of the LMRDA and the cash basis of reporting required by the LMRDA reporting forms.

Third, one organization suggested that the reporting forms should require disclosure of the names of all law firms and other professionals and consultants that receive over $10,000 per year, the receipts threshold for reporting the names of employees. This change could be made only after notice and comment. In addition, it is not clear that it would be appropriate to make this revision since the LMRDA requires general disclosure of the names of the recipients of labor organization disbursements only for officers and employees.

Fourth, two organizations suggested that the deadline for filing the annual financial reports be extended beyond the current 90 days after the end of the reporting labor organization's fiscal year. This deadline is set by LMRDA section 207 and, therefore, cannot be changed by regulation.

Fifth, one organization recommended elimination of the requirement that reports be filed in duplicate. This requirement is retained at this time in order to enable the Department to maintain copies of each labor organization's reports in the national office in Washington, DC and in the appropriate field office for disclosure purposes. However, consideration will be given to eliminating this requirement in the future.

Sixth, one organization suggested that the deadline for filing terminal reports when an organization goes out of existence be extended from the current 30 days. The Department has concluded that the deadline of 30 days is appropriate in view of the need to obtain terminal reports quickly while the responsible officials and the records are available.

Seventh, one organization recommended that any revision of the LMRDA reporting requirements be postponed in order to coordinate this reporting requirement with that imposed by the IRS. In the Department's view, contrary to that of this organization, it is more important to deal at this time with the new reporting requirements imposed by the final rules of October 30, 1992. It is also noted that it is difficult to establish the same reporting requirements because the purposes of the LMRDA and the Internal Revenue Code (IRC) are significantly different and because the IRC covers many different types of organizations.

Finally, a number of technical suggestions were made (to add the file number on all pages of the reporting forms, to delete "accounts receivable" and "accounts payable" from Statement A of Form LM–2, to provide a line item for liability for payroll taxes withheld, and to expand the instructions to include in "dividends" receipts from shares in money market and mutual funds). The Department does not believe these changes are necessary.

IV. Changes to the Proposed Reporting Forms and Instructions

A. Form LM–2

1. The following changes are made to the Form LM–2 which was proposed in the NPRM of September 23, 1993.

—Item 14 is revised to read as follows:

Have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative?

—Item 16 is revised to read as follows:

Have any officer who was paid $10,000 or more by your organization and also received $10,000 or more as an officer or employee of another labor organization or of an employee benefit plan?

2. The following changes are made to the instructions for Form LM–2 which were proposed in the NPRM of September 23, 1993.

—In Section VIII, "FUNDS TO BE REPORTED," the second paragraph is revised to read as follows:

All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency.

—In Item 12, "POLITICAL ACTION COMMITTEE FUNDS," the instructions are revised to read as follows:

If Item 12 is checked "Yes," provide in Item 75 the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a report. (PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency. See Section VIII of these instructions for additional information on PAC funds.)

—In Item 14, "AUDIT OR REVIEW OF BOOKS AND RECORDS," the instructions are revised to read as follows:

If Item 14 is checked "Yes," indicate in Item 75 whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If the audit or review was performed by an outside accountant, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which your organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from your organization's books and records to prepare Form LM–2 or other financial reports. Also, do not check Item 14 "Yes" if the audit or review was performed by an audit committee or trustees of your organization.

Note: The LMRDA does not require an audit or review.

—In Item 16, "ADDITIONAL POSITIONS OF OFFICERS," the instructions are revised to read as follows:

Check Item 16 "Yes" only if an officer of your organization was paid $10,000 or more in salary, wages, and allowances by your organization and was paid $10,000 or more in salary, wages, and allowances as an officer or employee of another labor organization or of an employee benefit plan. In calculating whether an officer was paid $10,000 or more include allowances paid on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals or amounts officers received as reimbursed expenses. If Item 16 is checked "Yes," provide in Item 75 the name of each officer, the name of the other labor organizations(s) or employee benefit plan(s), and the officer's position in the other labor organization(s) or employee benefit plan(s).

—In Item 21, "DUES AND FEES", the instructions for Line (a) are revised to read as follows:

Line (a): Enter the regular dues or fees or other periodic payments which a member must pay to be in good standing in your organization and enter the calendar basis for the payment (per year, per month, etc.). If your organization requires members to pay "working" dues as a part of regular dues also report the amount or percent of "working" dues and enter the basis for the payment (per hour, per month, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

—In Schedule 6, "SALE OF INVESTMENTS AND FIXED ASSETS," the third paragraph of the instructions for Column (E) is revised to read as follows:

Enter on Line 7 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments which was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption which was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 7. Interest and dividends received during the reporting period must be reported in Items 46 and 47.

—In Schedule 7, "PURCHASE OF INVESTMENTS AND FIXED ASSETS," the third paragraph of the instructions for Column (D) is revised to read as follows:

Enter on Line 7 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments which was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. Calculate the total amount reinvested by adding, for each investment, the lower of each investment's original cost or the amount received from the sale or redemption which was actually reinvested. If only a portion of the amount received was reinvested, only the reinvested portion may be included on Line 7. Interest and dividends received during the reporting period must be reported in Items 46 and 47. The total on Line 7 must agree with the amount reported in Line 7 of Schedule 6.

—In Statement B, "RECEIPTS AND DISBURSEMENTS," the third paragraph of the instructions is revised to read as follows:

Receipts and disbursements by an agent on behalf of your organization are considered receipts and disbursements of your organization and must be reported in the same detail as other receipts and disbursements. For example, if your organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on your organization's Form LM–2. Also, if your organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of your organization to third parties, these receipts and disbursements must be reported on your organization's Form LM–2.

—In Item 39, "DUES," the second paragraph of the instructions is revised to read as follows:

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of your organization, do not report in Item 39 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 75. For example, if the intermediate body or parent body retained $500 of your organization's dues checkoff as payment for supplies purchased from that body by your organization, this should be explained in Item 75 of your organization's Form LM–2 but the $500 should not be reported as a receipt or a disbursement on your organization's Form LM–2. However, if the intermediate body or parent body disbursed part of your organization's dues checkoff on your organization's behalf, this amount should be included in Item 39 and in the appropriate disbursement item on your organization's Form LM–2. For example, if the intermediate body or parent body disbursed $500 of your organization's dues checkoff to an attorney who had provided legal services to your organization, this amount should be reported in Item 39 and as a disbursement in Item 62 (Professional Fees) of your organization's Form LM–2.

Do not report in Item 39 dues which your organization collected on behalf of other organizations for transmittal to them. For example, if your organization received dues from a member of an affiliate who worked in your organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 52.

B. Form LM–3

1. The following changes are made to the Form LM–3 which was proposed in the NPRM of September 23, 1993.

—Item 14 is revised to read as follows:

Have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative?

