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Wednesday
December 22, 1993

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

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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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Presidential Documents

Title 3—

The President

Proclamation 6642 of December 17, 1993

Fifth Anniversary Day of Remembrance for the Victims of the Bombing of Pan Am Flight 103

By the President of the United States of America

A Proclamation

This holiday season, while we gather with loved ones, it is important to remember those innocents who can no longer celebrate with their families because of a cruel and senseless act of terrorism. Four days before Christmas in 1988, a bomb exploded aboard Pan American Airways Flight 103, killing its 259 passengers and crew, along with 11 people on the ground in Lockerbie, Scotland. Among the passengers from 21 different nations were 189 Americans who were never to see their families again. Today, those responsible for this heinous act are still at large.

We dare not forget the unsuspecting victims of Flight 103. Their tragedy reminds us that while our world is abounding with opportunities for peace and democracy, it is also filled with danger and uncertainty. The threat of terrorism, both at home and abroad, continues to loom as wars and instances of ethnic and religious turmoil imperil our vision for a safer world.

We must remain ever vigilant if we are to combat merciless brutality and ensure the security of all of our citizens. My Administration is closely monitoring the terrorist threat in order to make the changes needed to create a secure future and to avert the kind of murderous tragedy that occurred in the skies over Scotland. In this holiday season, our hearts go out to all who lost loved ones in the bombing of Flight 103—for them, the loss is incalculable. We pledge to remember the victims of this outrage and to recommit ourselves to bringing the perpetrators to justice, so that we may truly create a safer, more peaceful world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 21, 1993, as the "Fifth Anniversary Day of Remembrance for the Victims of the Bombing of Pan Am Flight 103." I call upon the people of the United States to observe this day with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-31384
Filed 12-20-93; 2:31 pm]
Billing code 3195-01-P

Editorial note: For the President's remarks at Arlington National Cemetery at a groundbreaking ceremony for a memorial to the Pan Am Flight 103 victims, see the *Weekly Compilation of Presidential Documents* (vol. 29, issue 51).

Rules and Regulations

Federal Register
Vol. 58, No. 244
Wednesday, December 22, 1993

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-082-2]

Imported Fire Ant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of direct final rule effective date.

SUMMARY: This notice confirms the effective date of the direct final rule allowing reduced dosage rates of granular bifenthrin for the treatment of containerized nursery stock that is to be certified, for limited periods of time, for interstate movement from areas under quarantine because of the imported fire ant.

EFFECTIVE DATE: The direct final rule published on October 28, 1993, beginning on 58 FR 57952 is effective December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittingham, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In a direct final rule published in the **Federal Register** on October 28, 1993 (58 FR 57952-57955, Docket No. 93-082-1), we notified the public of our intention to amend the imported fire ant regulations by allowing reduced dosage rates of granular bifenthrin for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas for limited periods of time.

We solicited comments concerning the direct final rule for a 30-day period ending November 29, 1993. We stated that the effective date of the proposed amendment would be 60 days after publication of the direct final rule in the **Federal Register**, unless we received adverse comments or written notice of intent to submit adverse comments by the close of the comment period.

We received neither adverse comments nor written notice of intent to submit adverse comments. Therefore, the direct final rule will become effective December 27, 1993, as scheduled.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 17th day of December 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-31218 Filed 12-21-93; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 301

[Docket 91-155-10]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding new portions of Los Angeles and Orange Counties, CA, to the list of quarantined areas. These actions are necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective December 16, 1993. Consideration will be given only to comments received on or before February 22, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-155-10. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573-57579, Docket No. 91-155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 22, October 14, and November 23, 1993 (57 FR 42485-42486, Docket No. 91-155-2; 57 FR 54166-54169, Docket No. 91-155-3; 58 FR 6343-6346, Docket No. 91-155-4; 58 FR 39123-39124, Docket No. 91-155-5; 58 FR 42489-42491, Docket No. 91-155-6; 58 FR 49186-49190, Docket No. 91-155-7; and 58 FR 53105-53109, Docket No. 91-155-8; and 58 FR 63027-63031, Docket No. 91-155-9).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Pomona area in Los Angeles County, CA, and the Anaheim and Orange areas in Orange County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by expanding the area that extends through Los Angeles and Orange Counties with the addition of an Orange County area of approximately 61 square miles and by expanding the area that extends through Los Angeles and San Bernardino Counties with the addition of a Los Angeles County area of approximately 10 square miles. The new quarantined areas are as follows:

Orange County

That portion of Orange County bounded by a line drawn as follows: Beginning at the intersection of Tustin Ranch Road and Jamboree Road; then north along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northwest along Nohl Ranch Road to its intersection with the Imperial Highway; then north along the Imperial Highway to its intersection with State Highway 91; then west along State Highway 91 to its intersection with Western Avenue; then south along Western Avenue to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with West Street; then south along West Street to its intersection with Chapman Avenue; then east along Chapman Avenue to its intersection with Hewes Street; then south along Hewes Street to its intersection with Old Foothill Boulevard; then southeast along Old Foothill Boulevard to its intersection with Foothill Boulevard; then southeast along Foothill Boulevard to its intersection with Pioneer Road; then Southeast along Pioneer Road to its intersection with Pioneer Way; then south along Pioneer Way to its intersection with Tustin Ranch Road; then east along Tustin Ranch Road to the point of beginning.

Los Angeles County

That portion of Los Angeles County bounded by a line drawn as follows: Beginning at the intersection of the San Bernardino County Line and State Highway 60; then west along State Highway 60 to its intersection with State Highway 57; then north along State Highway 57 to its intersection with Interstate 10; then east along Interstate 10 to its intersection with Garey Avenue; then south along Garey Avenue to State Highway 60; then west along State Highway 60 to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Orange and Anaheim areas of Orange County, CA, and the Pomona area of Los Angeles County, CA. There are approximately 221 small entities that could be affected, including 156 fruit sellers, 37 nurseries, 3 distributors, 12 growers, 2 packers, 7 vendors, and 4 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

In the new quarantined areas in Orange and Los Angeles Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3)

USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas are amended by revising the entry for Los Angeles and Orange Counties, and the entry for Los Angeles and San Bernardino Counties, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles and Orange Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Interstate Highway 405; then, east and south along Interstate Highway 405 to its intersection with Culver Drive; then, northeast along Culver Drive to its intersection with Walnut Avenue; then, northwest along Walnut Avenue to its intersection with Jamboree Road; then, northeast along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northwest along Nohl Ranch Road to its intersection with the Imperial Highway; then north on the Imperial Highway to its intersection with State Highway 91; then west along State Highway 91 to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning.

Los Angeles and San Bernardino Counties. That portion of the counties beginning at the intersection of College Way and State Highway 30 (Base Line Road); then east along State Highway 30 to its intersection with Carnelian Street; then south along Carnelian street to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Holt Boulevard; then west along Holt Boulevard to its intersection with Grove Avenue; then south along Grove Avenue to its intersection with Mission Boulevard; then southeast along Mission Boulevard to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Riverside Drive; then west along Riverside Drive to its intersection with Walker Avenue; then south along Walker Avenue to its intersection with Eucalyptus Avenue; then west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then south along State Highway 83 to its intersection with State Highway 71; then southwest from this intersection, along an imaginary line to the northern intersection of

the Yorba Linda City Limits and the San Bernardino County line; then northwest and north along the San Bernardino County line to its intersection with State Highway 60; then west along State Highway 60 to its intersection with State Highway 57; then north along State Highway 57 to its intersection with Interstate 10; then east on Interstate 10 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then northeast along College Way to the point of beginning.

Done in Washington, DC, this 16th day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-31182 Filed 12-21-93; 8:45 am]

BILLING CODE 3410-34-P

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Late and Prevented Planting for Various Crop Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations, effective for the 1994 and succeeding crop years, by revising the late planting and prevented planting provisions of the Corn, Grain Sorghum, and Soybean Endorsements. Additionally, this rule serves to incorporate the late and prevented planting coverage into the Hybrid Sorghum Seed, Rice, Cotton, Barley, Oats, and Wheat Crop Endorsements and to incorporate the prevented planting coverage into the ELS Cotton Endorsement.

DATES: Effective Date: This rule is effective on November 30, 1993.

Comments: Written comments pursuant to this rule must be received by February 22, 1994.

ADDRESSES: Written comments should be sent to Mari Dunleavy, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be viewed and copied at 2101 L Street, NW., suite 502, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, 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 Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Corn, Grain Sorghum, Hybrid Sorghum Seed, Rice, Cotton, ELS Cotton, Barley, Oats, Wheat, and Soybean Endorsement regulations affected by this rule under those procedures. The sunset review dates established for these regulations are as follows: Corn, April 1, 1996; Grain Sorghum, July 1, 1996; Hybrid Sorghum Seed, April 1, 1992; Rice, August 29, 1998; Cotton, May 1, 1994; ELS Cotton, June 1, 1994; Barley, October 1, 1997; Oats, October 1, 1997; Wheat, October 1, 1997; and Soybean, October 1, 1996.

Kenneth D. Ackerman, 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 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; (2) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) would not alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (4) 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.

The Manager certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons, nor will it have a significant economic effect on a substantial number of small entities. This action reduces the paperwork burden on the insured farmer, and on the reinsured company and sales and service contractor. 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 state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

The Manager has also certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are retroactive to November 30, 1993, and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

FCIC amends the General Crop Insurance Regulations (7 CFR Part 401) by revising the late and prevented planting provisions of the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113), and the Soybean Endorsement (§ 401.117), effective for the 1994 and succeeding crop years. The Hybrid Sorghum Seed (§ 401.109), Rice (§ 401.120), Cotton (§ 401.119), Barley (§ 401.103), Oats (§ 401.105), and Wheat (§ 401.101), Endorsements are revised by incorporating the late and prevented planting provisions, and the ELS Cotton (§ 401.121) Endorsement is revised by incorporating prevented planting provisions. The insured will be covered for loss if prevented from planting the insured crop due to an insurable cause of loss which is general in the area without having to purchase a separate option for this coverage.

The changes will be effective for the 1994 and succeeding crop years in all counties for corn, cotton, ELS cotton, grain sorghum, hybrid sorghum seed, rice, and soybeans; and only in counties with a December 31 contract change date for barley, oats, and wheat. The changes will be effective for all barley, oat, and wheat counties for the 1995 and succeeding crop years.

FCIC previously revised the Corn, Grain Sorghum, and Soybean Endorsements for the 1994 and subsequent crop years. Further review of these new provisions found the salvage crop and loss provision to be excessively complicated and burdensome on the insureds and the companies delivering the policies. The 1993 floods and drought revealed deficiencies in the present method of making separate coverages available to address these problems.

The current optional coverage for late and prevented planting lacks the desired degree of effectiveness due to both coverage deficiencies and the volume of paperwork required. The paperwork required includes the prevented planting application and acreage report, and an option form for late planting coverage. Adding to the administrative burden is the tracking of dates for submission of these forms. By incorporating the late and prevented planting into the standard crop insurance policy, the additional paperwork will become unnecessary and obsolete. Coverage for late planting, and prevented planting due to an insurable cause of loss will now be automatically extended to the insured.

Late and prevented planting provisions for corn, grain sorghum, and soybeans were published as a final rule in the **Federal Register** at 58 FR 3202 on January 8, 1993. These provisions were offered to policyholders for the 1994 crop year. FCIC hereby revises those provisions as follows:

1. The perils insured against have been expanded to include all perils covered under the basic policies for the insured crops. Provisions published January 8, 1993, provided coverage only against excess moisture conditions, and drought if approved in writing.

2. Salvage crop provisions will apply only when the insured crop is planted after the late planting period. If any other crop intended for harvest in the same crop year as the insured crop is planted, prevented planting coverage will not be provided for the affected acreage. Previous provisions provided that the salvage value of any alternative crop planted after the late planting period would be counted against the production guarantee of the insured crop. These provisions were overly complex, and would have been difficult to administer.

3. Provisions have been added which will allow additional acreage to qualify for prevented planting coverage if such acreage does not exceed one hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which the insured has continuous records of planted acreage or for the crop years that were used to determine the insured's yield. Provisions also allow the insurer to accept acreage in excess of the stated limitations if agreed to in writing prior to the sales closing date. Previously published provisions limited the acreage covered to the greater of the number of acres planted to the insured crop the previous year or the ASCS base acreage.

4. Provisions have been added to allow prevented planting coverage during the late planting period. Previously published provisions limited prevented planting coverage to acreage which was prevented from planting by the final planting date.

In addition to corn, grain sorghum, and soybeans, late and prevented planting coverage will be provided for barley, cotton, hybrid sorghum seed, oats, rice, and wheat. Prevented planting coverage will be provided for ELS cotton; however, late planting coverage will not be available for ELS cotton because planting during the late planting period generally does not allow enough time for the crop to reach maturity.

FCIC is soliciting comments for sixty days after the publication of this rule. Written comments should be sent to the name and address listed in the "Addresses" heading of this rule. All submitted comments will be considered and any amendment made necessary by these comments will be promulgated as soon as practicable. This rule relieves a restriction, is being promulgated for the benefit of the insured, and improves coverage for all policyholders good cause is found to make the rule retroeffective to November 30, 1993. Failure to make the rule final by November 30, 1993 will delay implementation until 1995 year for some crops.

List of Subjects in 7 CFR Part 401

Crop insurance; Corn, Grain sorghum, Soybeans, cotton, ELS cotton, Barley, Oats, Wheat, Hybrid sorghum seed, and Rice

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and for the reasons set forth in the preamble the Federal Crop Insurance Corporation hereby amends the crop insurance regulations (7 CFR Part 401) effective for the 1994 and subsequent crop years as follows:

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

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

2. Subparagraph 1.c. of § 401.101 (Wheat Endorsement) is removed, section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.101 Wheat endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to wheat during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest wheat final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted wheat acreage (and fall-planted wheat acreage only where insurance is not offered for spring-planted wheat) which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the wheat continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If your were prevented from planting wheat (see subparagraph 11.(i), you may elect:

(i) To plant wheat during the late planting period. The production guarantee for such acreage will be determined in accordance subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted wheat. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant wheat after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for wheat in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to wheat on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for wheat reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to wheat during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under any irrigated practice will be limited to the number of wheat acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for wheat in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than wheat, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of wheat acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of wheat on one optional unit and 40 acres of wheat on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more wheat acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to wheat in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted wheat in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted wheat in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured wheat must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated wheat acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—(applicable only to spring-planted wheat acreage and fall-planted wheat acreage only where insurance is not offered for spring-planted wheat)-the period which begins the day after the final planting date for wheat and ends twenty-five (25) days after the wheat final planting date.

(h) *Latest wheat final planting date*—

(1) The final planting date for spring-planted wheat in all counties for which the Actuarial Table designates a final planting date for spring-planted wheat only;

(2) The final planting date for fall-planted wheat in all counties for which the Actuarial Table designates a final planting date for fall-planted wheat only; or

(3) The final planting date for spring-planted wheat in all counties for which the Actuarial Table designates final planting dates for both spring-planted and fall-planted wheat.

(i) *Prevented planting*—inability to plant wheat with proper equipment by:

(1) The latest wheat final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant wheat due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest wheat final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—wheat planted by the final planting date, as established by the Actuarial Table, for wheat in the county to be planted for harvest in the crop year.

3. Subparagraph 1.c of § 401.103 (Barley Endorsement) is removed, section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.103 Barley endorsement.

* * * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.3.(4) and 21.o of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to barley during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest barley final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted barley acreage (and fall-planted barley acreage only where insurance is not offered for spring-planted barley) which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the barley continues after the final planting date, or you are prevented from planting barley during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting barley (see subparagraph 11.(i)), you may elect:

(i) To plant barley during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted barley. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant barley after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for barley in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to barley on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for barley reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to barley during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice is limited to the number of barley acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for barley in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than barley, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purposes of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of barley acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of barley on one optional unit and 40 acres of barley on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more barley acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number,

the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to barley in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted barley in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted barley in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured barley must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated barley acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Later planting period*—(applicable only to spring-planted barley acreage and fall-planted barley acreage only where insurance is not offered for spring-planted barley)—the period which begins the day after the final planting date for barley and ends twenty-five (25) days after the final planting date.

(h) *Latest barley final planting date*—

(1) The final planting date for spring-planted barley in all counties for which the Actuarial Table designates a final planting date for spring-planted barley only;

(2) The final planting date for fall-planted barley in all counties for which the Actuarial Table designates a final planting date for fall-planted barley only; or

(3) The final planting date for spring-planted barley in all counties for which the Actuarial Table designates final planting dates for both spring-planted and fall-planted barley.

(i) *Prevented planting*—inability to plant barley with proper equipment by:

(1) The latest barley final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant barley due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest barley final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—barley planted by the final planting date, as established by the Actuarial Table, for barley in the county to be planted for harvest in the crop year.

4. Subparagraph 1.c. of § 401.105 (Oat Endorsement) is removed, section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.105 Oat endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to oats during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest oat final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted oat acreage (and fall-planted oat acreage only where insurance is not offered for spring-planted oats) planted after the final planting date, but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the oats continues after the final planting date, or you are prevented from planting oats during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevent Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting oats (see subparagraph 11(i)), you may elect:

(i) To plant oats during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted oats. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant oats after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage

will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for oats in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to oats on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS based acreage for oats reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to oats during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of oats acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for oats in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than oats, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of oat acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of oats on one optional unit and 40 acres of oats on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more oat acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to oats in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted oats in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted oats in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured oats must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated oat acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—(applicable only to spring-planted oat acreage and fall-planted oat acreage only where insurance is not offered for spring-planted oats)—the period which begins the day after the final planting date for oats and ends twenty-five (25) days after the oat final planting date.

(h) *Latest oat final planting date*—

(1) The final planting date for spring-planted oats in all counties for which the Actuarial Table designates a final planting date for spring-planted oats only;

(2) The final planting date for fall-planted oats in all counties for which the Actuarial Table designates a final planting date for fall-planted oats only; or

(3) The final planting date for spring-planted oats in all counties for which the Actuarial Table designates final planting dates for both spring-planted and fall-planted oats.

(i) *Prevented planting*—inability to plant oats with proper equipment by:

(1) The latest oat final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant oats due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest oat final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—oats planted by the final planting date as established by the Actuarial Table, for oats in the county to be planted for harvest in the crop year.

5. In § 401.109 (Hybrid Sorghum Seed Endorsement), section 12 is redesignated as a revised section 13 and a new section 12 is added to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

(a) In lieu of subparagraphs (2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced amounts of insurance for such acreage. The reduced amounts of insurance will be combined with the amount of insurance for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 200 acres of the same type and variety of which 150 acres are occupied by the female plant. Fifty acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the amount of insurance for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre amount of insurance for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre amount of insurance for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 13.(o)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting the insured crop during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Acturial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subparagraph 13.(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with subparagraph 12.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The amount of insurance for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be equivalent to 100 dollars per acre (200 dollars per acre multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant the insured crop after the late planting period. The amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be equivalent to 100 dollars per acre (200 dollars per acre multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraphs 8.b. through e.

(2) In addition to the provisions of section 7 of the General Crop Insurance Policy (§ 401.8) and section 5 of this endorsement (Insurance Period), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Acturial Table for the insured crop.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(B) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of the insured crop acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting amount of insurance will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for the insured crop in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more insured crop acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the crop year.

(5) In accordance with the provisions of section 3. (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8) and of this endorsement, you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

13. Meaning of Terms

(a) *Adjusted average yield*—an expected yield level for a specific variety, in bushels per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

(b) *Amount of insurance*—the number of dollars per acre that results from subtracting the minimum payment (in bushels) provided by the seed company from the county yield contained in the Actuarial Table for the selected coverage level and multiplying the result by the selected price election. If the minimum payment provided by the seed company is stated as a dollar amount, it will be converted to a bushel equivalent by dividing the dollar amount by the selected price election.

(c) *Commercial seed*—the offspring produced by crossing two individual seeds of different genetic character. The resultant offspring is the product intended for use on a commercial basis by an agricultural producer to produce a field crop type for grain sorghum, forage sorghum, or sorghum sudan.

(d) *Days*—calendar days.

(e) *Dollar value per bushel*—the value determined by dividing the amount of insurance per acre for timely planted acreage by the result of multiplying the adjusted average yield by the coverage level percentage you elect.

(f) *Female plants*—the plants grown for the purpose of producing commercial seed and

from which the commercial seed is harvested.

(g) *Final planting date*—the date contained in the Actuarial Table by which the insured crop must initially be planted in order to be insured for the full amount of insurance.

(h) *Grow-out*—the growing of a sample of the insured crop to determine progeny characteristics.

(i) *Harvest*—combining, threshing, or picking of the seed and non-seed production on any acreage.

(j) *Inadequate germination*—less than 80 percent of the seed produced from female plants germinated as determined by a warm test using clean seed.

(k) *Irrigated practice*—a method of producing a crop by which water artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated insured crop acreage.

(l) *Late planted*—acreage planted during the late planting period.

(m) *Late planting period*—the period which begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(n) *Male plants*—the plants grown for the purpose of pollinating female plants.

(o) *Prevented planting*—inability to plant the insured crop with proper equipment by:

(1) The final planting date in the county for the insured crop; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(p) *Seed company*—a company which contracts with a grower to produce or grow plants for the production of hybrid seed.

(q) *Timely planted*—the insured crop planted by the final planting date, as established by the Acturial Table, for the insured crop in the county to be planted for harvest in the crop year.

(r) *Type*—grain sorghum, forage sorghum, or sorghum sudan.

(s) *Variety*—the seed produced from a pair of genetically identifiable parents.

6. Subparagraph 1.d. of § 401.111 (Corn Endorsement) is removed and section 10 and section 11 are revised to read as follows:

§ 401.11 Corn endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to corn during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph (11.(g)). This notice must be given no later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the corn continues after the final planting date, or you are prevented from planting corn during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting corn (see subparagraph 11.(g)), you may elect:

(i) To plant corn during the late planting period. The production guarantee for such acreage will be determined in accordance with section 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 70 bushels per acre, your prevented planting production guarantee would be equivalent to 35 bushels per acre (70 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant corn after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 70 bushels per acre, your prevented planting production guarantee would be equivalent to 35 bushels per acre (70 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.d.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for corn.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to corn on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for corn reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to corn during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of corn acres properly prepared to carry out an irrigation practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for corn in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than corn, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and will be reduced by the number of corn acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of corn on one optional unit and 40 acres of corn on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more corn acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to corn in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured corn must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—completion of combining or picking corn for grain on any acreage.

(d) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated corn acreage.

(e) *Late planted*—acreage planted during the late planting period.

(f) *Late planting period*—the period which begins the day after the final planting date for corn and ends twenty-five (25) days after the final planting date.

(g) *Prevented planting*—inability to plant corn with proper equipment by:

(1) The final planting date for corn in the county; or

(2) The end of the late planting period.

You must have been unable to plant corn due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(h) *Production guarantee*—the number of bushels (tons if the Corn Silage Option is in effect) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(i) *Replanting*—performing the cultural practices necessary to replace the corn seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(j) *Silage*—corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

(k) *Timely planted*—corn planted by the final planting date, as established by the Actuarial Table, for corn in the county to be planted for harvest in the crop year.

7. Subparagraph 1.c. of § 401.113 (Grain Sorghum Endorsement) is removed and section 10 and section 11 are revised to read as follows:

§ 401.113 Grain sorghum endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to grain sorghum during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(g)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the grain sorghum continues after the final planting date, or you are prevented from planting grain sorghum during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting grain sorghum (see subparagraph 11.(g)), you may elect:

(i) To plant grain sorghum during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee

would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant grain sorghum after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for grain sorghum.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to grain sorghum on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for grain sorghum reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to grain sorghum during the crop years that were used to determine your yield; unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of grain sorghum acres properly prepared to carry out an irrigation practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for grain sorghum in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than grain sorghum, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of grain sorghum acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of grain sorghum on one optional unit and 40 acres of grain sorghum on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more grain sorghum acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to grain sorghum in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured grain sorghum must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—completion of combining or threshing grain sorghum for grain on any acreage.

(d) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated grain sorghum acreage.

(e) *Late planted*—acreage planted during the late planting period.

(f) *Late planting period*—the period which begins the day after the final planting date for grain sorghum and ends twenty-five (25) days after the final planting date.

(g) *Prevented planting*—inability to plant grain sorghum with proper equipment by:

(1) The final planting date for grain sorghum in the county; or

(2) The end of the late planting period.

You must have been unable to plant grain sorghum due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(h) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(i) *Replanting*—performing the cultural practices necessary to replace the grain sorghum seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(j) *Timely planted*—grain sorghum planted by the final planting date, as established by the Actuarial Table, for grain sorghum in the county to be planted for harvest in the crop year.

8. Subparagraph 1.c. of § 401.117 (Soybean Endorsement) is removed and sections 10 and 11 are revised to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to soybeans during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(h)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the soybeans continues after the final planting date, or you are prevented from planting soybeans during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting soybeans (see subparagraph 11.(h)), you may elect:

(i) To plant soybeans during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant soybeans after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for soybeans.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to soybeans on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(B) One hundred percent (100%) of the simple average of the number of acres planted to soybeans during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of soybean acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for soybeans in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than soybeans, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of soybean acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of soybeans on one optional unit and 40 acres of soybeans on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more soybean acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to soybeans in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Distinctly low quality*—(1) Exceeding 8.0 percent kernel damage (excluding heat damage); (2) Having a musty, sour, or commercially objectionable foreign odor which causes the beans to grade U.S. Sample grade; or (3) Graded as "Garlicky."

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured soybeans must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining or threshing of soybeans on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated soybean acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—the period which begins the day after the final planting date for soybeans and ends twenty-five (25) days after the final planting date.

(h) *Prevented planting*—inability to plant soybeans with proper equipment by:

(1) The final planting date for soybeans in the county; or

(2) The end of the late planting period.

You must have been unable to plant soybeans due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(i) *Production guarantee*—the number of bushels determined by multiplying the

approved yield per acre by the coverage level percentage you elect.

(j) *Replanting*—performing the cultural practices necessary to replace the soybean seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(k) *Timely planted*—soybeans planted by the final planting date, as established by the Actuarial Table, for soybeans in the county to be planted for harvest in the crop year.

9. Subparagraph 1.e. of § 401.119 (Cotton Endorsement) is removed, section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.119 Cotton endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to cotton during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consist of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(k)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the cotton continues after the final planting date, or you are prevented from planting cotton during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subparagraph 11.(k)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant cotton after the late planting period. The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subparagraphs 7.b. and c.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8) and subparagraph 11.(b) (Meaning of Terms) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for cotton.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for cotton reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for cotton in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to cotton in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be providing for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Cotton*—only American Upland Cotton.

(b) *Crop year*—the period beginning at planting and extending through the end of the insurance period shown in section 4 and is designated by the calendar year in which the crop is normally planted.

(c) *Days*—calendar days.

(d) *Final planting date*—the date contained in the Actuarial Table by which the insured cotton must initially be planted in order to be insured for the full production guarantee.

(e) *Growth area*—a geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

(f) *Harvest*—the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated cotton acreage.

(h) *Late planted*—acreage during the late planting period.

(i) *Late planting period*—the period which begins the day after the final planting date for cotton and ends twenty-five (25) days after the final planting date.

(j) *Mature cotton*—cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

(k) *Prevented planting*—inability to plant cotton with proper equipment by:

(1) The final planting date for cotton in the county; or

(2) The end of the late planting period.

You must have been unable to plant cotton due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(l) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for the row pattern planted, multiplied by the coverage level percentage you elect.

(m) *Skip-row*—planting patterns consisting of alternating rows of cotton and fallow rows or rows of another crop (not spring-planted) as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

(n) *Timely planted*—cotton planted by the planting date, as established by the Actuarial Table, for cotton in the county to be planted for harvest in the crop year.

10. Subparagraph 1.c. of § 401.120 (Rice Endorsement) is removed, section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to rice during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for the late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(h)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (0.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the rice continues after the final planting date, or you are prevented from planting rice during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subparagraph 11.(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be equivalent to 700 pounds per acre (2000 pounds multiplied by 0.35). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant rice after the late planting period. The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be equivalent to 700 pounds per acre (2000 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subparagraphs 7.b. and c.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for rice.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to rice on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for rice reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for rice in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than rice, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iii) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more rice acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to rice in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured rice must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—the completion of combining or threshing rice for grain on any acreage.

(d) *Late planted*—acreage planted during the late planting period.

(e) *Late planting period*—the period which begins the day after the final planting date for rice and ends twenty-five (25) days after the final planting date.

(f) *Mill center*—any location in which two or more mills are engaged in milling rough rice.

(g) *Planted*—uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods. Any acreage into which seed is placed in any other manner will not be considered as planted under the terms of this policy:

(1) Drill seeding—uniform placement of the rice seed into the prepared seedbed by use of a grain drill that incorporates the seed to a proper soil depth.

(2) Broadcast seeding—uniform distribution of the rice seed onto the surface of a prepared seedbed, followed by either mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water.

(3) Broadcast seeding into a controlled flood—uniform distribution of the rice seed onto a prepared seedbed that has been intentionally covered by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

(h) *Prevented planting*—inability to plant rice with proper equipment by:

(1) The final planting date for rice in the county; or

(2) The end of the late planting period.

You must have been unable to plant rice due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(i) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Replanting*—performing the cultural practices necessary to replace the rice seed and replacing the rice seed in the insured acreage with the expectation of growing a successful crop.

(k) *Second crop rice*—regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

(l) *Timely planted*—rice planted by the final planting date, as established by the Actuarial Table, for rice in the county to be planted for harvest in the crop year.

11. In § 401.121 (ELS Cotton Endorsement), section 10 is redesignated as a revised section 11, and a new section 10 is added to read as follows:

§ 401.121 ELS cotton endorsement.

* * * * *

10. *Prevented Planting (Including Planting after the Final Planting Date)*

(a) In lieu of subparagraph 2.e.(4) of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage you were prevented from planting (see subparagraph 11.(h)). This coverage provides a reduced production guarantee for such acreage. The reduced guarantee will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 100 acres, of which 50 acres were planted by the final planting date and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely; and

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subparagraph 11.(h)), you may elect:

(1) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). This section does not prohibit the preparation and care of

the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(2) To plant ELS cotton after the final planting date. The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, you prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(c) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for ELS cotton.

(d) You must provide written notice to us if you were prevented from planting. This notice must be given not later than three (3) days after the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage.

(e) The acreage to which prevented planting coverage applies will be limited as follows:

(1) Eligible acreage will not exceed the greater of:

(i) The number of acres planted to ELS cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(ii) The ASCS base acreage for ELS cotton reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(2) Acreage intended to be planted under an irrigated practice will be limited to the number of ELS cotton acres properly prepared to carry out an irrigation practice.