—Item 16 is revised to read as follows:

Have any officer who was paid $10,000 or more by your organization and also received

$10,000 or more as an officer or employee of another labor organization or of an employee benefit plan?

2. The following changes are made to the instructions for Form LM–3 which were proposed in the NPRM of September 23, 1993.

—In Section VIII, "FUNDS TO BE REPORTED," the second paragraph is revised to read as follows:

All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

—In Item 12, "POLITICAL ACTION COMMITTEE FUNDS," the instructions are revised to read as follows:

If Item 12 is checked "Yes," provide in Item 56 the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a report. (PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency. See Section VIII of these instructions for additional information on PAC funds.)

—In Item 14, "AUDIT OR REVIEW OF BOOKS AND RECORDS," the instructions are revised to read as follows:

If Item 14 is checked "Yes," indicate in Item 56 whether the audit or review was performed by an outside accountant or a parent body auditor/representative. If the audit or review was performed by an outside accountant, provide the name of the accountant or accounting firm. Report any audit or review by an outside accountant or a parent body auditor/representative in which your organization's books and records were examined to verify their accuracy and validity. The term "audit or review" does not include providing assistance in developing a bookkeeping system, providing routine bookkeeping services, or merely compiling information from your organization's books and records to prepare Form LM–3 or other financial reports. Also, do not check Item 14 "Yes" if the audit or review was performed by an audit committee or trustees of your organization.

Note: The LMRDA does not require an audit or review.

—In Item 16, "ADDITIONAL POSITIONS OF OFFICERS," the instructions are revised to read as follows:

Check Item 16 "Yes" only if an officer of your organization was paid $10,000 or more in salary, wages, and allowances by your organization *and* was paid $10,000 or more in salary, wages, and allowances as an officer or employee of another labor organization or of an employee benefit plan. In calculating whether an officer was paid $10,000 or more include allowances paid on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals or amounts officers received as reimbursed expenses. If Item 16 is checked "Yes," provide in Item 56 the name of each officer, the name of the other labor organizations(s) or employee benefit plan(s), and the officer's position in the other labor organization(s) or employee benefit plan(s).

—In Item 23, "DUES AND FEES", the instructions for Line (a) are revised to read as follows:

Line (a): Enter the regular dues or fees or other periodic payments which a member must pay to be in good standing in your organization and enter the calendar basis for the payment (per year, per month, etc.). If your organization requires members to pay "working" dues as a part of regular dues also report the amount or percent of "working" dues and enter the basis for the payment (per hour, per month, etc.). Include only the dues or fees of regular members and not dues or fees of members with special rates, such as apprentices, retirees, or unemployed members.

—In Statement B, "RECEIPTS AND DISBURSEMENTS," the third paragraph of the instructions is revised to read as follows:

Receipts and disbursements by an agent on behalf of your organization are considered receipts and disbursements of your organization and must be reported in the same detail as other receipts and disbursements. For example, if your organization owns a building managed by a rental agent, the agent's rental receipts and disbursements for expenses must be reported on your organization's Form LM–3. Also, if your organization's parent body or an intermediate body functions as an agent receiving and disbursing funds of your organization to third parties, these receipts and disbursements must be reported on your organization's Form LM–3.

—In Item 38, "DUES," the second paragraph of the instructions is revised to read as follows:

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of your organization, do not report in Item 38 the portion retained by that organization for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 56. For example, if the intermediate body or parent body retained $500 of your organization's dues checkoff as payment for supplies purchased from that body by your organization, this should be explained in Item 56 of your organization's Form LM–3 but the $500 should not be reported as a receipt or a disbursement on your organization's Form LM–3. However, if the intermediate body or parent body disbursed part of your organization's dues checkoff on your organization's behalf, this amount should be included in Item 38 and in the appropriate disbursement item on your organization's Form LM–3. For example, if the intermediate body or parent body disbursed $500 of your organization's dues checkoff to an attorney who had provided legal services to your organization, this amount should be reported in Item 38 and as a disbursement in Item 49 (Professional Fees) of your organization's Form LM–3.

Do not report in Item 38 dues which your organization collected on behalf of other organizations for transmittal to them. For example, if your organization received dues from a member of an affiliate who worked in your organization's jurisdiction, the dues collected on the affiliate's behalf must be reported in Item 43.

C. Form LM–4

1. The following changes are made to the Form LM–4 which was proposed in the NPRM of September 23, 1993.

—Item 17 is revised to read as follows:

Enter the total disbursements made by your organization during the reporting period (per capita tax, loans made, net payments to officers, payments for office supplies, etc.).

—Item 18 is revised to read as follows:

Enter the total payments to officers and employees during the reporting period (gross salaries, lost time payments, allowances, expenses, etc.).

2. The following changes are made to the instructions for Form LM–4 which were proposed in the NPRM of September 23, 1993.

—In Item 17, "DISBURSEMENTS," the instructions are revised to read as follows:

Enter in Item 17 the total amount of all disbursements made by your organization during the reporting period including, for example, net payments to officers and employees, per capita tax and any other fees or assessments which your organization paid to any other organization, payments for administrative expenses, loans made by your organization, and taxes paid. Enter "00" if your organization made no disbursements during the reporting period.

—In Item 18, "PAYMENTS TO OFFICERS AND EMPLOYEES," the instructions are revised to read as follows:

Enter in Item 18 the total amount of all payments to officers and employees made by your organization during the reporting period. The amount should include, for example, gross salaries (before tax withholdings and other payroll deductions); lost time pay; monthly, weekly, or daily allowances; and disbursements for conducting official business of the organization as well as disbursements which were essentially for the personal benefit of the officer or employee. Enter "00" if your

organization made no payments to officers or employees during the reporting period.

V. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head previously certified that this rule would not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The rule will only apply to labor organizations and would decrease the reporting burden on labor organizations. However, the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980, as amended, the information collection requirements for this program have been approved by the Office of Management and Budget (OMB control number 1214–0001).

List of Subjects in 29 CFR Part 402

Labor unions, Reporting and recordkeeping requirements.

Text of Final Rule

In consideration of the foregoing, the Department of Labor, Office of the American Workplace, hereby amends part 402 of title 29, Code of Federal Regulations, as follows:

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

1. The authority citation for part 402 is revised to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 2–93 (58 FR 42578).

2. Section 402.4 is revised to read as follows:

§ 402.4 Subsequent reports.

(a) Except as noted elsewhere in this paragraph, every labor organization which revises the most recent constitution and bylaws it has filed with the Office of Labor-Management Standards shall file two dated copies of its revised constitution and bylaws at the time it files its annual financial report as provided in Part 403 of this chapter. However, a labor organization which has as its constitution and bylaws a uniform constitution and bylaws prescribed by the reporting labor organization's parent national or international labor organization in accordance with § 402.3(b) is not required to file copies of a revised uniform constitution and bylaws if the parent national or international labor organization files as many copies of the revised constitution and bylaws with the Office of Labor-Management Standards as the Office may request.

(b) Every labor organization which changes the practices and procedures for which separate statements must be filed pursuant to subsection 201(a)(5)(A) through (M) of the Act shall file with the Office of Labor-Management Standards two copies of an amended Form LM–1, signed by its president and secretary or corresponding principal officers. The amended Form LM–1 shall be filed when the labor organization files its annual financial report as provided in Part 403 of this chapter.

Signed in Washington, DC, this 15th day of December, 1993.

Martin Manley,

Assistant Secretary for the American Workplace.

Appendix to Preamble

Note: This appendix, which will not appear in the Code of Federal Regulations, contains the revised Forms LM–2, LM–3, and LM–4, provided for in Parts 402 and 403. The text of the instructions, which is not included in this appendix, is available from the Office of Labor-Management Standards, Office of the American Workplace (section IV of the preamble of this final rule contains the text of all changes made to the instructions contained in the appendix to the proposed rule of September 23, 1993, 58 FR 49672).

BILLING CODE 4510–86–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-2

MUST BE USED BY LABOR ORGANIZATIONS WITH $200,000 OR MORE IN TOTAL ANNUAL RECEIPTS AND LABOR ORGANIZATIONS UNDER TRUSTEESHIP

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

IMPORTANT

If a label is here, → peel off the top copy and place it in the same box on the second copy of the form.

If label information is correct, leave items 4 through 8 blank.

If label information is incorrect, complete items 4 through 8.

1. FILE NUMBER

2. PERIOD COVERED

	MO	DAY	YR
From			
Through			

3. If your organization ceased to exist and this is its terminal report, see Section XII of the instructions and check here: ☐

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, Lodge, etc.)

6. DESIGNATION NUMBER

7. UNIT NAME (if any)

8. MAILING ADDRESS:
(In care of) NAME AND TITLE OF PERSON
NUMBER AND STREET
BUILDING AND ROOM NUMBER (if any)
CITY STATE ZIP CODE

9. Are your organization's records kept at its mailing address? Yes ☐ No ☐
(If "No," provide address in Item 75.)

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION:

	Yes	No
10. Have a "subsidiary organization" as defined in Section X of the instructions?	☐	☐
11. Create or participate in a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries?	☐	☐
12. Have a political action committee (PAC) fund?	☐	☐
13. Acquire or dispose of any goods or property in any manner other than by purchase or sale?	☐	☐
14. Have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative?	☐	☐
15. Discover any loss or shortage of funds or other property? *(Answer "Yes" even if there has been repayment or recovery.)*	☐	☐
16. Have any officer who was paid $10,000 or more by your organization and also received $10,000 or more as an officer or employee of another labor organization or of an employee benefit plan?	☐	☐
17. Liquidate or reduce any liabilities without disbursement of cash?	☐	☐

(If the answer to any of the above questions is "Yes," provide details in Item 75 as explained in the instructions for each item.)

18. How many members did your organization have at the end of the reporting period?

19. What is the date of your organization's next regular election of officers? Month Year

20. What is the maximum amount recoverable under your organization's fidelity bond for a loss caused by any officer or employee of your organization? $

21. What are your organization's rates of dues and fees? *(Enter a minimum and maximum if more than one rate applies for any line.)*

Rates of Dues and Fees		
(a) Regular Dues/Fees	$ _____	per (month, year, etc.)
(b) Initiation Fees	$ _____	
(c) Transfer Fees	$ _____	
(d) Work Permits	$ _____	per (month, year, etc.)

	Yes	No
22. During the reporting period, did your organization have any changes in its constitution and bylaws (other than rates of dues and fees) or in practices/procedures listed in the instructions?	☐	☐
23. Were any of your organization's assets pledged as security or encumbered in any other way at the end of the reporting period?	☐	☐
24. Did your organization have any contingent liabilities at the end of the reporting period?	☐	☐

(If the constitution and bylaws have changed, attach two new dated copies. If practices/procedures have changed, see the instructions.)

(If the answer to Item 23 or 24 is "Yes," provide details in Item 75.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VI on penalties in the instructions.)*

76. SIGNED: _____ PRESIDENT *(If other title, see instructions)*
Date ( ) Telephone Number

77. SIGNED: _____ TREASURER *(If other title, see instructions)*
Date ( ) Telephone Number

ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

COMPLETE SCHEDULES 1 THROUGH 15 BEFORE COMPLETING STATEMENTS A AND B

STATEMENT A—ASSETS AND LIABILITIES

ASSETS Item	FROM SCH #	Start of Reporting Period (A)	End of Reporting Period (B)	LIABILITIES Item	FROM SCH #	Start of Reporting Period (C)	End of Reporting Period (D)
25. Cash		$	$	33. Accounts Payable		$	$
26. Accounts Receivable				34. Loans Payable	8		
27. Loans Receivable	1			35. Mortgages Payable			
28. U.S. Treasury Securities.				36. Other Liabilities	4		
29. Investments	2			37. TOTAL LIABILITIES		$	$
30. Fixed Assets	5						
31. Other Assets	3			38. NET ASSETS *(Item 32 less Item 37)*		$	$
32. TOTAL ASSETS		$	$				

STATEMENT B—RECEIPTS AND DISBURSEMENTS

CASH RECEIPTS Item	FROM SCH #	AMOUNT	CASH DISBURSEMENTS Item	FROM SCH #	AMOUNT
39. Dues		$	56. To Officers	9	$
40. Per Capita Tax			57. To Employees	10	
41. Fees			58. Per Capita Tax		
42. Fines			59. Fees, Fines, Assessments, etc.		
43. Assessments			60. Office & Administrative Expense	13	
44. Work Permits			61. Educational & Publicity Expense		
45. Sale of Supplies			62. Professional Fees		
46. Interest			63. Benefits	11	
47. Dividends			64. Contributions, Gifts & Grants	12	
48. Rents			65. Supplies for Resale		
49. Sale of Investments & Fixed Assets	6		66. Direct Taxes		
50. Loans Obtained	8		67. Withholding Taxes		
51. Repayments of Loans Made	1		68. Purchase of Investments & Fixed Assets	7	
52. On Behalf of Affiliates for Transmittal to Them			69. Loans Made	1	
			70. Repayment of Loans Obtained	8	
53. From Members for Disbursement on Their Behalf			71. To Affiliates of Funds Collected on Their Behalf		
			72. On Behalf of Individual Members		
54. Other Receipts	14		73. Other Disbursements	15	
55. TOTAL RECEIPTS		$	74. TOTAL DISBURSEMENTS		$

75. ADDITIONAL INFORMATION

Item Number	

(If more space is needed, attach additional pages properly identified.)