(3) A prevented planting production guarantee will not be provided for:

(i) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(ii) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for ELS cotton in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(iii) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(iv) Land on which any crop, other than ELS cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(v) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(4) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more ELS cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(f) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to ELS cotton in the crop year.

(g) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(h) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Cotton*—Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

(b) *Days*—calendar days.

(c) *ELS Cotton*—Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

(d) *Final planting data*—the date contained in the Actuarial Table by which the insured ELS cotton must initially be planted in order to be insured for the full production guarantee.

(e) *Harvest*—the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(f) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated ELS cotton acreage.

(g) *Mature cotton*—ELS cotton which can be harvested either manually of mechanically and will include both unharvested and harvested cotton.

(h) *Prevented planting*—inability to plant ELS cotton with proper equipment by the final planting date due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date.

(i) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for the row pattern planted, multiplied by the coverage level percentage you elect.

(j) *Replanted*—performing the cultural practices necessary to replant acreage to AUP cotton and replacing the AUP cotton seed after ELS cotton was destroyed by an insured cause in the same growing season.

(k) *Skip-row*—planting patterns consisting of alternating rows of cotton and fallow rows as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

(l) *Timely planted*—ELS cotton planted by the final planting date, as established by the Actuarial Table, for ELS cotton in the county to be planted for harvest in the crop year.

Done in Washington, D.C. on December 13, 1993.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-31171 Filed 12-21-93; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 443

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Hybrid Seed Crop Insurance Regulations by revising coverage terms to cover loss due to late and prevented planting. The intended effect of this regulation is to incorporate insurance provisions for coverage of late or prevented planting.

EFFECTIVE DATE: November 30, 1993.

ADDRESSES: Written comments on this rule must be received by February 22, 1994, to be sure of consideration. Comments should be addressed to Mari L. Dunleavy, Federal Crop Insurance Corporation, US Department of Agriculture, Washington, DC 20250. Comments received may be viewed and copied Monday through Friday, during normal business hours, at 2101 L Street NW., suite 500 Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mari L. Dunleavy, 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 Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity and effectiveness of these regulations 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 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;

(2) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Would not alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(4) 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.

The Acting Manager certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons, nor will it have a significant economic effect on a substantial number of small entities. This action reduces the paperwork burden on the insured farmer, and on the reinsured company and sales and service contractor. This action is therefore, 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 state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are retroactive to November 30, 1993 and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Optional insurance coverage for late planting is currently offered for hybrid seed. However, due to the method by which the amount of insurance is reduced after the final planting date, and the excessive volume of paperwork required to administer the option, the current option lacks the desired degree of effectiveness. Coverage for prevented planting is not currently extended to hybrid seed policyholders.

By this rule, FCIC will now incorporate both, prevented planting and late planting coverage into the hybrid seed policy. The coverages will automatically be extended to all hybrid seed policyholders, without the added burden of option forms.

As this rule liberalizes the policy, and is being promulgated for the benefit of the farmer, good cause is found to make this rule final upon publication. Comments will, however, be accepted for sixty days after the publication of this rule and any amendment made necessary through those comments will be promulgated as soon as practicable.

List of Subjects in 7 CFR Part 443

Crop Insurance, Hybrid Seed.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and for the reasons set forth in the preamble, the Federal Crop Insurance Corporation amends the Hybrid Seed Crop Insurance Regulations (7 CFR part 443), effective for the 1994 and succeeding crop years, as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 443 continues to read as follows:

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

2. Section 443.7 is amended in the insurance policy by removing paragraph 2.e.(4) and redesignating paragraphs 2.e(5) through 2.e.(12) as 2.e.(4) through 2.e.(11), revising paragraph 7 introductory text, redesignating paragraphs 17, 18, 19, 20, and 21 as 18, 19, 20, 21, and 22 respectively, adding new paragraph 17, and revising the newly designated paragraph 18 to read as follows:

§ 443.7 The application and policy.

* * * * *

7. Insurance Period

Insurance attaches for each type and variety when both the male plant seed and the female plant seed of that type and variety are planted in accordance with the production management practices of the seed company. Insurance terminates at the earliest of:

* * * * *

17. Late Planting and Prevented Planting

(a) Insurance will be provided for acreage planted to the insured crop during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced amounts of insurance for such acreage. The reduced amounts of insurance will be combined with the amount of insurance for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example assume you insure one unit in which you have a 100 percent share. The unit consists of 200 acres of the same type and variety, of 100 percent share. The unit consists of 200 acres of the same type and variety, of which 150 acres are occupied by the female plant. Fifty acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the amount of insurance will be computed as follows:

(1) For timely planted acreage, multiply the per acre amount of insurance for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre amount of insurance for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by forty percent (0.40) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 18.(w)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting

(1) For acreage planted after the final planting date, but on or before 25 days after the final planting date, the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, Type and Practice), you must report the dates on which the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting the insured crop during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subparagraph 18.(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with subparagraph 17.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The amount of insurance for such acreage eligible for prevented planting coverage will be forty percent (0.40) of the amount of insurance for timely planted acres. For example, if your amount of insurance is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars per acre multiplied by 0.40). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant the insured crop after the late planting period. The amount of insurance for such acreage will be forty percent (0.40) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be to 80 dollars per acre (200 dollars per acre multiplied by 0.40). Production to count for such acreage will be determined in accordance with subparagraph 9.e.

(2) In addition to the provisions of section 7 (Insurance Period), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for the insured crop.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(B) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of the insured crop acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting amount of insurance will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate, unless you submit a written request for coverage for such acreage prior to the sales closing date for the insured crop in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more insured crop acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

18. Meaning of Terms

(a) *Actuarial table*—the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, amounts of insurance, practices, insurable and uninsurable acreage, and related information regarding insurance for the crop in the county.

(b) *Amount of insurance*—the number of dollars per acre that results from subtracting the minimum payment (in bushels) provided by the seed company from the selected coverage level's county yield contained in the Actuarial Table and multiplying the result by the selected price election. If the minimum payment provided by the seed company is stated as a dollar amount, it will be converted to a bushel equivalent by dividing the dollar amount by the selected price election.

(c) *Approved yield*—an expected yield level for a specific variety, in bushels per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

(d) *ASCS*—the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(e) *Commercial seed*—the offspring of two individual seeds of different genetic character which is produced as a result of crossing. A portion of this resultant offspring is the product intended for the purpose or use on a commercial basis by an agricultural producer to produce a field crop type for grain or silage.

(f) *County*—(1) The County shown on the application; and

(2) Any additional land located in a local producing area bordering on the county, as shown by the Actuarial Table.

(g) *Crop year*—the period within which the crop is normally grown and is designated by the calendar year in which the crop is normally harvested.

(h) *Days*—calendar days.

(i) *Dollar value per bushel*—the value determined by dividing the amount of insurance per acre for timely planted acreage by the result of multiplying the approved yield by the coverage level percentage you elect.

(j) *Female plant*—the plants grown for the purpose of producing commercial seed.

(k) *Final planting date*—the date contained in the Actuarial Table by which the insured crop must initially be planted in order to be insured for the full amount of insurance.

(l) *Harvest*—the completion of combining, threshing, or picking of the crop on any acreage.

(m) *Inadequate germination*—less than 80 percent (80%) of the seed produced from female plants germinated as determined by a warm test using clean seed.

(n) *Insurable acreage*—the land classified as insurable by us and shown as such by the Actuarial Table.

(o) *Insured*—the person who submitted the application accepted by us.

(p) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated crop acreage.

(q) *Late planted*—acreage planted during the late planting period.

(r) *Late planting period*—the period which begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(s) *Loss ratio*—the ratio of indemnity to premium.

(t) *Male plant*—the plants grown for the purpose of pollinating female plants.

(u) *Non-seed production*—all seed with inadequate germination. (Designation as non-seed production under this definition may be production to count under section 9 through appraisal if the inadequate germination was due to an uninsurable cause. (See subparagraph 9.e.(2)(a)).

(v) *Person*—an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

(w) *Prevented planting*—inability to plant the insured crop with proper equipment by:

(1) the final planting date for the insured crop in the county; or

(2) the end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(x) *Sample*—at least 3 pounds of shelled corn representative (field run) for each variety of seed corn grown on the unit.

(y) *Seed company*—a company which contracts with a grower to produce or grow for the production of hybrid corn seed.

(z) *Seed production*—all seed with a germination rate of at least 80 percent (80%) on a warm test using clean seed.

(aa) *Service office*—the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(bb) *Shelled-corn*—the grain (corn) after its removal from the cob.

(cc) *Tenant*—a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

(dd) *Timely planted*—the insured crop planted by the final planting date, as established by the Actuarial Table, for the insured crop in the county to be planted for harvest in the crop year.

(ee) *Type*—the crop grown: i.e., corn.

(ff) *Unit*—all insurable acreage of the insured crop in the county on the date of planting for the crop year:

(1) In which you have a 100 percent (100%) share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported.

Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

(gg) *Variety*—the seed produced from a pair of genetically identifiable parents.

* * * * *

Done in Washington, DC on November 30, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-30728 Filed 12-21-93; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Parts 130 and 156

[Docket No. 92-042-2]

RIN 0579-AA43

User Fees—Import- and Export-Related Veterinary Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing user fees for certain import-related services we provide for live animals, animal products, organisms and vectors, and germplasm. We are also amending existing hourly user fees for certain export services provided for live animals and establishing user fees for endorsing export certificates for germplasm. These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The effect of these regulations is to require certain persons to pay fees for services they receive.

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and germplasm, contact Dr. David Vogt, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8172.

For information concerning services provided for animal products and byproducts, contact Dr. Kathleen Akin, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7830.

For information concerning fees, contact Ms. Barbara Thompson, Chief, User Fee Branch, Budget and Accounting Division, M&B, APHIS, USDA, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5901.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (Section 2509(c)(1) of the Farm Bill.)

Section 2509(c) also provides procedures for the Secretary to follow in the case of nonpayment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides, in addition, that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

Previously Published Regulations

We have previously published documents in the **Federal Register** establishing, or proposing to establish, user fees for various services provided by the Animal and Plant Health Inspection Service (APHIS). APHIS user fees currently in effect are published in 7 CFR 354.3 and 354.4, and 9 CFR part 130. Currently effective user fees include fees for:

(1) Inspecting various passengers and commercial aircraft, vessels, trucks and railroad cars arriving within the customs territory of the United States;

(2) Issuing certain certificates, such as phytosanitary certificates for plants and plant products, and endorsing export certificates for animals;

(3) Providing quarantine services within the United States for imported animals;

(4) Providing certain inspection and supervision services within the United States for animals intended for export;

(5) Conducting certain veterinary inspections outside the United States; and

(6) Veterinary diagnostic services.

Proposed Rule

On July 22, 1993, we published a document in the **Federal Register** (58 FR 39163–39173, Docket No. 92–042–1) in which we proposed to amend 9 CFR Chapter I to establish user fees for certain import-related services we provide for live animals, animal products, organisms and vectors, and germplasm. In our document of July 22, 1993, we also proposed to amend existing hourly user fees for certain export services provided for live animals. In the same document we also proposed to amend 9 CFR Chapter I to establish user fees for endorsing export certificates for germplasm.

We solicited comments concerning our proposal for a 30-day comment period ending August 23, 1993. We received 26 comments by that date. They were from importers, exporters, universities, Federal Government agencies, and research facilities.

We have carefully considered all of the comments we received. They are discussed below by topic.

General Comments

Increased Costs to APHIS

With regard to savings realized by charging user fees, the intent of the Farm Bill was not to save money, but to shift the burden of paying for services from the general public to the recipient of the services. We believe our APHIS user fees accomplish this goal.

Public Versus Private Benefit

Numerous comments stated that our services are already paid for by taxes, and therefore we should not charge user fees for them. Other comments stated that we should not charge a user fee for any service that benefits the public. Some comments also implied that institutions that provide services to APHIS should not have to pay user fees for services they receive from APHIS.

Some of these comments were apparently referring to the User Fee Statute (31 U.S.C. 9701), which provides, in part, that:

"(a) It is the sense of the Congress that each service or thing of value provided by an agency * * * to a person (except a person on official business of the United States government) is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency."

However, the user fees we proposed are authorized by the Farm Bill, not by the User Fee Statute. Our authority under the Farm Bill, which is explained more extensively above, does not require us to consider the issue of private versus public benefits at all. The Farm Bill states simply that we may charge a user fee for certain listed services. Whether those services provide public or private benefits, or a combination of the two, is irrelevant under the Farm Bill. Therefore, we are making no changes in the proposed regulations based on these comments.

Length of Comment Period

One commenter requested that we extend the 30-day comment period. The Animal and Plant Health Inspection Service (APHIS) must institute user fees as soon as possible. Appropriated funds for APHIS are not sufficient to cover the costs of providing the services covered by our proposed user fees. It is therefore, necessary for us to collect user fees, starting as soon as possible, to ensure that these services continue to be available to the public. For this reason, a longer comment period is not feasible. We believe the comment period provided was reasonable under the circumstances. Moreover, the fact that we received 26 comments on the proposal leads us to believe that the comment period was adequate.

Use of Fees—Deficit Reduction Versus Improved APHIS Service

Many comments stated that APHIS user fees should be used to augment the APHIS budget and improve services. Some comments also stated that APHIS user fees should not be used for general Federal budget deficit reduction. Other comments demanded better and more efficient service from APHIS in return for user fees.

All user fees collected under the regulations adopted in this final rule will be collected under authority of the Farm Bill. This money will be available to APHIS to apply directly to APHIS programs, as explained above. The Farm Bill does not require Congress to reduce our appropriation. Whether to increase or decrease our funding is a decision made by Congress as part of the budget process. For fiscal year 1993, the APHIS appropriation has been reduced. We anticipate that the loss of direct funding will be made up to some extent by APHIS user fees we collect.

Many comments made suggestions as to how APHIS can improve its services. Several comments suggested fees that could be eliminated by eliminating certain inspections or permit requirements or by replacing them. Commenters stated that certain requirements are redundant or unnecessary.

We are not making any changes based on these comments. Our proposal concerned only charging user fees for services APHIS provides. Whether a particular service should be provided is therefore outside the purview of our proposal. However, we are considering all of the commenters' suggestions. APHIS services are continually adjusted to meet changing needs. We are constantly trying to improve our services and reduce costs. If we determine that a change would be beneficial, we will publish a proposed rule for public comment in the **Federal Register**. In addition, if in the future we propose to eliminate a service for which we have a user fee, we will also propose to eliminate the user fee. Likewise, if in the future we propose to add a service, we may also propose to add a user fee for the service. If we propose in the future to substantially change a service for which we charge a user fee, we will recalculate the user fee for the service to reflect those changes.

Detrimental Effects of User Fees

One commenter expressed the belief that charging user fees will slow down APHIS services. For the most part, we do not anticipate that this will happen. The billing and collection system for

user fees is generally separate from providing the actual service. Therefore, in most cases, charging user fees should not effect the speed at which APHIS provides any given service.

Future Review and Revision of User Fees

One commenter expressed concern that our user fees will increase over time. We are making no changes based on this comment. We have determined, using the best data available, the current cost of each of the services for which we will charge an APHIS user fee. We realize that our cost to provide each service will probably change over time. Salaries, supplies, overhead, and all the other elements of our fees change over time. However, our costs will not necessarily increase. As explained in our proposal, the Farm Bill authorizes us to collect the full costs of the services we provide. Therefore, as stated in our proposal, we intend to monitor our fees throughout the year and review them at least annually. We will propose to adjust the fees up or down as the review warrants, and we will publish, for public comment, any proposed fee changes in the **Federal Register**.

One commenter suggested that we establish user fees for 5 years, so there would be no "dramatic" price increases. We have considered this idea. However, we do not consider it to be practical. If we continue to provide various services, we must collect enough in user fees to cover our costs. If costs rise, we must collect more money by raising our user fees. In addition, the services and programs we offer are constantly adjusted to changing circumstances, such as disease outbreaks. If we lock in our user fees for 5 years, we cannot adjust them, whether up or down, to reflect service changes.

General Hardship; Exemptions From Fees

Many comments objected in general terms to the proposed APHIS user fees. Many maintained the proposed APHIS user fees would be detrimental to small businesses, or to specific industries such as embryo transfer companies and semen exporters. Others stated that paying the fees would be a hardship, would increase their cost of doing business, would inhibit international cooperation, would hurt United States exports, or would have other detrimental effects.

Some comments proposed that we either exempt certain industries or classes of users from the proposed user fees or charge them reduced fees. Among those mentioned were nonprofit institutions such as zoos and museums, research institutions, tax-exempt organizations, and Federal and State institutions and facilities supported by tax revenues or grants from tax-exempt organizations or government agencies.

We are not making any changes in the regulations based on these comments. Because of budget constraints, we do not have the option to charge user fees that recover less than the full cost of providing a service. If we did so, we would not collect enough money to support the service. However, we have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level. In addition, generally speaking, the costs to APHIS are the same to provide a specific service, regardless of the recipient of the service. The size or funding source of the entity receiving the service is unrelated to the cost of providing the services. Therefore, we cannot justify a discount based on the size of the business or other factors.

We realize that payment of the proposed user fees will increase the up-front cost of doing business. Various persons are currently subsidized by the taxpayers in general, in that those who benefit from APHIS services do not directly pay for the services. Requiring persons to pay a fee for the services they receive would eliminate the subsidy, general appropriations from taxes would no longer be needed, and costs to taxpayers in general would be reduced.

Rounding of Fees

One commenter objected to our proposal to round up our fees. In addition, the commenter states that it is unfair for those who do pay their user fees, to have to pay, through higher fees, for the unpaid fees of others.

We are not making any changes in the regulations based on this comment. As explained in our proposal (see 58 FR 39169), we proposed to round our user fees up to the nearest quarter as this is consistent with the methodology we used to determine other APHIS user fees. We also explained that, based on our experience with billings and collections, we believe rounding up our fees is most practical as it makes calculations easier, reduces billing and collection errors, compensates for the impossibility of calculating the exact cost of any service, and compensates APHIS for the portion of user fees that will never be paid and that we cannot collect.

APHIS will make every attempt to collect user fees due the agency. To encourage payment, the regulations provide that users who do not pay will not be able to get future services from APHIS.

However, APHIS does not receive any funds to cover user fees that remain unpaid. Unpaid user fees therefore become a cost of providing services. As a cost, they must be factored into our user fees. In this way they are unavoidably passed on to users who do pay. However, based on our experience charging APHIS user fees for other services, we anticipate that unpaid user fees will be minimal.

Relationship of User Fee to Either Time Spent Providing Service or Value of Product

We received one comment suggesting that user fees be tied to the duration of the service provided.

As explained in our proposed rule, the time spent by APHIS employees is only part of the cost that we must recover through user fees. Supplies, overhead, equipment, telephone, and numerous support costs must be included. A service may be provided faster in one instance than another. However, our proposed user fees reflect the average cost of providing particular services on a nationwide basis.

We did include hourly fees in our proposed rule for certain services. However, we proposed hourly fees only for services that vary greatly in the amount of time needed to complete them and for which we could not accurately calculate a flat fee. We set the hourly fee at a level that is sufficient to recover all possible costs for a variety of veterinary services. If we applied hourly fees to all services, some users would save money, but many would pay more, in some cases more than the cost to provide the services they received. We do not believe this would be fair. We have therefore calculated flat fees whenever possible.

It would not be practical, from the point of view of collecting fees, to customize the fee for a service each time it was rendered. Such a system would be unwieldy and expensive to administer. The additional expenses of such a system would, in turn, have to be included in the fee, raising it further. For these reasons, we are making no changes based on this comment.

Another comment suggested that user fees should be tied to the value of the product. We are not making any changes based on this comment. What service or type of service we provide is not related to the value of the items involved. Nor is the value of the items related to the time or effort required of APHIS personnel to provide the service.

User Fees Less Than Processing Costs

One comment stated that our proposed user fees are less than

processing costs, when both APHIS's costs and the payor's costs are considered. This commenter may be correct in the case of certain proposed user fees. However, the Farm Bill only authorizes APHIS to recover its own costs. The Farm Bill does not authorize APHIS to consider the payor's costs when calculating fees. However, we are constantly trying to reduce costs and minimize any necessary cost increases, thus keeping our user fees as low as possible.

Paperwork Reduction Act

One comment complained that our proposed user fees violate the Paperwork Reduction Act. We are not making any changes based on this comment.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) was designed, among other things, to:

(1) Minimize the Federal paperwork burden;

(2) Minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

(3) Maximize the use of information collected by the Federal Government;

(4) Coordinate, integrate, and, as much as possible, make Federal information policies and practices uniform; and

(5) Ensure that the Federal Government collects, maintains, uses and disseminates information in accordance with the Privacy Act (5 U.S.C. 552a).

The Paperwork Reduction Act does not prohibit agencies of the Federal Government from imposing information and paperwork requirements. In order to ensure that agencies do not make excessive demands on the public, all information and paperwork requirements are reviewed, and must be approved, by the Office of Management and Budget. All the information and paperwork requirements contained in our proposed rule have been submitted to OMB for review. We have been very careful to ask only for the information and paperwork we believe is absolutely necessary to ensure that user fees are correctly assessed and collected.

Mandatory Versus Voluntary Use of APHIS Services

One commenter suggested that he should not have to pay a user fee for service he received because he had not asked for the service, but instead was required to obtain it. Another commenter was generally negative on the idea of user fees, suggesting that he was required to use our services. A third commenter stated that there should be no fee for any service that the government requires.

We are not making any changes in the proposal based on these comments. Our authority to collect user fees does not distinguish between mandatory and voluntary services. Further, we do not agree with the commenters' basic proposition that users do not ask for APHIS services if they are complying with a regulatory requirement.

APHIS services are provided to enhance U.S. agriculture. Some requirements concerning importation of animals and animal products are designed to help ensure that animal diseases and pests are not introduced into the United States. APHIS services concerning exportation of animals and animal products are designed either to provide services to exporters that they need in order to meet requirements of the importing country, or to help ensure that no infected animals or animal products are exported from the United States, thereby harming markets for U.S. exports.

No one is required to conduct any business or endeavor that is regulated by APHIS. However, anyone who does so must comply with APHIS requirements. In this manner, all users ask for service from APHIS.

User Fees for Courtesy Permits

One commenter stated that we should not charge user fees for "courtesy permits." These are permits we issue, at the request of importers, for importations that do not require permits. Importers usually request courtesy permits if they believe having a permit will minimize delays getting their importation into the country. We are not making any changes based on this comment. These permits are issued solely for the convenience of importers. However, it takes the same time and effort for APHIS personnel to issue a courtesy permit as to issue any other permit. We believe it would be unfair not to charge for courtesy permits, which no importer is required to obtain, when we have proposed to charge for permits that are required.

User Fees for VS Form 16

One commenter asked if user fees are payable for all VS Form 16 documents.[1] Our answer is no. User fees are only payable for documents or services listed in the regulations. If a form number is included in the regulations, it is to clarify what service is subject to a user fee. Generally, we have not listed particular form numbers because there are many different forms and because form numbers change. We have instead indicated only the type of document or service for which we would charge a user fee. However, if the user fee applies to only a particular form, we have listed that form number.

User Fees for APHIS Errors

One commenter objected to paying a user fee for APHIS inspections that are conducted in error, for example, when no inspection is required or requested, but an APHIS inspector conducts an inspection nonetheless. We agree with the commenter that it would be unfair under such circumstances, and we do not intend to charge such user fees.

Hourly User Fees

One commenter asked us to explain what the hourly veterinary fee includes. In our proposal we listed the various types of services covered by the hourly fee. They were:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in our user fee regulations.

These are tasks that vary widely in duration from one instance to another. The main cost of providing these services is the cost of employee time—direct labor time spent by the individual doing the work. Salary and benefits are included, but there are minimal support or other costs. Therefore a general hourly charge is suitable. We prefer to charge an exact fee for specific services, and we proposed exact fees for all services for which we have sufficient data to calculate what the appropriate user fee rate should be.

Reimbursable Overtime

One commenter observed that, as we explained in our proposal, under certain circumstances users would have to pay reimbursable overtime in addition to user fees. One of the conditions for reimbursable overtime is that work must be performed "outside of the normal tour of duty of the employee." The commenter asked us to explain this.

To clarify, most APHIS employees have a set tour of duty, that is, their work day starts at a certain time and

[1] VS Form 16 documents are all used in connection with the import or export of animal products, byproducts, organisms, and vectors.

ends at a certain time each day. For most APHIS employees, the work day is from 8:30 a.m. to 5 p.m., Monday through Friday, except holidays. Certain APHIS facilities, such as quarantine facilities, laboratories, and inspection stations, are open at different hours, and the employees at those facilities may have different tours of duty. The normal hours of business are usually posted at these offices. Reimbursable overtime is only payable, assuming all other requirements are met, if the employee who performs the service must do so outside of their normal tour of duty. Under the regulations that govern reimbursable overtime (see 9 CFR part 97), we do charge for the time spent traveling from the employee's duty station to the location where the service must be performed. However, we do not charge, contrary to the commenter's suggestion, for employees' "leisure time."

Missing Fees

One commenter alerted us that we did not include a user fee for endorsing VS 16–4, Export Certificate for Animal Products.

We are aware that no user fee was included in our proposal for this service. Our proposal of July 22, 1993, was not intended to be an exhaustive list of services we provide. For various reasons, we did not propose user fees in that document for every service we currently provide. If we determine in the future that a user fee is appropriate for this or any other services, we will publish a proposed fee, for public comment, in the **Federal Register.**

Specific User Fees That Need To Be Adjusted

User Fee for Endorsing Export Health Certificates

One comment stated that the proposed fee of $54.75 per certificate for endorsing export embryo certificates is too high and should be "consistent" with the user fee for endorsing export semen certificates.

We are not making any changes based on this comment. We have carefully calculated our fee, and determined that it costs APHIS more to endorse an export certificate for embryos than to endorse an export certificate for semen.

This commenter also suggested that for "up to [5] donor pairs, the fee [be the same] regardless of the number of certificates, and for each additional group of donor pairs, up to [5] pairs per group, that the charge be [a lower fee] per group of donor pairs." Other commenters questioned our proposed user fee for endorsing export certificates for semen, stating that it is too high. These commenters also questioned imposing the user fee on each certificate, when some countries require that no more than one animal be listed on a certificate. The commenters had several suggestions: Apply the user fee "per shipment" rather than per certificate; charge one fee for the first certificate for a shipment and a lower fee for other certificates for the same shipment; and establish a flat fee for each artificial insemination center, based on the volume of certificates required each year.

We are making no changes based on these comments as we have determined that the suggested changes would be impractical and difficult to implement and administer. However, we realize from the comments that changes in the fee structure for these services may be desirable. We intend to investigate other approaches, and will publish any proposed amendments for public comment in the **Federal Register.**

User Fee for Amending Import Permits

One commenter objected to the proposed fee for amending import permits, stating that there should be different fees depending on the "degrees of change required." We agree that not all amended permits require the same number of changes. However, our proposed user fee for amended permits were calculated to reflect the cost of making the average number of changes. In addition, no matter how many or how few changes are actually required, each amended permit requires the same basic processing time and effort. Therefore, regardless of the actual number of actual changes, there is no significant difference in our costs. For this reason we are making no changes based on this comment.

User Fee for Import Compliance Assistance

We received several comments concerning import compliance assistance.

One commenter objected to paying a user fee for "import compliance assistance" to release a shipment that is being held pending confirmation of stated facts regarding it (such as, that it is free of antigens and antisera).

This commenter apparently misinterpreted our proposed regulations. There would be no user fee for releasing such a shipment. The "import compliance assistance" user fee cited by the commenter would apply only when an importer, whose shipment did not meet all import requirements, required extra assistance from APHIS personnel to bring the shipment into compliance. Common situations of this type are shipments that arrive without required permits or other documentation, and shipments that arrive without proper identification.

This commenter also objected to the proposed import compliance assistance fee as "exorbitant" for a single importation or single product. We are not making any changes based on this comment. The proposed user fee is not related to the value or size of the shipment. The amount of work APHIS employees must perform to bring an importation into compliance with import requirements is not dependent on the value or size of the shipment. Our proposed user fee reflects our costs to provide this service.

Another commenter objected to paying a user fee for import compliance assistance when something was wrong with a shipment, but it was not the importer's direct fault.

Under our regulations, importers are responsible for ensuring that their importations comply with all applicable regulations. In addition, if APHIS personnel must provide extra service to make sure an importation meets all requirements, it is irrelevant who is at fault. For these reasons we are not making any changes based on this comment.

Consolidated Shipments of Germplasm

One commenter observed that our proposed rule did not address the "unique situation * * * where an export marketing organization consolidates a number of [export health] certificates from individual [artificial insemination] centers into one order for actual shipment. Since the health certificates will have already been endorsed for the originating [artificial insemination] center," the commenter recommends that no user fee be charged for consolidating the shipments for actual movement overseas.

We are not making any changes based on this comment. Any consolidated export health certificates are issued at the exporter's request and for the exporter's convenience. These certificates require the same time and effort from APHIS employees as other export health certificates. Therefore we charge the same user fee for them as for other export health certificates.

Unfair Fees

One commenter stated that if a user obtains a validated permit, is unable to use it, and therefore obtains a second validated permit for the same shipment, that it is unfair to charge a user fee for the second permit. Another commenter objected to paying a user fee for us to

process permit applications for permits they do not use, stating that it would not be fair.

We are not making any changes based on these comments. We realize not all the documents we issue are used by the permittees. This is beyond our control and responsibility. However, it costs us the same to process the paperwork and issue a document that is used, as it does to process the paperwork and issue a document that is not used. If we were to charge a user fee only for documents that are used, the user fees would have to be much higher, to cover the cost of paperwork for documents that are not used. We believe this would not be fair. In addition, it would be impractical to collect the user fee at the time a document was used, as opposed to the time it was applied for or issued.

One commenter objected to a flat fee for approving establishments to receive or treat various animal products and byproducts. According to the commenter, a flat fee is unfair because it fails to take into account differences in the work required.

While developing our proposed rule, we considered other types of user fees for approving establishments. However, we decided on a flat fee as being the best approach. A flat fee allowed establishment operators to determine, in advance, their user fee costs. A flat fee does not need to be calculated for each establishment. It is therefore easier to collect, ensuring lower billing, collection, and recordkeeping costs for APHIS. We can pass these lower costs on to users through lower user fees.

Other Regulatory Changes Suggested by Commenters

Eliminate "Unapproved" Establishments

One comment suggested we change our regulations concerning importation of restricted animal products (such as certain trophies) to require that all such products, not just restricted ones, be imported only to approved establishments. According to the commenter, this would eliminate an unfair advantage, and lower expenses, enjoyed by unapproved establishments.