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ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

If more space is needed to complete any of the schedules, continue on additional pages, using the same column headings used on the schedule, and enter the totals on the line provided for additional pages in each schedule.

SCHEDULE 1—LOANS RECEIVABLE

List below loans to officers, employees, or members which at any time during the reporting period exceeded $250 and list all loans to business enterprises regardless of amount. (A)	Loans Outstanding at Start of Period (B)	Loans Made During Period (C)	Repayments Received During Period		Loans Outstanding at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1. Name: ____ Purpose: ____ Security: ____ Terms of Repayment: ____	$	$	$	$	$
2. Name: ____ Purpose: ____ Security: ____ Terms of Repayment: ____					
3. Totals from additional pages (if any)					
4. Totals of loans not listed above					
5. Totals of Lines 1 through 4	$	$	$	$	$
Enter the Totals from Line 5 in	Item 27, Column (A)	Item 69	Item 51	Item 75 with Explanation	Item 27, Column (B)

SCHEDULE 2—INVESTMENTS (OTHER THAN U.S. TREASURY SECURITIES)

Description (A)	Amount (B)
Marketable Securities	
1. Total Cost	$
2. Total Book Value	
3. List each marketable security which has a book value over $1,000 and exceeds 20% of Line 2.	
(a) ____	
(b) ____	
(c) ____	
(d) ____	
Other Investments	
4. Total Cost	$
5. Total Book Value	
6. List each other investment which has a book value over $1,000 and exceeds 20% of Line 5. Also list each subsidiary for which separate reports are attached.	
(a) ____	
(b) ____	
(c) ____	
(d) ____	
(e) Total from additional pages (if any)	
7. Total of Lines 2 and 5	$
Enter the Total from Line 7 in	Item 29, Column (B)

SCHEDULE 3—OTHER ASSETS

Description (A)	Book Value (B)
1.	$
2.	
3.	
4.	
5. Total from additional pages (if any)	
6. Total of Lines 1 through 5	$
Enter the Total from Line 6 in	Item 31, Column (B)

SCHEDULE 4—OTHER LIABILITIES

Description (A)	Amount at End of Period (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7.	
8. Total from additional pages (if any)	
9. Total of Lines 1 through 8	$
Enter the Total from Line 9 in	Item 36, Column (D)

ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

SCHEDULE 5—FIXED ASSETS

Description (A)	Cost or Other Basis (B)	Total Depreciation or Amount Expensed (C)	Book Value (D)	Fair Market Value (E)
1. Land (give location):	$		$	$
2. Totals from additional pages (if any)				
3. Buildings (give location):		$		
4. Totals from additional pages (if any)				
5. Automobiles and Other Vehicles				
6. Office Furniture and Equipment				
7. Other Fixed Assets				
8. Totals of Lines 1 through 7	$	$	$	$

Enter the Total from Line 8, Column (D) in ..... Item 30, Column (B)

SCHEDULE 6—SALE OF INVESTMENTS AND FIXED ASSETS

Description (if land or buildings, give location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Received (E)
1.	$	$	$	$
2.				
3.				
4.				
5. Totals from additional pages (if any)				
6. Totals of Lines 1 through 5	$	$	$	$
		7. Less Reinvestments		
		8. Net Sales		$

Enter the Total from Line 8 in ..... Item 49

SCHEDULE 7—PURCHASE OF INVESTMENTS AND FIXED ASSETS

Description (if land or buildings, give location) (A)	Cost (B)	Book Value (C)	Cash Paid (D)
1.	$	$	$
2.			
3.			
4.			
5. Totals from additional pages (if any)			
6. Totals of Lines 1 through 5	$	$	$
	7. Less Reinvestments		
	8. Net Purchases		$

Enter the Total from Line 8 in ..... Item 68

SCHEDULE 8—LOANS PAYABLE

Source of Loans Payable at Any Time During the Reporting Period (A)	Loans Owed at Start of Period (B)	Loans Obtained During Period (C)	Repayments Made During Period		Loans Owed at End of Period (E)
			Cash (D)(1)	Other Than Cash (D)(2)	
1.	$	$	$	$	$
2.					
3.					
4. Totals from additional pages (if any)					
5. Totals of Lines 1 through 4	$	$	$	$	$

Enter the Totals from Line 5 in ..... Item 34, Column (C) ..... Item 50 ..... Item 70 ..... Item 75 with Explanation ..... Item 34, Column (D)

LM-2

ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

SCHEDULE 9—ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

Name (List all persons who held office during the reporting period even if they received no salary or other disbursements.) (A)	Title (B)	Status (C)*	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Disbursements for Official Business (F)	Other Disbursements (G)	Total (H)
1.			$	$	$	$	$
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10. Totals from additional pages (if any)							
11. Totals of Lines 1 through 10			$	$	$	$	$
					12. Less Deductions		
					13. Net Disbursements		$

Enter the Total from Line 13 in ..... Item 56

* Code for Column (C): past officer–P, continuing officer–C, new officer during the reporting period –N.

(If any officer was not elected at a regular election in accordance with your organization's constitution and bylaws, explain in Item 75.)

SCHEDULE 10—DISBURSEMENTS TO EMPLOYEES

Name (List all employees who received more than $10,000 in total disbursements from your organization and any affiliates.) (A)	Position (B)	Name of Affiliated Organization (if applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Disbursements for Official Business (F)	Other Disbursements (G)	Total (H)
1.			$	$	$	$	$
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. Totals from additional pages (if any)							
10. Totals for all employees who, during the reporting period, received $10,000 or less in total disbursements from your organization and any affiliates.							
11. Totals of Lines 1 through 10			$	$	$	$	$
					12. Less Deductions		
					13. Net Disbursements		$

Enter the Total from Line 13 in ..... Item 57

ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

SCHEDULE 11—BENEFITS

Description (A)	To Whom Paid (B)	Amount (C)
1.		$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10. Total from additional pages (if any)		
11. Total of Lines 1 through 10		$
Enter the Total from Line 11 in ..... Item 63		

SCHEDULE 12—CONTRIBUTIONS, GIFTS, AND GRANTS

Description (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from additional pages (if any)	
11. Total of Lines 1 through 10	$
Enter the Total from Line 11 in ..... Item 64	

SCHEDULE 13—OFFICE AND ADMINISTRATIVE EXPENSE

Description (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from additional pages (if any)	
11. Total of Lines 1 through 10	$
Enter the Total from Line 11 in ..... Item 60	

SCHEDULE 14—OTHER RECEIPTS

Description (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from additional pages (if any)	
11. Total of Lines 1 through 10	$
Enter the Total from Line 11 in ..... Item 54	

SCHEDULE 15—OTHER DISBURSEMENTS

Description (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10. Total from additional pages (if any)	
11. Total of Lines 1 through 10	$
Enter the Total from Line 11 in ..... Item 73	

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-3

FOR USE BY LABOR ORGANIZATIONS WITH LESS THAN $200,000 IN TOTAL ANNUAL RECEIPTS

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

IMPORTANT

If a label is here, → peel off the top copy and place it in the same box on the second copy of the form.