We are not making any changes in the proposed regulations based on this comment. Our regulations currently distinguish between approved establishments and others. Whether APHIS should make this distinction is not an issue we can address in this document, as it was not raised by our proposed rule. However, the user fees we proposed are designed to recover the costs of providing various APHIS services. APHIS currently conducts inspections of approved establishments. As long as these inspections are required, we must charge a user fee for them.

Eliminate Inspection of Feeder Lambs Entering the United States From Canada

One comment objected to a user fee for feeder lambs entering the United States from Canada. According to the commenter, inspecting these lambs is unnecessary and we should discontinue it.

We are not making any changes based on this comment. Whether APHIS should or should not inspect feeder lambs at the Canadian border is not an issue we can address in this document, as it was not raised by our proposed rule. However, the user fees we proposed are designed to recover the costs of providing various APHIS services. APHIS currently inspects feeder lambs crossing into the United States from Canada. As long as these inspections are required, we must charge a user fee for them.

Miscellaneous Comments

Venezuelan Equine Encephalitis Outbreak

One commenter called our attention to the fact that, since our proposed rule was published in July 1993, there has been an outbreak of Venezuelan equine encephalitis (VEE) in Mexico. The commenter stated that our proposed regulations do not include any user fee to cover veterinary inspections APHIS conducts in connection with the outbreak. The commenter suggested that the cost of APHIS services could be recovered under the terms of cooperative agreements signed with prospective importers.

We agree with the commenter in all respects. Because of the VEE outbreak, at the time this document is being written, horses from Mexico must be quarantined in Mexico and inspected by APHIS personnel prior to shipment to the United States. None of the user fees proposed by us on July 22, 1993, would fully recover APHIS costs in this situation. However, current § 130.8 of the regulations states that cooperative agreements, covering veterinary services we provide outside the United States, may include a provision that the importer must reimburse us for our costs. In fact, we are currently collecting user fees under this provision of the regulations with regard to horses from Mexico.

User Fees for Diagnostic Tests

One commenter wrote that they wanted to comment on the cost of diagnostic tests necessary for exporting animal germplasm. We published a proposed rule governing user fees for diagnostic tests on March 22, 1993 (Docket No. 91–021–4, 58 FR 15292–15301). We accepted comments on our proposal through April 21, 1993, and published a final rule implementing the fees on July 21, 1993 (Docket 91–021–5, 58 FR 38954–38961). User fees for diagnostic tests were effective September 1, 1993. As with all of our user fees, we intend to monitor our fees throughout the year and review them at least annually. We will propose to adjust the fees up or down as the review warrants, and we will publish, for public comment, any proposed fee changes in the **Federal Register**.

Amendments We Are Making to the Proposed Regulations

We are making several amendments to the proposed regulations. They are discussed individually below.

Pre-entry Equine Piroplasmosis Screening Fee

Our proposed rule included a specific user fee for issuance of permits to import serum samples for piroplasmosis screening. As a courtesy, we offer to screen samples of serum taken from horses intended for importation into the United States. Equines that are infected with this insect-borne equine disease are ineligible for importation. To use the service, importers send to the United States a serum sample from the equine they wish to import, and our laboratory tests the sample for equine piroplasmosis. If the sample is determined to be positive for the disease, the importer is saved the expense of shipping the animal to the United States, paying for quarantine and testing in this country, and then shipping the animal back or otherwise disposing of it. Prospective importers must obtain an import permit for the serum sample. Prior to the time we published our proposed rule, the procedures we utilized to issue import permits for these serum samples were different than the procedures we used to issue import permits for other serum imports. However, since we published our proposed rule, we have altered our procedures. As a result, the user fee we proposed for this specific service no longer accurately reflects the costs of providing the service. We are therefore withdrawing the proposed user fee (see proposed § 130.8). We intend to propose a recalculated fee for this specific service as soon as feasible.

Please note that we still offer pre-entry equine piroplasmosis screening. As in the past, prospective importers

must obtain an import permit for their serum samples. Under the regulations covered by this document, the same user fee will apply to these import permits as applies to other import permits for serum. In addition, there is a user fee for laboratory testing of the samples. A user fee for testing was adopted July 21, 1993 (Docket No. 91-021-5, 58 FR 38954-38961), and became effective September 1, 1993.

Definition of "Feeder Animal"

In our proposed regulations we defined "feeder animal" as "[a]ny animal imported into the United States under 9 CFR part 92, for feeding at a quarantined feedlot." However, we made an error, in that feeder animals do not necessarily have to be fed at quarantined feedlots. They may be imported for feeding at a quarantined feedlot, but they may also be imported for feeding at other locations. Therefore, we are amending this definition to read: "Any animal imported into the United States under 9 CFR part 92 for feeding." (See § 130.1.)

User Fee for Pet Birds

In our proposed regulations we included user fees for pet birds entering the United States (see proposed § 130.8(a)). However, we failed to account for the fact that pet birds entering the United States from Canada are not subject to quarantine. Our proposed user fees assumed that all pet birds entering the United States require quarantine and multiple veterinary inspections. As this is not true with respect to pet birds entering the United States from Canada, we are changing § 130.8(a) in this final rule to clarify that these pet birds are not subject to the pet bird user fees. However, these pet birds are subject to veterinary inspection at the border. Therefore, the hourly user fee will apply to that service.

Intervening Amendments

Our proposed rule was published on July 22, 1993. At that time, the document accurately reflected the authority citation and regulations in 9 CFR part 130. However, on September 1, 1993, a final rule amending part 130 became effective (Docket No. 91-021-5, published July 21, 1993, at 58 FR 38954-38961). That final rule changed the authority citation, redesignated some of the sections, and added new sections. Our final rule reflects these changes.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. It has been determined that this rule is part of a series of documents that are being considered as a "significant regulatory action." This final rule is one of several rules that require certain persons to pay user fees for APHIS services they receive. We have already published final rules adopting user fees for various services we provide.

Rules covering user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country were published April 12, 1991, and effective May 13, 1991 (Docket No. 91-028, 56 FR 14837-14846). Rules covering user fees for export certification and animal quarantine services were published January 9, 1992, and effective February 9, 1992 (Docket No. 91-135, 57 FR 755-773). Rules covering user fees for veterinary diagnostics (tests and reagents) were published July 21, 1993, and effective September 1, 1993 (Docket No. 91-021-5, 58 FR 38954-38961).

It is estimated that the final user fees included in this document will save taxpayers annually between $3.4 and $4.5 million. The discounted value of taxpayer savings is estimated to total between $14.3 and $18.6 million over 5 years. Fees for processing live animal imports account for about 65 percent of the total savings. APHIS estimates that this rule will increase administrative costs by about $41,979 each year. The discounted value of additional administrative costs is expected to total about $172,000 over 5 years.

These amendments will lower the user fees for imported ratite chicks and miniature horses, and will raise the user fees for imported ratite juveniles and adults. APHIS estimates that these amended fees will reduce total charges to importers by about $53,385 annually.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of imposing user fees on "small" domestic entities. The number of impacted domestic firms that qualify as "small" cannot be determined from available data. However, APHIS believes that a large percentage of domestic importers of live animals, birds, poultry, and animal products can be categorized as "small" domestic importers. We anticipate that the final regulatory revisions will not have a severe economic impact on "small" domestic importers, especially since the final user fees represent only a small fraction of total operating costs faced by each "small" entity.

Our final Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

Executive Order 12372

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

Executive Order 12606

We have analyzed this final rule in accordance with Executive Order 12606, and have determined that it has no potential impact on family well-being. We have determined that this rule: Will not affect the stability of the family, and particularly, the marital commitment; will not affect the authority and rights of parents in the education, nurture, and supervision of their children; will not help or hinder the family to perform its functions; would not substitute governmental activity for family functions; and will not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501

et seq.), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0579–0015, 0579–0055, and 0579–0094.

Lists of Subjects

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

9 CFR Part 156

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 130 and 156 are amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 130.1, the definition of "Animal Import Center" is revised, and the following definitions are added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1] The Harry S Truman Animal Import Center (HSTAIC) on Fleming Key, Florida, is not an "animal import center" within this definition.

* * * * *

Approved establishment. An establishment approved by the Animal and Plant Health Inspection Service for the receipt and handling of restricted import animal products or byproducts under 9 CFR chapter I, subchapter D.

* * * * *

Breeding animal. Any animal imported into the United States for breeding purposes.

* * * * *

Feeder animal. Any animal imported into the United States under 9 CFR part 92 for feeding.

* * * * *

Germplasm. Semen, embryos, or ova.

Grade animal. Any unregistered animal.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

Load. All the animals or birds carried on one vehicle.

Miniature horse. Any horse which at maturity measures 34 inches high or less from the ground to the base of the last hair of the mane at the withers.

* * * * *

Pet bird. Birds which are imported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

Registered animal. Any animal recorded in the book of record of an animal registry association which issues certificates concerning the pedigree of animals.

Slaughter animal. Any animal moving directly to slaughter.

* * * * *

3. In § 130.2, the table in paragraph (a) is amended by revising the category headings for "Birds" and "Equines"; by adding a category for "Ratites" before the category for "Poultry"; and by adding a category for "Miniature horses" before the category for "Zoo animals" to read as follows:

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily fee
Birds (including zoo birds, but excluding ratites):	
* * * * *	
Ratites:	
Chicks (less than 3 months of age)	5.50
Juveniles (3 months through 10 months of age)	7.75
Adults (11 months of age and older)	15.50
* * * * *	
Equines (including zoo equines, but excluding miniature horses):	
* * * * *	
Miniature horses	39.00
* * * * *	

4. Section 130.3 is amended as follows:

a. The section heading and paragraph (a) is revised to read as set forth below.

b. Paragraph (c) is redesignated as paragraph (c)(1) and new paragraphs (c)(2) and (c)(3) are added to read as set forth below.

c. At the end of the section, a statement containing the OMB control number is added to read as set forth below.

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) An importer may, at his or her option, exclusively occupy space at APHIS Animal Import Centers as specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for the space as follows:

Animal import center	Space available	Monthly fee
Miami, FL:		
South Wing.	6,952 sq. ft. (6,45.9 sq. m.)	$25,233
North Wing.	6,545 sq. ft. (608.1 sq. m.)	24,476
Newburgh, NY.	5,904 sq. ft. (548.5 sq. m.)	39,450

(2) Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day. The person for whom the service is provided and the person requesting the service are jointly and severally liable for any additional charges.

(3) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with 9 CFR 92.103, 92.204, 92.304, 92.404, or 92.504, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space, regardless of whether the user occupies the space on that date or not.

* * * * *

(c)(1) * * *

(2) If the number of animals and birds requested by the importer can be housed in the space requested, as determined by APHIS personnel at the Animal Import Center, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must pay for additional services on an hourly basis, or reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees are:

(i) $50.00 per hour; and

(ii) $12.50 per quarter-hour.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0094)

5. In § 130.5, paragraph (b) is revised to read as follows:

[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

* * * * *

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

§§ 130.20–130.23 [Redesignated from §§ 130.6–130.9]

6. Sections 130.6 through 130.9 are redesignated as §§ 130.20 through 130.23, and new §§ 130.6 through 130.9 are added to read as follows:

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for live animals imported into or entering the United States through a land border port along the United States-Mexico border:

Type of live animal	User fee (per head)
Feeder animals	$1.50
Slaughter animals	2.50
Horses, other than slaughter	28.25
In-bond or in transit animals	2.25
Any ruminants not covered above	5.75

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section. (Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for live animals imported into or entering the United States through any port of entry other than a land border port along the border between the United States and Mexico:

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit horses.	$18.25 per head.
Breeding animals, except horses:	
Grade animals:	
Swine	0.50 per head.
Sheep and goats	0.50 per head.
All others	2.25 per head.
Registered animals, all types.	3.75 per head.
Feeder animals:	
Cattle (not including calves)	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
Slaughter animals, all types	16.00 per load.
Poultry (including eggs), imported for any purpose.	30.25 per load.
Animals transiting[1] the United States:	
Cattle	0.75 per head.
Swine	0.25 per head.
Sheep and goats	0.25 per head.
Horses and all other animals.	3.00 per head.

[1] The user fee in this section will be charged for services provided to animals transiting the United States at the port of entry. The hourly user fee will be charged for services provided at the port where animals leave the United States.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section. (Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.8 User fees for other services.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for the following services:

Service	User fee
Inspection for approval of slaughter establishment:	
Initial approval	$236.75 for all inspections required during year.
Renewal	205.00 for all inspections required during year.
Pet birds, except pet birds entering the United States from Canada:	
Which have been out of United States more than 60 days	163.25 per lot.
Which have been out of United States 60 days or less	68.50 per lot.
Germplasm:	
Being imported:	
Semen	38.00 per permit.
Embryo	38.00 per permit.
Being exported:	
Semen	33.50 per certificate.
Embryo (up to 5 donor pairs)	54.75 per certificate.
Embryo (each additional group of donor pairs, up to 5 pairs per group)	24.75 per group of donor pairs.
Processing VS form 16–3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors" and any applicable VS form 16–7, "Additional Information for Cell Cultures and Their Products":	
Original application:	
For permit to import fetal bovine serum when facility inspection is required	207.25 per application.
For all other permits	26.50 per application.
Amended application	11.00 per amended application.
Application renewal	14.50 per application.
Fetal Bovine Serum sample verification	660.75 per verification.
Import compliance assistance	22.75 per release.

Service	User fee
Release from export agricultural hold	22.75 per release.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	252.50 for first year of 3-year approval.
Renewed approval	146.00 per year for second and third years of 3-year approval.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section. (Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0055, and 0579–0094)

§ 130.9 User fees for miscellaneous import or entry services.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for any import or entry services listed below, of $50.00 per hour, or $12.50 per quarter hour, with a minimum fee of $16.00:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in this part.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

7. In redesignated § 130.20, a new paragraph (d) is added to read as follows:

§ 130.20 User fees for endorsing export health certificates.

* * * * *

(d) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(Approved by the Office of Management and Budget under control number 0579–0055)

8. Redesignated § 130.21 is amended as follows:

a. The section heading is revised to read as set forth below.

b. In paragraph (a)(1), the words "and the animals in it" are added after the words "isolation facility".

c. At the end of paragraph (a)(2), the word "and" is removed.

d. At the end of paragraph (a)(3), the period is removed and a semicolon is added in its place.

e. New paragraphs (a)(4) and (a)(5) are added to read as set forth below.

f. Paragraph (b) is revised to read as set forth below.

g. A new paragraph (c) is added to read as set forth below.

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.

(a) * * *

(4) Inspect means of conveyance used to export animals or birds; and

(5) Conduct inspections under authority of 9 CFR part 156.

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

9. Section 130.50 is amended as follows:

a. Paragraph (a)(3) is revised to read as set forth below.

b. Paragraph (a)(5) is amended by removing "and" at the end of the paragraph;

c. Paragraph (a)(6) is amended by removing the period at the end of the paragraph and adding a semicolon in its place.

d. New paragraphs (a)(7) through (a)(9) are added to read as set forth below.

§ 130.50 Payment of user fees.

(a) * * *

(3) User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with 9 CFR part 156, must be paid when specified in the agreement;

* * * * *

(7) User fees for live animals presented for importation at a port of entry must be paid either when presented or when billed;

(8) User fees for inspection and permit services listed in § 130.8 must accompany the request for service;

(9) User fees assessed at an hourly rate under § 130.9 must be paid when the service is provided or within the time specified in the bill.

* * * * *

PART 156—INSPECTION AND CERTIFICATION OF ANIMAL BYPRODUCTS

10. The authority citation for part 156 is revised to read as follows:

Authority: 7 U.S.C. 1622 and 1624; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(d).

11. Section 156.7 is amended as follows:

a. The heading is revised to read:

§ 156.7 Fees and charges, including user fees under 9 CFR part 130.

b. Once in the first sentence, once in the second sentence, and twice in the third sentence, the phrase ", and user fees under 9 CFR part 130," is added after "fees and charges".

Done in Washington, DC, this 16th day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31184 Filed 12–21–93; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 30, 31, 32, 34, 35, 36, 39, 40, 50, 61, 70, and 72

RIN 3150-AA38

Standards for Protection Against Radiation; Removal of Expired Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; removal of expired material.

SUMMARY: This final rule makes a number of minor conforming amendments to the NRC's standards for protection against radiation. The final rule is necessary to remove the text of the superseded standards and to conform references in the text of the NRC's regulations to the Commission's decision to require mandatory implementation of the revised standards on January 1, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Cool, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3785.

SUPPLEMENTARY INFORMATION: On May 21, 1991 (56 FR 23360), the Nuclear Regulatory Commission (NRC) published its revised standards for protection against radiation (10 CFR 20.1001-20.2401 and the associated appendices). The revised standards for protection against radiation incorporated scientific information and reflected changes in the basic philosophy of radiation protection that had occurred since the promulgation of the original regulations. The revisions conformed the Commission's regulations to the Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure and to recommendations of national and international radiation protection organizations. The revised standards for protection against radiation became effective on June 20, 1991. However, NRC licensees were permitted to defer the mandatory implementation of these regulations until January 1, 1993.

On August 26, 1992 (57 FR 38588), the NRC published a final rule that extended the date by which NRC licensees are required to implement the revised standards for protection against radiation from January 1, 1993, until January 1, 1994. That document also made several conforming amendments to the text of the revised standards for protection against radiation that were necessary to reflect the new mandatory implementation date.

This document is necessary to remove the provisions of the standards for protection against radiation that are no longer in effect. This document also eliminates the cross-references to these provisions that appear throughout 10 CFR Chapter I.

Because these amendments implement changes which were the subject of earlier rulemaking actions for which public comment was solicited (May 21, 1991; 56 FR 23360 and August 26, 1992; 57 FR 38588) and make minor conforming changes to existing regulations to reflect revised citations, the NRC has determined that good cause exists to dispense with the notice and comment provisions of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the NRC has determined that good cause exists to waive the 30-day deferred effective date provisions of the APA (5 U.S.C. 553(d)).

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0136, -0044, -0014, -0017, -0016, -0001, -0007, -0010, -0158, -0130, -0020, -0011, -0135, -0009, and -0132.

Regulatory Analysis

This final rule is administrative in that it removes superseded provisions from the text of an existing regulation. These amendments will not have a significant impact. Therefore, the NRC has not prepared a separate regulatory analysis for this final rule. The final regulatory analysis for the May 21, 1991, final rule examined the costs and benefits of the alternatives considered by the Commission in developing the revised standards for protection against radiation and is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington DC.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provision that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedures, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety

and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalties, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation, protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear material, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 19, 20, 30, 31, 32, 34, 35, 36, 39, 40, 50, 61, 70, and 72.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Supplement IV of Appendix C to part 2 is amended by removing the center heading "Section 20.1–20.601", removing and reserving paragraphs A through E and Footnote 18, and revising the introductory paragraph to read as follows:

Appendix C to Part 2—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

SUPPLEMENT IV—HEALTH PHYSICS (10 CFR PART 20)

This supplement provides examples of violations in each of the five severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR part 20[17]

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

3. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

4. In § 19.13, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 19.13 Notifications and reports to individuals.

* * * * *

(b) Each licensee shall advise each worker annually of the worker's dose as shown in records maintained by the licensee pursuant to the provisions of § 20.2106 of 10 CFR part 20.

(c) At the request of a worker formerly engaged in licensed activities controlled by the licensee, each licensee shall furnish to the worker a report of the worker's exposure to radiation or radioactive material for each year the worker was required to be monitored under the provisions of § 20.1502. This report must be furnished within 30 days from the time the request is made or within 30 days after the exposure of the individual has been determined by the licensee, whichever is later. This report must cover the period of time that the worker's activities involved exposure to radiation from radioactive material licensed by the Commission and must include the dates and locations of licensed activities in which the worker participated during this period.

(d) When a licensee is required pursuant to §§ 20.2202, 20.2203, 20.2204, or 20.2206 of this chapter to report to the Commission any exposure of an individual to radiation or radioactive material the licensee shall also provide the individual a report on his or her exposure data included therein. This report must be transmitted at a time not later than the transmittal to the Commission.

(e) At the request of a worker who is terminating employment with the licensee that involved exposure to radiation or radioactive materials, during the current calendar quarter or

[17] Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

the current year, each licensee shall provide at termination to each worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose must be provided together with a clear indication that this is an estimate.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (2 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§§ 20.1–20.601 [Removed]

6. Sections 20.1 through 20.601 are removed.

Appendix A to §§ 20.1–20.601 [Removed]

7. Appendix A to §§ 20.1–20.601 is removed.

Appendix B to 20.1–20.601 [Removed]

8. Appendix B to §§ 20.1–20.601 is removed.

Appendix C to §§ 20.1–20.601 [Redesignated as Appendix B to 10 CFR part 30]

9. Appendix C to §§ 20.1–20.601 is redesignated as Appendix B to 10 CFR Part 30.

Appendix D to §§ 20.1–20.601 [Removed]

10. Appendix D to §§ 20.1–20.601 is removed.

Undesignated Center Heading [Removed]

11. The center heading that appears prior to subpart A is removed.

§ 20.1008 [Removed]

12. Section 20.1008 is removed.

Appendix A to §§ 20.1001–20.2401 [Redesignated as Appendix A to part 20]

13. Appendix A to §§ 20.1001–20.2401 is redesignated as Appendix A to part 20.

Appendix B to §§ 20.1001–20.2401 [Redesignated as Appendix B to part 20]

14. Appendix B to §§ 20.1001–20.2401 is redesignated as Appendix B to part 20.

Appendix C to §§ 20.1001–20.2401 [Redesignated Appendix C to part 20 and Amended]

15. Appendix C to §§ 20.1001–20.2401 is redesignated as Appendix C to part 20

16. In Appendix C to part 20, the Quantity for Neptunium-237 that reads "1.001" is revised to read "0.001."

Appendix D to §§ 20.1001–20.2401 [Redesignated as Appendix D to part 20]

17. Appendix D to §§ 20.1001–20,2401 is redesignated as Appendix D to part 20.

Appendix E to §§ 20.1001–20.2401 [Redesignated as Appendix E to part 20]

18. Appendix E to §§ 20.1001–20.2401 is redesignated as Appendix E to part 20.

Appendix F to §§ 20.1001–20.2401 [Redesignated as Appendix F to part 20]

19. Appendix F to §§ 20.1001–20.2401 is redesignated as Appendix F to part 20.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

20. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

21. In § 30.35, paragraph (a) is amended by revising the two references to "appendix C to §§ 20.1–20.601 of 10 CFR part 20" to read as "appendix B to part 30"; paragraph (d) is amended by revising the three references to "appendix C to §§ 20.1–20.601 of 10 CFR part 20" to read "appendix B to part 30"; the note at the end of the section is removed; and paragraphs (g)(3) (i) and (iv) are revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) * * *

(3) * * *

(i) All areas designated and formerly designated restricted areas as defined in 10 CFR 20.1003 (For requirements prior to January 1, 1994, see 10 CFR 20.3 as contained in the CFR edition revised as of January 1, 1993.);

* * * * *

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

22. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

§ 31.5 [Amended]

23. In § 31.5(c)(10), remove the phrase "§§ 20.402 and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 31.7 [Amended]

24. In § 31.7(b), remove the phrase "§§ 20.402 and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20–2401,".

§ 31.10 [Amended]

25. In § 31.10(b)(1), remove the phrase "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

26. In § 31.10(b)(3), remove the phrase "§§ 20.301, 20.402, and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 31.11 [Amended]

27. In § 31.11(c)(5), remove the phrase "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

28. In § 31.11(f), remove the phrase "§§ 20.301, 20.402, and 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

29. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

30. In § 32.51, paragraphs (a)(2)(ii) and (c) are revised to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.

(a) * * *

(2) * * *

(ii) Under ordinary conditions of handling, storage, and use of the device, the byproduct material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in 1 year a dose in excess of 10 percent of the annual limits specified in § 20.1201(a) of this chapter; and

* * * * *

(c) In the event the applicant desires that the general licensee under § 31.5 of this chapter, or under equivalent regulations of an Agreement State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and the bases for these estimates. The submitted information must demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of 10 percent of the annual limits specified in § 20.1201(a) of this chapter.

§ 32.61 [Amended]

31. In § 32.61(d), remove the phrase "§ 20.203(a) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 32.71 [Amended]

32. In § 32.71(c)(2), remove the phrase "§ 20.203(a)(1) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

33. In § 32.71(e), remove the phrase "§ 20.301 or for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

34. The authority citation for part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

§ 34.29 [Amended]

35. In § 34.29(a), remove the phrase "§ 20.203(c) (2)(ii), (2)(iii), or (4) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 34.41 [Amended]

36. In § 34.41, remove the phrase "§ 20.203(c)(2) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 34.42 [Amended]

37. In § 34.42, remove the phrases "§ 20.204(c) or, for licensees implementing the provision of" and "§ 20.203 (b) and (c)(1) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

38. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.92 [Amended]

39. In § 35.92(a), remove the phrase "§ 20.301 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 35.205 [Amended]

40. In § 35.205, paragraph (a) is amended by revising the reference to "§§ 20.103 and 20.106" to read "§ 20.1301" and paragraph (c) is amended by revising the reference to "appendix B to Part 20" to read "§ 20.1301."

§ 35.315 [Amended]

41. In § 35.315(a)(8), remove the phrase "§ 20.401(c)(1) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 35.415 [Amended]

42. In § 35.415(a)(1), remove the phrase "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 35.641 [Amended]

43. In § 35.641(a)(2)(i), remove the phrase "§ 20.101 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

44. In § 35.641(a)(2)(ii), remove the phrase "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

45. In § 35.641(b)(2), remove the phrase "§ 20.501 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 35.643 [Amended]

46. In the introductory text of § 35.643(a), remove the phrase "§ 20.105(b) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

47. In § 35.643, paragraphs (a) (1) and (b), remove the phrases "§ 20.105(a) or, for licensees implementing the provisions of §§ 20.1001–20.2401," and "§ 20.105(b) of this chapter or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

48. The authority for part 36 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

§ 36.59 [Amended]

49. In § 36.59(c), remove the phrase "§§ 20.1001 to 20.2401 of."

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 39.15 [Amended]

51. In § 39.15(a)(5)(iii)(B), remove the phrase "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 39.31 [Amended]

52. In § 39.31(a)(1), remove the phrase "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

53. In § 39.31(a)(2), remove the phrase "§ 20.203 or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

§ 39.77 [Amended]

54. In § 39.77(b), remove the phrase "§§ 20.402, 20.403, 20.405 and 30.50 or, for licensees implementing the provisions of §§ 20.1001–20.2201,".

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

55. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022). Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

56. In § 40.34, paragraph (a)(2) is revised to read as follows:

§ 40.34 Special requirements for issuance of specific licenses.

(a) * * *

(2) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in 1 year a radiation dose in excess of 10 percent of the annual limits specified in § 20.2101(a) of this chapter; and

* * * * *

§ 40.36 [Amended]

57. In § 40.36(f)(3)(i), remove the reference "20.3(a)(14) or," and in § 40.36(f)(3)(iv), remove the reference "Part 20.302 or."

Appendix A to Part 40 [Amended]

58. In the first paragraph of the introduction to Appendix A, remove the phrase "§ 20.1(c), or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

59. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.120 is also issued under section 306 of the NWPA of 1982, 42 U.S.C. 1C226. Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

§ 50.34 [Amended]

60. In § 50.34(f)(2)(viii), remove the words "5 rems to the whole body or 75 rems to the extremities or, for licensees implementing the provisions of §§ 20.1001–20.2401 of this chapter,".

61. In § 50.36a, in the introductory text of paragraph (a), remove the phrase "§ 20.106 or, for licensees implementing the provisions of §§ 20.1001–20.2401," and revise paragraph (b) to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

* * * * *

(b) In establishing and implementing the operating procedures described in paragraph (a) of this section, the licensee shall be guided by the following considerations: Experience with the design, construction, and operation of nuclear power reactors indicates that compliance with the technical specifications described in this section will keep average annual releases of radioactive material in effluents and their resultant committed effective dose equivalents at small percentages of the dose limits specified in § 20.1301 and in the operating license. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual operating conditions which may temporarily result in releases higher than such small percentages, but still within the dose values specified in § 20.1301 of this chapter and in the operating license. It is expected that in using this operational flexibility under unusual operating conditions, the licensee will exert its best efforts to keep levels of radioactive material in effluents as low as is reasonably achievable. The guides set out in appendix I provide numerical guidance on limiting conditions for operation for light-water cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable.

62. In § 50.72 in paragraph (a), Footnote 1 is amended by removing the phrase "§§ 20.205, 20.403 or, for licensees implementing the provisions of §§ 20.1001–20.2401," and paragraphs (b)(2)(iv) (A) and (B) are revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) * * *

(2) * * *

(iv)(A) Any airborne radioactive release that, when averaged over a time period of 1 hour, results in concentrations in an unrestricted area that exceed 20 times the applicable concentration specified in appendix B to part 20, table 2, column 1.

(B) Any liquid effluent release that, when averaged over a time of 1 hour, exceeds 20 times the applicable concentration specified in appendix B to part 20, table 2, column 2, at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases. (Immediate notifications made under this paragraph also satisfy the requirements of § 20.2202 of this chapter.)

* * * * *

63. In § 50.73, paragraphs (a)(2)(viii) and (a)(2)(ix) are revised to read as follows:

§ 50.73 Licensees event report system.

(a) * * *

(2) * * *

(viii)(A) Any airborne radioactive release that, when averaged over a time period of 1 hour, resulted in airborne radionuclide concentrations in an unrestricted area that exceeded 20 times the applicable concentration limits specified in appendix B to part 20, table 2, column 1.

(B) Any liquid effluent release that, when averaged over a time period of 1 hour, exceeds 20 times the applicable concentrations specified in appendix B to part 20, table 2, column 2, at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases.

(ix) Reports submitted to the Commission in accordance with paragraph (a)(2)(viii) of this section also

meet the effluent release reporting requirements of § 20.2203(a)(3) of this chapter.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

64. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

§ 61.52 [Amended]

65. In § 61.52(a)(6), remove the phrase "§ 20.105, or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

66. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.25 [Amended]

67. In § 70.25, paragraph (a) is amended by revising the two references to "appendix C to §§ 20.1–601 of 10 CFR Part 20" to read as "appendix B to Part 30"; paragraph (d) is amended by revising the two references to "appendix C to §§ 20.1–20.601 of 10 CFR Part 20" to read "appendix B to Part 30"; the note at the end of the section is removed; and paragraphs (g)(3)(i) and (iv) are revised to read as follows:

* * * * *

(g) * * *

(3) * * *

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.1003 (For requirements prior to January 1, 1994, see 10 CFR 20.3 as contained in the CFR edition revised as of January 1, 1993.);

* * * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

68. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

69. In § 72.30, paragraph (d)(3)(i) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(d) * * *

(3) * * *

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.1003; and

* * * * *

Dated at Rockville, Maryland, this 10th day of December 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–31189 Filed 12–21–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB24

Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is issuing a regulation required by section 141 of the FDIC Improvement Act of 1991 (FDICIA) on the least-cost resolution of failed and failing depository institutions insured by the FDIC. The intended effect of this rule is to comply with the statutory requirement of prescribing regulations on the prohibition against increasing losses to the insurance funds by protecting uninsured depositors and non-depositor creditors of insured depository institutions.