If label information is correct, leave items 4 through 8 blank.

If label information is incorrect, complete items 4 through 8.

1. FILE NUMBER

2. PERIOD COVERED

	MO	DAY	YR
From			
Through			

3. If your organization ceased to exist and this is its terminal report, see Section XII of the instructions and check here: ☐

4. AFFILIATION OR ORGANIZATION NAME		8. MAILING ADDRESS: (In care of) NAME AND TITLE OF PERSON
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	NUMBER AND STREET
7. UNIT NAME (if any)		BUILDING AND ROOM NUMBER (if any)
9. Are your organization's records kept at its mailing address? Yes ☐ No ☐ *(If "No," provide address in Item 56.)*		CITY STATE ZIP CODE

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION:

10. Have a "subsidiary organization" as defined in Section X of the instructions? ..... Yes ☐ No ☐

11. Create or participate in a trust or other fund or organization, as defined in the instructions, which provides benefits for members or their beneficiaries? ..... ☐ ☐

12. Have a political action committee (PAC) fund? ..... ☐ ☐

13. Acquire or dispose of any goods or property in any manner other than by purchase or sale? ..... ☐ ☐

14. Have an audit or review of its books and records by an outside accountant or by a parent body auditor/representative? ... ☐ ☐

15. Discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.) ..... Yes ☐ No ☐

16. Have any officer who was paid $10,000 or more by your organization and also received $10,000 or more as an officer or employee of another labor organization or of an employee benefit plan? ..... ☐ ☐

17. Pay any employee salary, allowances, and other expenses which, together with any payments from affiliates, totaled more than $10,000? ..... ☐ ☐

18. Have loans totaling more than $250 to any officer, employee, or member, or make any loans to a business enterprise? ... ☐ ☐

(If the answer to any of the above questions is "Yes," provide details in Item 56 as explained in the instructions for each item.)

19. How many members did your organization have at the end of the reporting period? ☐

20. What is the maximum amount recoverable under your organization's fidelity bond for a loss caused by any officer or employee of your organization? $ ☐

21. During the reporting period, did your organization have any changes in its constitution and bylaws (other than rates of dues and fees) or in practices/procedures listed in the instructions? ..... Yes ☐ No ☐

(If the constitution and bylaws have changed, attach two new dated copies. If practices/procedures have changed, see the instructions.)

22. What is the date of your organization's next regular election of officers? Month ☐ Year ☐

23. What are your organization's rates of dues and fees? *(Enter a minimum and maximum if more than one rate applies for any line.)*

Rates of Dues and Fees		
(a) Regular Dues/Fees	$ _____	per (month, year, etc.)
(b) Initiation Fees	$ _____	
(c) Transfer Fees	$ _____	
(d) Work Permits	$ _____	per (month, year, etc.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VI on penalties in the instructions.)*

57. SIGNED: _____ PRESIDENT *(If other title, see instructions)*
_____ Date ( ) _____ Telephone Number

58. SIGNED: _____ TREASURER *(If other title, see instructions)*
_____ Date ( ) _____ Telephone Number

ENTER AMOUNTS IN DOLLARS ONLY

FILE NUMBER

24. ALL OFFICERS AND DISBURSEMENTS TO OFFICERS

Name (List all persons who held office during the reporting period even if they received no salary or other disbursements.) (A)	Title (B)	Status N-New P-Past C-Continuing (C)	Gross Salary (before taxes and other deductions) (D)	Allowances and Other Disbursements (E)	Total (F)
(a)			$	$	$
(b)					
(c)					
(d)					
(e)					
(f)					
(g) Totals from additional pages (if any)					
(h) Totals of Lines (a) through (g)			$	$	$
			(i) Less Deductions		
Enter the Total from Line (j), in Item 45			(j) Net Disbursements		$

STATEMENT A—ASSETS AND LIABILITIES

ASSETS Item	Start of Reporting Period (A)	End of Reporting Period (B)	LIABILITIES Item	Start of Reporting Period (C)	End of Reporting Period (D)
25. Cash	$	$	32. Accounts Payable	$	$
26. Loans Receivable			33. Loans Payable		
27. U.S. Treasury Securities			34. Mortgages Payable		
28. Investments			35. Other Liabilities		
29. Fixed Assets			36. TOTAL LIABILITIES	$	$
30. Other Assets			37. NET ASSETS *(Item 31 less Item 36)*		
31. TOTAL ASSETS	$	$		$	$

STATEMENT B—RECEIPTS AND DISBURSEMENTS

CASH RECEIPTS Item	AMOUNT	CASH DISBURSEMENTS Item	AMOUNT
38. Dues	$	45. To Officers *(from Item 24)*	$
39. Per Capita Tax		46. To Employees *(less deductions)*	
40. Fees, Fines, Assessments & Work Permits		47. Per Capita Tax	
41. Interest & Dividends		48. Office & Administrative Expense	
42. Sale of Investments & Fixed Assets		49. Professional Fees	
43. Other Receipts		50. Benefits	
44. TOTAL RECEIPTS	$	51. Contributions, Gifts & Grants	
If total receipts reported in Item 44 are $200,000 or more, your organization must file Form LM-2 instead of this form.		52. Purchase of Investments & Fixed Assets	
		53. Loans Made	
		54. Other Disbursements	
		55. TOTAL DISBURSEMENTS	$

56. ADDITIONAL INFORMATION

Item Number	
	(If more space is needed, attach additional pages properly identified.)

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-4

FOR USE ONLY BY LABOR ORGANIZATIONS WITH LESS THAN $10,000 IN TOTAL ANNUAL RECEIPTS

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT. SUBMIT THIS REPORT IN DUPLICATE.

IMPORTANT

If a label is here, → peel off the top copy and place it in the same box on the second copy of the form.

If label information is correct, leave Items 4 through 8 blank.

If label information is incorrect, complete Items 4 through 8.

1. FILE NUMBER

2. PERIOD COVERED	MO	DAY	YR
From			
Through			

3. If your organization ceased to exist and this is its terminal report, see Section X of the instructions and check here: ☐

4. AFFILIATION OR ORGANIZATION NAME

5. DESIGNATION (Local, Lodge, etc.)

6. DESIGNATION NUMBER

7. UNIT NAME (if any)

8. MAILING ADDRESS:
(In care of) NAME AND TITLE OF PERSON
NUMBER AND STREET
CITY STATE ZIP CODE

	Yes	No
9. During the reporting period, did your organization have any changes in its constitution and bylaws (other than rates of dues and fees) or in practices/ procedures listed in the instructions? *(If the constitution and bylaws have changed, attach two new dated copies. If practices/procedures have changed, see the instructions.)*	☐	☐
10. Did your organization change its rates of dues and fees during the reporting period? *(If "Yes," report the new rates in Item 19.)*	☐	☐
11. Did your organization discover any loss or shortage of funds or property during the reporting period? *(If "Yes," provide details in Item 19. Answer "Yes" even if there has been repayment or recovery.)*	☐	☐
12. Was your organization insured by a fidelity bond during the reporting period? *(If "Yes," enter the maximum amount recoverable under the bond for loss caused by any person: $_____.)*	☐	☐
13. How many members did your organization have at the end of the reporting period?	☐	

14. Enter the total value of your organization's assets at the end of the reporting period (cash, bank accounts, equipment, etc.). $

15. Enter the total liabilities (debts) of your organization at the end of the reporting period (unpaid bills, loans owed, etc.). $

16. Enter the total receipts of your organization during the reporting period (dues, fees, interest received, etc.). *(If $10,000 or more, your organization must file Form LM-2 or LM-3 instead of this form.)* $

17. Enter the total disbursements made by your organization during the reporting period (per capita tax, loans made, net payments to officers, payments for office supplies, etc.). $

18. Enter the total payments to officers and employees during the reporting period (gross salaries, lost time payments, allowances, expenses, etc.). $

19. ADDITIONAL INFORMATION

Item Number

(If more space is needed, attach additional pages properly identified.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VI on penalties in the instructions.)*

20. SIGNED: _____ PRESIDENT *(If other title, see instructions.)*
_____ Date ( ) _____ Telephone Number

21. SIGNED: _____ TREASURER *(If other title, see instructions.)*
_____ Date ( ) _____ Telephone Number

Form LM-4 (1993)

[FR Doc. 93-31091 Filed 12-20-93; 8:45 am]
BILLING CODE 4510-86-C

federal register

Tuesday
December 21, 1993

Part X

Department of Housing and Urban Development

Innovative Homeless Initiatives Demonstration Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3690; FR-3628-N-01]

Funding Availability for Fiscal Year 1994 for Innovative Project Funding Under the Innovative Homeless Initiatives Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability (NOFA).

SUMMARY: This Notice announces the availability of $25 million in funds for applications for Innovative Project Funding under the Innovative Homeless Initiatives Demonstration Program. These funds will be awarded competitively for activities which are components of an innovative approach toward providing a "continuum of care" system designed to assist homeless persons and prevent homelessness. The funds will be used to fill gaps within the context of developing a seamless system to combat homelessness. They will not be used to fund activities isolated from a systematic approach. This notice of funding availability (NOFA) contains information concerning program purpose, eligible applicants, eligible activities, application requirements, and application processing.

DATES: All applications received in the Office of Special Needs Assistance Programs (SNAPS) at the address shown in the "**ADDRESSES**" section of this NOFA during or prior to the three working day period beginning on January 10, 1994 and ending on January 12, 1994 will be considered before applications received during the next three working day period. Applications received during the second three working day period will be considered before applications received during the following three working day period, and so forth until the $25 million is awarded. An application received after the close-of-business (5:15 pm Eastern time) on the third day of any three-day period will be considered to have been received during the next three-day period. Any application received prior to or during the three working day period beginning on January 10, 1994, or during a succeeding three working day period, and which was not selected for funding from the pool of applications received during the same three working day period remains eligible for consideration for funding, and will compete with applications received during succeeding three-day periods until all available funding is awarded. Applications may not be sent by facsimile.

The Department has established a short application period for this NOFA in an effort to make funding quickly available to applicants who are in need of funding to assist homeless persons, especially during this time when harsh weather conditions necessitate greater and more immediate assistance to homeless persons.

ADDRESSES: An original completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, 451 Seventh Street, SW., room 7262, Washington, DC 20410, Attention: Homeless Innovative Funding. One copy of the application must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of Field Offices appears in Appendix C to this NOFA. The Field Office copy must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at the Office of Special Needs Assistance Programs in Washington.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the area in which the proposed project is located. Telephone numbers are included in the list of Field Offices set forth in Appendix C to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB approval number 2506-0147, which expires March 16, 1994.

I. Purpose and Substantive Description

(A) Authority

Innovative Project Funding is part of the Innovative Homeless Initiatives Demonstration Program, which is authorized under section 2 of the HUD Demonstration Act of 1993 (Pub. L. 103-120, approved October 27, 1993).

(B) Purpose

The purpose of this NOFA is to fund activities which are components of an innovative approach toward providing a "continuum of care" system designed to assist homeless persons and prevent homelessness. The funds will be used to fill gaps within the context of developing a seamless system to combat homelessness. Any proposed system should give specific attention to the particular needs of homeless persons in the applicant's area, including those needs necessitated by adverse weather conditions.

A continuum of care system consists of three basic components:

(1) A prevention plan and outreach activities designed to bring homeless persons into a system and assess their needs;

(2) Transitional housing combined with rehabilitative services; and

(3) Placement into permanent housing.

Depending on the specific needs of the individual or family, continuing supportive services may be provided. For projects serving families, the projects and activities should serve the family together, and should work to strengthen the family structure.

(C) Funding Availability

This NOFA makes $25 million available for the Innovative Project Funding. The $25 million represents one-quarter of the amount appropriated for the Innovative Homeless Initiatives Demonstration Program by the HUD Appropriations Act of 1994 (Pub. L. 103-124, approved October 28, 1993). HUD reserves the right to fund less than the full amount requested in any application. Because there is only $25 million available for this competition, the Department expects to fund requests ranging from $250,000 to $1,000,000.

II. Application Process

(A) Applications will be reviewed and selected on the basis of the following process.

(1) *Review.* Applications will be reviewed to ensure that they meet the following:

(a) *Applicant eligibility.* The applicant must be a jurisdiction (i.e., State, metropolitan city, urban county, unit of general local government [including units in rural areas], Indian tribe) or nonprofit organization operating within such jurisdiction.

A proposed project that involves the participation of more that one jurisdiction or more than one nonprofit organization, or a combination of jurisdictions or nonprofit organizations is eligible for consideration for funding. However, of these participating jurisdictions and organizations, only one jurisdiction or one organization may be the applicant.

The terms *State, metropolitan city, urban county, unit of general local government,* and *Indian tribe* have the

meanings given such terms in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

The term *nonprofit organization* means an organization—

(i) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(ii) That, in the case of a private nonprofit organization, has a voluntary board;

(iii) That has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(iv) That practices nondiscrimination in the provision of assistance.

(b) *Eligible population to be served.* The population proposed to be served must be homeless individuals or homeless families, or be very low-income and at risk of homelessness.