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gail Patelunas, Assistant Director, Division of Resolutions (202/898–6779), Sean Forbush, Resolution Specialist, Division of Resolutions (202/898–8506), David Gearin, Senior Counsel, Legal Division (202/898–3621), Ruth R. Amberg, Senior Counsel, Legal Division (202/898–3736) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not impose burdens on depository institutions of any size and will not have the type of economic impact

addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) are not applicable here.

Background

Section 141 of FDICIA (Pub. L. 102-242, 105 Stat. 2236 (1991)) amended section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) to, among other things, require that the assistance provided by the FDIC under section 13(c) of the FDI Act be "necessary" to meet the FDIC's obligation to provide insurance coverage for insured deposits in a failed or failing institution and that the resolution be the "least costly" to the deposit insurance fund of "all possible methods" of meeting that obligation. This least-cost resolution requirement, set forth in section 13(c)(4)(A) of the FDI Act, became effective immediately upon the enactment of FDICIA on December 19, 1991.[1]

Section 141 also amended section 13(c) of the FDI Act to prohibit the FDIC from taking any direct or indirect action after December 31, 1994 (or such earlier time as the FDIC determines to be appropriate), with regard to any insured depository institution, that would have the effect of increasing losses to either the Bank Insurance Fund or the Savings Association Insurance Fund by protecting depositors for more than the insured portion of their deposits or creditors other than depositors. 12 U.S.C. 1823(c)(4)(E) (section 13(c)(4)(E)).[2]

Section 13(c)(4)(E) requires that the FDIC prescribe regulations to implement the requirement no later than January 1, 1994, and that the regulations become effective no later than January 1, 1995. A proposed rule to comply with the regulation-issuance requirement of section 13(c)(4)(E) was published in the **Federal Register** on October 25, 1993 (58 FR 55027). A discussion of the comments received on the proposed rule is provided below.

FDICIA's least-cost resolution requirements arose from a congressional effort to stem insurance fund losses and to instill depositor discipline in the banking industry. Prior to the passage of FDICIA, the FDIC could pursue any resolution alternative as long as it was less costly than liquidating the institution. Thus, when faced with several proposals that satisfied the cost test, the FDIC could have selected, for policy reasons (such as minimizing community disruption), a more expensive proposal than the least cost resolution. In many cases effected prior to the enactment of FDICIA, the resolutions involved an acquiring institution's assumption of both insured and uninsured deposits and resulted in no losses for uninsured depositors. Of the 124 banks closed in 1991, approximately 16 percent of the failures involved a loss for uninsured depositors.

Since the enactment of FDICIA, the FDIC has adhered to the least-cost requirements of FDICIA. In resolving institutions, the FDIC typically solicits bids for both total deposits and insured deposits only, evaluating all bids received and selecting the least costly. Therefore, in cases where the uninsured deposits are passed to the assuming institution, it is because that particular resolution represented the least costly of all possible resolution alternatives.

During 1992, the FDIC resolved 120 bank failures and provided open bank assistance to two institutions in danger of failing. Uninsured depositors were made whole in 50 percent of the 1992 failures. For the first eight months of 1993, only 4 of the 34 bank failures have resulted in uninsured depositors being made whole.

The Final Rule

The final rule adds a new section to Part 360 of the FDIC's regulations stating the prohibition in section 13(c)(4)(E) of the FDI Act on taking any action under section 13(c) of the FDI Act that would have the effect of increasing losses to any insurance fund by protecting uninsured depositors or non-depositor creditors of a failed or failing depository institution. In addition, the final rule references the systemic risk exception to the prohibition.

The final rule also includes the provision of section 13(c)(4)(E) of the FDI Act which makes clear that the prohibition shall not be construed as prohibiting the FDIC from engaging in purchase and assumption transactions under which uninsured deposits may be acquired so long as the loss to the insurance fund on those uninsured deposits is less than if the institution had been liquidated and the insured deposits were paid. Since section 13(c)(4)(A) and its least-cost rule of comparison will continue in effect after the implementation of section 13(c)(4)(E), the question may arise how these two provisions interrelate.

The FDIC believes that by complying with the more general least-cost requirements of section 13(c)(4)(A) of the FDI Act, it also has complied fully with the prohibition of section 13(c)(4)(E). Under the latter provision, the FDIC is prohibited from protecting uninsured deposits and creditors other than depositors only if doing so "would have the effect of increasing losses to any insurance fund". In the FDIC's view, the more general least cost requirements of section 13(c)(4)(A) already prohibit the FDIC from protecting creditors other than insured depositors if it would have the effect of increasing, rather than decreasing, losses to the applicable deposit insurance fund. Consequently, it is the FDIC's view that section 13(c)(4)(E) is subsumed in the more general least cost provisions of section 13(c)(4)(A) and has no independent operative effect.

Because the FDIC currently complies with the least cost requirements of section 13(c) (as imposed by section 141 of FDICIA), the Board is making the final rule effective thirty days after its publication in the **Federal Register**.[3] As noted above, section 13(c)(4)(E) requires that the final rule be prescribed no later than January 1, 1994. The effective date satisfies the requirement in section 13(c)(4)(E) that the FDIC regulations on that provision take effect no later than January 1, 1995.

Comments on the Proposed Rule

As noted above, the proposed rule was published in the **Federal Register** on October 25, 1993. The FDIC received five comments on the proposal. Two of the comments (one from a bank and one from an industry trade group) expressed full support for the proposed rule, one noting that "losses to the insurance funds should not be increased by protecting uninsured depositors and non-depositor creditors of insured depository institutions".

A comment from a savings association questioned whether the implementation of section 141 of FDICIA will "save taxpayers' money". The comment noted that the "lack of confidence created by the law will cause additional losses to

[1] The FDICIA amendments to the FDI Act created a "systemic risk" exception to the cost-test requirements of sections 13(c)(4) (A) and (E) of the FDI Act which may be invoked only if the Secretary of the Treasury, acting in consultation with the President and on the recommendation of two-thirds of the members of the Board and the Board of Governors of the Federal Reserve System, determines that the transaction is necessary to avoid "serious adverse effects on economic conditions or financial stability". Costs of such a transaction are to be recovered through special assessments on insured institutions on a broad deposit base which includes foreign deposits. 12 U.S.C. 1823(c)(4)(G). This provision has not been invoked to date.

[2] See also section 11 of the recently enacted Resolution Trust Corporation Completion Act which makes clear that the deposit insurance funds may not be used to benefit shareholders of failing insured depository institutions.

[3] A thirty-day delayed effective date complies with the general rulemaking requirements of the Administrative Procedure Act. 5 U.S.C. 553(d).

the insurance funds from the failure of more insured institutions" and suggested that the FDIC consider the macroeconomic effect of the proposed rule as well as the root causes of insurance fund losses. The Board notes that experience to date does not suggest that additional failures have been caused by implementing the least-cost requirements. Moreover, as noted above, the FDIC is required by statute to issue the final rule to implement the least-cost resolution requirements of section 141.

Another commenter, which is in the business of providing services to insured depository institutions, expressed concern that the final rule could be construed to supersede the recently enacted national depositor preference statute (Pub. L. 103–66, 107 Stat. 312 (August 10, 1993)) or other related law. As noted in the preamble to the proposed rule, the national depositor preference statute does not affect the operation of the final rule. The depositor preference statute and implementing regulations (58 FR 43069, August 13, 1993) establish certain priorities for distributing amounts realized from the liquidation or other resolution of FDIC-insured institutions. The final rule does not apply to the administration and distribution of receivership assets, which are governed by the depositor preference statute and regulations and other applicable law. As the commenter suggested, the final rule has been modified to indicate more explicitly that it relates to corporate actions affecting only the deposit insurance funds, and does not apply to receivership actions.

A comment from an industry trade group urged that the FDIC develop a standardized process for resolving failing banks that does not cover losses uninsured depositors would otherwise absorb in a bank or thrift failure. It suggested that, in the bidding process, the FDIC require bidders to explicitly price their offers to assume the uninsured deposits. As noted above, since the enactment of FDICIA, the FDIC routinely offers bidders the option of assuming all deposits or only the insured deposits, but does not require a bidder to bid both ways.[4] Whether a bidder is interested in bidding on both insured deposits and all deposits largely depends on the attractiveness of the deposit structure at each failing bank. Thus, a bidder may not want to bid both ways because it may not be interested in both options. Requiring that bids be submitted on each basis, therefore, may discourage otherwise interested bidders.

The comment suggested, as an alternative approach, that the FDIC only accept bids for insured deposits and, if the acquirer wanted the uninsured portion, the acquirer would agree to reimburse the FDIC fully for the losses that this portion of deposits would otherwise absorb. The Board believes that such an approach would not be cost-effective. The amount of work involved for this process would be substantial because a full claim process would be necessary in each failure and the amount to be recouped would not be determined for some years.

Finally, this commenter also recommended that the FDIC adopt a mechanism such as the final settlement payment which Congress authorized in FDICIA, or other procedure, to ensure consistent treatment of uninsured depositors in resolutions. The FDICIA final settlement payment mechanism entails the application of a formula reflecting an average of the FDIC's receivership recovery experience. The Board notes that such an approach raises complex issues because other provisions of the FDI Act appear to contemplate distributions being made from the assets of a particular receivership estate.

The final rule incorporates no substantive changes to the proposed rule.

List of Subjects in 12 CFR Part 360

Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 360 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The heading of Part 360 is revised to read as set forth above.

2. The authority citation for Part 360 is revised to read as follows:

Authority: Sec. 401(h), Pub. L. 101–73, 103 Stat. 357; 12 U.S.C. 1821(d)(11), 1823(c)(4).

§§ 360.1 through 360.3 [Redesignated as §§ 360.2 through 360.4]

3. Sections 360.1, 360.2 and 360.3 are redesignated as §§ 360.2, 360.3 and 360.4, respectively, and a new § 360.1 is added to read as follows:

§ 360.1 Least-cost resolution.

(a) *General rule.* Except as provided in section 13(c)(4)(G) of the FDI Act (12 U.S.C. 1823 (c)(4)(G)), the FDIC shall not take any action, directly or indirectly, under sections 13(c), 13(d), 13(f), 13(h) or 13(k) of the FDI Act (12 U.S.C. 1823 (c), (d), (f), (h) or (k)) with respect to any insured depository institution that would have the effect of increasing losses to any insurance fund by protecting:

(1) Depositors for more than the insured portion of their deposits (determined without regard to whether such institution is liquidated); or

(2) Creditors other than depositors.

(b) *Purchase and assumption transactions.* Subject to the requirement of section 13(c)(4)(A) of the FDI Act (12 U.S.C. 13(c)(4)(A)), paragraph (a) of this section shall not be construed as prohibiting the FDIC from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the FDIC has been appointed conservator or receiver, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of December, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–31197 Filed 12–21–93; 8:45 am]

BILLING CODE 6714–01–P

[4] Certain circumstances preclude the ability to provide options for assuming the uninsured portion of deposits, such as time constraints that do not permit an estimation of the losses imbedded in the failing bank's asset base.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 611, 613, 614, 620, 621, and 627 on September 20, 1993 (58 FR 48780). The final regulation amends 12 CFR parts 611, 613, 614, 620, 621, and 627 to update existing accounting and reporting requirements, promote consistency with industry practices pertaining to problem loan accounting and reporting issues, and to

ensure that the regulatory requirements and standards of 12 CFR part 621 are consistent with those of generally accepted accounting practices. Technical and conforming changes are made at 12 CFR parts 611, 613, 614, 620, and 627. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 31, 1993.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611, 613, 614, 620, 621, and 627, published on September 20, 1993 (58 FR 48780) is effective December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: December 16, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93-31280 Filed 12-21-93; 8:45 am]

BILLING CODE 6705-01-P

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12 CFR Part 614

RIN 3052-AB35

Loan Policies and Operations; Lending Limits; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 614 on July 28, 1993 (58 FR 40311). The final regulation amends 12 CFR part 614 to prescribe a limit on extensions of credit to a single borrower of 25 percent of capital for all Farm Credit System direct lender institutions, except banks for cooperatives. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 1, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR part 614, published on July 28, 1993 (58 FR 40311) is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: December 16, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93-31281 Filed 12-21-93; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-65-AD; Amendment 39-8758; AD 93-24-09]

Airworthiness Directives; British Aerospace (Commercial Aircraft) Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that currently requires deactivation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). This amendment requires installation of a terminating modification and revision of the AFM to include an associated temporary revision. This amendment is prompted by the availability of an improved contactor assembly for the TRU power supply changeover system. The actions specified by this AD are intended to prevent the loss of all primary electric power sources during automatic switching to alternative three-phase power for the TRU's.

DATES: Effective January 21, 1994.

The incorporation by reference of British Aerospace Service Bulletin ATP-24-49-10247A, Revision 1, dated October 23, 1992, and Temporary Revision No. T/26, Issue 1, dated May 22, 1992, as listed in the regulations, is approved by the Director of the Federal Register as January 21, 1994.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of January 24, 1992 (57 FR 784, January 9, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC. 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 by superseding AD 92-01-01, Amendment 39-8124 (57 FR 784, January 9, 1992), which is applicable to certain British Aerospace Model ATP airplanes, was published in the **Federal Register** on August 11, 1993 (58 FR 42699). The action proposed to supersede AD 92-01-01 to require replacing the currently installed contactor in the transformer rectifier unit (TRU) power supply changeover system with an improved contactor. The action also proposed to require revising the Airplane Flight Manual (AFM) to include an associated temporary revision. Once the improved contactor assembly has been installed and the AFM has been revised to include the associated temporary revision, the automatic alternative three-phase power supply system for each TRU is re-activated.

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 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 67 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour.

Required parts will cost approximately $3,030 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60,435, or $6,715 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 removing amendment 39–8124 (57 FR 784, January 9, 1992), and by adding a new airworthiness directive (AD), amendment 39–8758, to read as follows:

93–24–09 British Aerospace: Amendment 39–8758. Docket 93–NM–65–AD. Supersedes AD 92–01–01, Amendment 39–8124.

Applicability: Model ATP airplanes; serial numbers 2001 through 2053 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of all primary electric power sources, accomplish the following:

(a) Within 30 hours time-in-service after January 24, 1992 (the effective date of AD 92–01–01, Amendment 39–8124), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Trip and lock out the alternative three-phase circuit breaker to each transformer rectifier unit (TRU), and perform an operational test to ensure that the auto-changeover system is inoperative, in accordance with British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991.

(3) Amend the AFM, Section 0.25.0, in accordance with paragraph 2.(6) of British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991.

(b) Within 6 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the currently-installed Cutler Hammer contactor type SM15–CK-A6 or SM15–CK-A8 with Leach contactor type HA1F, in accordance with British Aerospace Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the AFM (Document No. ATP–004) to include Temporary Revision No. T/26, Issue 1, dated May 22, 1992.

(c) Accomplishment of the contactor replacement and the AFM revision required by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. The AFM revisions required by paragraphs (a)(2) and (a)(3) of this AD are revised as necessary by incorporation of AFM Temporary Revision No. T/26, Issue 1, dated May 22, 1992, and the automatic alternative three-phase power supply to each TRU is re-activated.