The term *homeless individual* has the meaning given such term in section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302). Section 103 defines *homeless individual* as follows:

(i) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(ii) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term *homeless family* means a group of one or more related individuals who are homeless individuals, and includes homeless pregnant women and homeless individuals in the process of securing legal custody of a person who has not attained the age of 18 within the definition of family.

The term *very low-income* has the meaning given this term in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a).

(c) *Eligible activities.* The activities for which assistance is requested may be any activities which are, or are designed to be, components of an innovative approach toward providing a "continuum of care" system, as described above, and which will fill gaps within the context of developing that seamless system to combat homelessness. Up to 5 percent of the amount of grant funds requested may be used for grant administration expenses, such as the costs of audits and reports.

Applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons.

(d) *Fair housing and equal opportunity.* Organizations that receive assistance under this NOFA must be in compliance with applicable civil rights laws and Executive Orders.

(e) *Outstanding audit findings.* No organization that receives assistance may have serious, unaddressed, outstanding Inspector General audit findings.

(2) *Selection criteria.* Applications will be selected based on the following criteria, which will receive equal consideration in the selection process.

(a) The extent to which the program described in the application achieves the purpose of this NOFA;

(b) The extent to which the applicant demonstrates the capacity to implement a program that achieves the purpose of this NOFA;

(c) The extent to which the program described in the application is innovative and may be replicated or may serve as a model for implementation in other jurisdictions;

(d) Diversity by geography and community type;

(e) The speed with which the projects and activities will become operational;

(f) The need for homeless assistance in the jurisdiction; and

(g) The cost effectiveness of the project and activities taking into consideration the grant amount requested.

III. Application Submission Requirements

(A) Instructions for Submitting Required Items

(1) Each submission requirement (listed as exhibits in Section (B) below) must be clearly identified (including the exhibit subparts), and the application assembled in the order listed below. After the entire application is assembled, applicants should:

(a) Mark each exhibit with an appropriately numbered tab; and

(b) Number every page of the application sequentially.

(2) All reviews will be based on the application submission.

(B) Application Submissions

All applications must include the following exhibits:

(1) Exhibit 1 consists of two documents that are printed in this **Federal Register** as appendices to this NOFA. The documents may be removed from the **Federal Register** or photocopied (do not re-type), and signed by the official authorized to act on behalf of the applicant. The two documents are:

(a) SF–424—Application for Federal Assistance (published as Appendix A to this NOFA); and

(b) Applicant Certifications (published as Appendix B to this NOFA).

(2) Exhibit 2. Describe on not more than one page the extent of homelessness in the jurisdiction.

(3) Exhibit 3. Explain on not more than two pages the extent to which the existing systems, both public and private, for homelessness prevention, outreach, assessment, shelter, services, transitional services, transitional housing, and permanent housing available within the jurisdiction would benefit from additional resources to achieve a comprehensive approach to meeting the needs of individuals and families who are homeless, or very low-income and at risk of homelessness.

(4) Exhibit 4. Describe on not more than four pages:

(a) The projects and activities for which funding is being requested;

(b) The grant amounts requested for the projects and activities;

(c) The amount requested for grant administration, which may not exceed 5 percent of the total amount requested in item (b);

(d) Time schedules for carrying out the project and activities, from beginning to end;

(e) The estimated number of homeless persons to be assisted and, if applicable, the estimated number of very low-income persons at risk of homelessness who will be assisted.

(f) How the projects and activities are components of an approach for moving toward a "continuum of care" system designed to assist homeless persons and prevent homelessness, and how they will be used to fill gaps within the context of developing that seamless system for combating homelessness; and

(g) The resources, if any, that will be contributed to the projects and activities from States, local governments, and the private sector, including nonprofit organizations, foundations, and communities, and information on the status of any such resources that are essential to the financial feasibility of the projects and activities.

(5) Exhibit 5. Describe on not more than two pages the past experience of the organization(s) that will implement the proposed activities in carrying out these types of activities.

(6) Exhibit 6. For jurisdictions applying: describe on not more than one page the demonstrated willingness and capacity of the jurisdiction to work cooperatively with the Department of Housing and Urban Development, nonprofit organizations, foundations, other private entities, and the community, to the extent feasible, to design and implement an initiative to achieve a comprehensive strategy for assisting homeless individuals and families (including homeless individuals who have AIDS or who are infected with HIV).

For nonprofit organizations applying: submit a one-page description covering these elements, prepared either by the jurisdiction or by the applicant.

(7) Exhibit 7. If changes in a jurisdiction's policy or procedure are necessary to provide sufficient flexibility and resources to implement and sustain the proposed activities, submit a statement of commitment from the jurisdiction to make such changes.

(8) Exhibit 8. Applicants that are private nonprofit organizations must submit one of the following:

(a) Documentation showing that the applicant is a certified United Way member agency: or.

(b) (i) A certification on letterhead stationery from a CPA or Public Accountant that the organization has a functioning accounting system that is operated in accordance with generally accepted accounting principles or that the organization has designated a qualified entity to maintain a functioning accounting system in accordance with generally accepted accounting principles; and

(ii) A copy of their IRS ruling providing tax exempt status under section 501(c)(3) of the IRS Code of 1986, as amended.

(C) Clarification of Application Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the applicant's application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(D) Environmental Review

Selection of an application for funding does not imply HUD approval of any particular property for use in the project. HUD will complete an environmental review with respect to particular properties, to the extent required under 24 CFR part 50, at the time the recipient proposes particular properties for use under the program. The recipient may not commit HUD or local funds for acquisition, leasing or physical development activities under the program until it receives HUD approval of the property.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. Specifically, the purpose of the funding under this NOFA is to provide grants to jurisdictions, or nonprofit organizations operating within jurisdictions, for innovative approaches toward providing a continuum of care system designed to assist homeless persons and prevent homelessness.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have the potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide housing to homeless persons. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment"), and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000, and applicants for Federal commitments exceeding $150,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Disclosure of Funding Decisions

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act (HUD Reform Act) are codified at 24 CFR part 4 and apply to the funding competition announced today. The requirements of part 4 continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Accountability in the Provision of HUD Assistance

HUD's regulation implementing section 102 of the HUD Reform Act is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992 (57 FR 1942), following publication of the final rule, HUD published additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The requirements of section 102 are applicable to assistance awarded under this NOFA.

a. Document and Public Access Requirements

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.6(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.

b. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1993 (57 FR 1942) for further information on these disclosure requirements.

Dated: December 17, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–29–P

Application for Federal Assistance

APPENDIX A

OMB Approval No. 0348-0043

1. Type of Submission:		2. Date Submitted	Applicant Identifier
Application: ☐ Construction ☐ Non-Construction	Preapplication: ☐ Construction ☐ Non-Construction	3. Date Received by State	State Application Identifier
		4. Date Received by Federal Agency	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN):

7. Type of Applicant: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify):

8. Type of Application:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. Name of Federal Agency: U.S. Dept. of Housing & Urban Development

10. Catalog of Federal Domestic Assistance Number:

Title: Innovative Homeless Initiatives Demonstration Program

11. Descriptive Title of Applicant's Project:

12. Areas Affected by Project (cities, counties, states, etc.):

13. Proposed Project:		14. Congressional Districts of:	
Start Date	Ending Date	a. Applicant	b. Project

15. Estimated Funding:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. Total	$	.00

16. Is Application Subject to Review by State Executive Order 12372 Process?

a. Yes. This preapplication/application was made available to the State Executive Order 12372 Process for review on:

Date: _____

b. No. ☒ Program is not covered by E.O. 12372

or

☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?

☐ Yes If "Yes," explain below or attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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form SF-424 (4/88)
Prescribed by OMB Circular A-102

APPENDIX A CONTINUED

Instructions for the SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item 1. Self-explanatory.

Item 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

Item 3. State use only (if applicable).

Item 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

Item 9. Name of Federal agency from which assistance is being requested with this application.

Item 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

Item 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item 12. List only the largest political entities affected (e.g., State, counties, cities).

Item 13. Self-explanatory.

Item 14. List the applicant's Congressional District and any District(s) affected by the program or project.

Item 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

Item 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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form SF-424 (4/88)
Prescribed by OMB Circular A-102

APPENDIX B—Applicant Certifications

The Applicant hereby assures and certifies that:

1. It will comply with:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

b. The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), instead of Title VI and the Fair Housing Act and their implementing regulations.

c. Executive Order 11063 on Equal Opportunity in Housing, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp. p. 652 and 3 CFR , 1980 Comp. 307) and the implementing regulations at 24 CFR part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

d. Executive Order 11246 on Equal Opportunity in Employment (3 CFR 1964–1965, Comp., p. 339) and the implementing regulations at 41 CFR part 61, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in § 130.5 of HUD regulations the equal opportunity clause required by § 130.15(b) of the HUD regulations.

e. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and the implementing regulations at 24 CFR part 135), which require that to the greatest extent feasible, employment, training and contract opportunities arising in connection with the expenditure of HUD assistance covered by section 3 be given to the low-income persons and the business concerns identified in the part 135 regulations.

f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and the implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.

g. The Age Discrimination Act of 1975 (42 U.S.C. 6101–07), as amended, and the implementing regulations at 24 CFR part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

h. Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

i. The reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a;

d. Notifying the employee in the statement required by paragraph a that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e and f;

h. Providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised "Place of Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR part 24.

4. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 35.

5. It will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested; and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

6. The applicant certifies that:

a. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any

Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and of more than $100,000 for each such failure.

7. For private nonprofit applicants, the applicant certifies that members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for their services.

8. The applicant certifies that it and its principals (see 24 CFR 24.105(p)):

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in (b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, the applicant shall attach an explanation behind this page.

Signature of Authorized Certifying Official:

Title:

Applicant: Date:

Appendix C—HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY or (1-800-877-8339) or (202) 708-9300.

Alabama—Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Parkway West, suite 300, Birmingham, AL 35209-3144; (205) 731-1672; TDD (205) 290-7624.

Alaska—Colleen Craig, 949 E. 36th Avenue, suite 401, Anchorage, AK 99508-4399; (907) 271-4328; TDD (907) 271-4328.

Arizona—Diane Domzalski, 400 N. 5th St., suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379-4754; TDD (602) 379-4461.

Arkansas—Billy M. Parsley, Lafayette Bldg., 523 Louisiana, suite 200, Little Rock, AR 72201-3707; (501) 324-6375; TDD (501) 324-5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015-3801; (213) 251-7235; TDD (213) 251-7038.

(Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357.

Colorado—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202-3607; (303) 672-5414; TDD (303) 672-5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106-1860; (203) 240-4508; TDD (203) 240-4522.

Delaware—John Kane, Liberty Square Bldg., 105 S. 7th Street, Philadelphia, PA 19106-3392; (215) 597-2665; TDD (215) 597-5564.

District of Columbia—James H. McDaniel, 820 First Street, NE, Washington, DC (and MD and VA suburbs) 20002; (202) 275-0994; TDD (202) 275-0967.

Florida—James N. Nichol, 301 West Bay Street, suite 2200, Jacksonville, FL 32202-5121; (904) 232-3587; TDD (904) 791-1241.

Georgia—Charles N. Straub, Russell Federal Bldg., Room 688, 75 Spring St., SW., Atlanta, GA 30303-3388; (404) 331-5139; TDD (404) 730-2654.

Hawaii (and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813-4918; (808) 541-1327; TDD (808) 541-1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204-1596 (503) 326-7018; TDD * via 1-800-877-8339.

Illinois—Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604-5760; (312) 353-1696; TDD (312) 353-7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204-2526; (317) 226-5169; TDD * via 1-800-877-8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154-3955; (402) 492-3144; TDD (402) 492-3183.

Kansas—Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 551-5485; TDD (913) 551-6972.

Kentucky—Ben Cook, PO Box 1044, 601 W. Broadway, Louisville, KY 40201-1044; (502) 582-5394; TDD (502) 582-5139.

Louisiana—Greg Hamilton, PO Box 70288, 1661 Canal St., New Orleans, LA 70112-2887; (504) 589-7212; TDD (504) 589-7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640; TDD (603) 666-7518.

Maryland—Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202-1865; (301) 962-2417; TDD (301) 962-0106.

Massachusetts—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5343; TDD (617) 565-5453.

Michigan—Richard Wears, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226-2592; (313) 226-7186; TDD * via 1-800-877-8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401-2195; (612) 370-3019; TDD (612) 370-3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269-1096; (601) 965-4765; TDD (601) 965-4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103-2836; (314) 551-5484; TDD (314) 551-6972.

(Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 551-5485; TDD (913) 551-6972.

Montana—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202-3607; (303) 672-5414; TDD (303) 672-5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154-3955; (402) 492-3144; TDD (402) 492-3183.

Nevada—(Las Vegas, Clark Cnty) Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379-4754; TDD (602) 379-4461.

(Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640; TDD (603) 666-7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622-7900; TDD (201) 645-3298.

New Mexico—R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905; (817) 885-5483; TDD (817) 885-5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768; TDD * via 1-800-877-8339.

(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278-0068; (212) 264-2885; TDD (212) 264-0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547-4006; TDD (910) 547-4055.

North Dakota—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202-3607; (303) 672-5414; TDD (303) 672-5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215-2499; (614) 469-6743; TDD (614) 469-6694.

Oklahoma—Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK

73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

(Eastern) John Kane, Liberty Square Bldg., 105 S. 7th Street, Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos 159 Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Robert Paquin, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4393; TDD (615) 545–4559.

Texas—(Northern) R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

(Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Barbara H. Richards, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

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