(d) 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.

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

(f) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991; British Aerospace Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992; Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991; and Temporary Revision No. T/26, Issue 1, dated May 22, 1992. Revision 1 of British Aerospace Service Bulletin ATP–24–49–10247A contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–34, 39, 81–84	1	October 23, 1992
2, 35–37, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79	Original	July 15, 1992
38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80	(These pages are not used).	

The incorporation by reference of British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991, and Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of January 24, 1992 (57 FR 784, January 9, 1992). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 21, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-30096 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 91-ANE-49; Amendment 39-8740; AD 93-23-06]

Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), AD 88-24-02, applicable to Pratt & Whitney Canada (PWC) PT6A series turboprop engines, that currently requires daily inspections of the airframe chip detector flag system, repetitive inspections of the main oil filter, and replacement of the engine chip detector with a modified engine chip detector. This amendment requires the installation of a new, strengthened power turbine (PT) shroud as a terminating action to the repetitive inspections. This amendment is prompted by the availability of the new, strengthened PT shroud. The actions specified by this AD are intended to prevent aircraft damage from engine failure debris.

DATES: Effective January 26, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 26, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. 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: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7137, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) by superseding priority letter AD 88-24-02 was published in the **Federal Register** on June 2, 1993 (58 FR 31347). That action proposed to continue the inspection requirements of the priority letter AD, and to require installation of the strengthened PT shroud by December 31, 1994. The FAA has determined, based on the availability of parts, that by that date affected engines would have at least one scheduled maintenance opportunity for installation of the strengthened PT shroud. Installation of this PT shroud in accordance with PWC Service Bulletin No. 4143R2, Revision 2, dated December 6, 1991, would constitute a terminating action to all the inspection requirements retained from the priority letter AD.

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

One commenter supports the rule as proposed.

One commenter suggests that Revision 3, as well as earlier revisions, of Pratt & Whitney Canada Service Bulletin 4143 be referenced in the final rule as acceptable means of compliance because the revisions were only for administrative reasons and did not change the actions necessary. The FAA concurs that the accomplishment instructions of previous SB revisions are identical and paragraph (e) of the compliance section of this AD has been revised to incorporate these revisions as acceptable means of compliance. However, the FAA cannot reference Revision 3 of PWC SB 4143 as it has not yet been issued.

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

There are approximately 300 PWC PT6A-50 series turboprop engines of the affected design that are installed on aircraft of U.S registry. The FAA has determined that it will take approximately 0.5 work hours per engine to install the strengthened PT shroud, and that the average labor rate is $55 per work hour. Required parts will cost approximately $6,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,808,250.

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 a new airworthiness directive, Amendment 39-8740, to read as follows:

93-23-06. Pratt & Whitney Canada: Amendment 39-8740. Docket No. 91-ANE-49, supersedes priority letter AD 88-24-02.

Applicability: Pratt & Whitney Canada (PWC) PT6A-50 series turboprop engines installed on but not limited to DeHavilland DHC-7 turboprop aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent aircraft damage from engine failure debris, accomplish the following:

(a) Within one calendar day after the effective date of this AD, inspect the airframe chip detector flag system, and thereafter reinspect each day of operation, in accordance with DeHavilland Canada (DHC) Dash 7 Maintenance Manual, Section 71-05-00, dated July 15, 1977. If the chip detector flag is actuated, accomplish paragraphs

(b)(1), (b)(2), and (b)(4) of this AD, prior to further flight.

(b) Within the next 50 hours time in service (TIS) after the effective date of this AD, accomplish the following:

(1) Remove and visually inspect the engine chip detector for metal debris, in accordance with PWC PT6A-50 Maintenance Manual, Section 79-35-02, dated January 15, 1991, and based on the inspection results, accomplish the applicable procedures specified in Section 79-35-02, dated January 15, 1991.

(2) Remove from service engine chip detector Part Number (P/N) 3040019, if installed, and replace with engine chip detector P/N 3026609.

(3) Inspect the circuit wiring of the installed or replacement engine chip detector, P/N 3026609, in accordance with PWC PT6A-50 Maintenance Manual, Section 79-35-02, dated January 15, 1991. Remove from service, prior to further flight, engine chip detectors found with an open circuit and replace with serviceable engine chip detectors.

(4) Perform a one-time inspection check of the airframe chip detector flag system by grounding the wiring pins in the connector to the chip detector, in accordance with PWC Alert Service Information Letter (SIL) No. 4019, dated October 20, 1988. If the chip detector flag is not actuated in the nacelle, correct defects and repeat this inspection check until the chip detector flag actuation is confirmed (reference DeHavilland Canada Dash 7 Maintenance Manual, Section 71-05-00, dated July 15, 1977).

(5) Inspect the main oil filter for contamination, and based on the inspection results, accomplish the applicable procedures specified in PWC PT6A-50 Maintenance Manual, Section 79-25-04, dated January 15, 1991.

(c) Thereafter, inspect the main oil filter at intervals not to exceed 100 hours TIS since the last inspection in accordance with the requirements of paragraph (b)(5) of this AD. If visible metallic debris is evident, accomplish paragraph (b)(1) of this AD prior to further flight.

(d) Remove, inspect, and reinstall the engine chip detector of non-installed engines, in accordance with paragraphs (b)(1), (b)(2), and (b)(3) above, prior to entering service.

Note: Paragraphs (a) through (d) of this AD repeat the compliance requirements of paragraphs (a) through (d) of priority letter AD 88-24-02.

(e) Remove from service power turbine (PT) shroud, Part Number (P/N) 3023797, and replace with PT shroud, P/N 3112919-01, in accordance with PWC Service Bulletin (SB) No. 4143R2, dated December 6, 1991, on or before December 31, 1994. PWC SB 4143, dated May 31, 1989, and PWC SB 4143, Revision 1, dated February 12, 1990, are acceptable alternate means of compliance to this AD. Installation of PT shroud, P/N 3112919-01, constitutes terminating action to the inspection requirements of this AD.

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

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

(g) 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.

(h) The modification shall be done in accordance with the following documents:

Document No.	Page No.	Issue	Date
DHC-7 Maintenance Manual, Section 71-05-00	1-3	Original	Jul 15, 1977.
Total pages: 3.			
PWC PT6A-50 Maintenance Manual, Section 79-35-02	1	Original	Apr 5, 1976.
	2	Original	Mar 1, 1977.
	201	Original	Jan 26, 1983.
	202	Original	Apr 5, 1976.
	203	Original	Jan 15, 1991.
	204	Original	Jan 26, 1983.
Total pages: 6.			
PWC Alert SIL No. 4019	1-2	Original	Oct 20, 1988.
Total pages: 2.			
PWC PT6A-50 Maintenance Manual, Section 79-25-04	202A&B, 204, & 209	Original	Jan 26, 1983.
	203	Original	Apr 5, 1976.
	205-6	Original	Jan 15, 1991.
	207-8, & 210	Original	Apr 2, 1987.
Total pages: 10.			
PWC (SB) No. 4143R2	1-2	Revision 2	Dec 6, 1991.
Total pages: 2.			

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 Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. 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.

(i) This amendment becomes effective on January 26, 1994.

Issued in Burlington, Massachusetts, on December 1, 1993.

Jay J. Pardee,

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

[FR Doc. 93-30100 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-AGL-12]

Amended Class E5 Airspace Area; Manitowish Waters, WI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the legal description of the Manitowish Waters, WI, Class E5 airspace area published in a final rule on October 28, 1993 (58 FR 57964), Airspace Docket Number 93-AGL-12.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 93-26468, Airspace Docket 93-AGL-12, published on October 28, 1993 (58 FR 57964), modified the description of the Manitowish Waters, Wisconsin Class E5 airspace area. An exclusion sentence was left out of the legal description but

included in the summary and history. This action corrects that error by correcting the legal description to include the exclusion sentence. This change does not effect the size of the Class E5 airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Manitowish Waters, Wisconsin, Class E5 airspace, as published in the **Federal Register** on October 28, 1993 (58 FR 57964), (**Federal Register** Document 93–26468; page 57964, column 3), is corrected in the amendment to the incorporation by reference 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

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

* * * * *

AGL WI E5 Manitowish Waters, WI [Corrected]

Manitowish Waters Airport, WI (lat. 46°07'18" N, long. 89°53'03" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manitowish Waters, WI, Airport, excluding that airspace within the Minocqua-Woodruff Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on December 2, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–31249 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 26852; Amendment No. 71–16]

Class D Airspace Area; Glenview, IL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Glenview, IL, Class D airspace area legal description published in a final rule, on March 19, 1993, (58 FR 15252) Docket Number 26852.

EFFECTIVE DATE: September 16, 1993.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 93–6246, published on March 19, 1993 (58 FR 15252), revised the Class D airspace description for Glenview Naval Air Station, IL, by adding the arrival extensions for runway 17, which were inadvertently deleted. The airspace is correctly depicted on aeronautical charts; however, the legal description published in Order 7400.9A, Airspace Designations and Reporting Points, inadvertently does not include the arrival extensions for runway 17.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Glenview, Illinois, Class D, airspace, as published in the Federal Register on Friday, March 19, 1993, (58 FR 15252), (Federal Register Document 93–25634, page 15255, column 3), is corrected in the amendment to the incorporation by reference 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

Paragraph 5000 General

* * * * *

AGL IL D Glenview, IL

NAS Glenview, IL
(lat. 42°05'00" N., long. 87°49'06" W.)
Northbrook VORTAC (lat. 42°13'26" N., long. 87°57'06" W.) Chicago-O'Hare International Airport, IL
(lat. 41°58'46" N., long. 87°54'16" W.)
Glenview TACAN (lat. 42°05'08" N., long. 87°49'21" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-nautical mile radius of NAS Glenview and within 1.8 nautical miles each side of the Northbrook VORTAC 162° and 145° radials extending from the Chicago-O'Hare International Airport and the NAS Glenview 4.1-nautical mile radius to 1.8 nautical miles south along the 162° radial of the Northbrook VORTAC and 3.8 nautical miles southeast along the 145 radial of the Northbrook VORTAC, and within 1.7 nautical miles each side of the NAS Glenview TACAN 100° radial, extending from the 4.1-mile radius to 5.7 nautical miles east of the TACAN, and within 1.3 nautical miles each side of the NAS Glenview TACAN 002° radial at 4.1 nautical miles and within 2.0 nautical miles west and 1.4 nautical miles east of the NAS Glenview TACAN 002° radial extending from the 4.1-nautical mile radius to 6.1 nautical miles north of the TACAN, excluding the area that overlies the Chicago, IL Terminal Control Area.

* * * * *

Issued in Des Plaines, Illinois on December 2, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–31250 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–13]

Modification of Class D Airspace; Tacoma, McChord AFB, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace for McChord AFB airport by excluding the airspace overlying the Spanaway Airport, Washington. This action will allow operations to and from the Spanaway Airport without radio communication with McChord AFB control tower.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace for McChord AFB by excluding the airspace overlying the Spanaway Airport, Washington, (58 FR 43575). The reclassification of airspace which was effective September 16, 1993, necessitated enlarging the Class D airspace for McChord AFB and consequently this expansion encompassed the Spanaway Airport. The FAA endeavors to exclude satellite airports located within surface areas where safety would not be substantially compromised. This action will avoid any adverse impact on the Spanaway Airport and simplify ATC coordination responsibilities between the primary and the satellite airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in notice except the vertical limit of the airspace exclusion is 1000 MSL to provide additional airspace over the Spanaway Airport for the McChord

AFB traffic pattern and the name of the airport excluded is Spanaway Airport, Washington, not Spanaway, Shady Acres Airport, Washington. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace listed in this document will be published subsequential in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace for McChord AFB Airport by excluding the airspace overlying the Spanaway Airport, Washington. This action will allow operations to and from the Spanaway Airport without radio communication with the McChord AFB control tower. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant Regulatory Action" under Executive Order 12866; (2) is not a "Significant Rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM WA D Tacoma McChord AFB, WA [Revised]

Tacoma McChord AFB, WA, (lat. 47°08'17" N, long. 122°28'34" W)

McChord VORTAC (lat. 47°08'52" N, long. 122°28'30" W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5.4 mile radius of the McChord AFB, and within 1.8 miles each side of the McChord VORTAC 182° radial extending from the 5.4 miles radius to 6.6 miles south of the VORTAC; excluding that airspace southwest of a line extending from lat. 47°09'56" N, long. 122°36'07" W; to lat. 47°04'18" N, long. 122°31'28" W; and excluding that airspace at and below 1000 feet MSL within an area bounded by a line beginning at lat. 47°03'09" N, long. 122°26'10" W, thence to lat. 47°05'00" N, long. 122°26'38" W, thence to lat. 47°06'17" N, long. 122°26'34" W, thence to lat. 47°0719" N, long. 122°20'47" W, thence clockwise via a 5.4 mile radius arc of McChord AFB Airport to point of beginning.

* * * * *

Issued in Seattle, Washington, on December 6, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–31256 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AAL–6]

Revocation of Class D Airspace and Establishment of Class E Airspace; Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace and establishes the Class E airspace surface area at Galena, Alaska. The Galena air traffic control tower (ATCT), operated by the United States Air Force (USAF), was permanently closed the last week of September 1993. The standard instrument approach procedures (SIAPs) based on the Very High Frequency Omnidirectional Range/Tactical Air Navigational Aid (VORTAC), Non-directional Radio Beacon (NDB) and Instrument Landing System (ILS) will remain. Controlled airspace to the surface is needed for Instrument Flight Rules (IFR) operations at Galena.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587, telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class D airspace and establishes Class E airspace at Galena, AK, to provide adequate controlled airspace to the surface for operators executing the established SIAP's.

The United States Air Force advised the Federal Aviation Administration of their decision to close the Galena ATCT in July 1993. The U.S. Air Force no longer required the tower after September 30, 1993. The VORTAC, NDB, and ILS remain, providing instrument flight rules (IFR) approach and departure procedures to the Galena Airport. The U.S. Air Force has installed an Automated Weather Observing System (AWOS–3) to provide altimeter setting, wind data, temperature, dew point, density altitude, visibility and cloud/ceiling data. This real-time weather data is transmitted directly to the pilot or obtainable via telephone for use to support the IFR approaches and the special visual flight rules (SVFR) at the Galena Airport. This action is a minor technical amendment. Since there is no longer a Galena ATCT, the Class D airspace to the surface at Galena in which all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulations (§ 91.129) must be removed. Class E surface area airspace must be established to provide airspace for IFR operators executing established SIAP, to avoid confusion on the part of the pilots flying in the vicinity of the Galena Airport, and to promote safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b), are unnecessary, and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

Class D airspace areas are published in paragraph 5000 and Class E surface areas are published in paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D area listed in this document will be removed subsequently from the Order and the Class E area listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348 (a), 1354 (a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Regulations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AAL AK D Galena, AK [Removed]

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

AAL AK E2 Galena, AK [New]

Galena Airport, AK
(lat. 64°44'10" N, Long. 156°56'15" W)
Within a 5.1-mile radius of the Galena Airport.

* * * * *

Issued in Anchorage, AK, on December 10, 1993.

Henry A. Elias,
Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 93–31257 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Safety Standard for Cigarette Lighters; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; Correction.

SUMMARY: On July 12, 1993, the Commission published a rule document in the **Federal Register** that issued the Safety Standard for Cigarette Lighters, 16 CFR part 1210, 58 FR 37557. Under the "**DATES**" heading on page 37557, the document stated "The standard applies to all disposable and novelty lighters manufactured in the United States or imported on or after July 12, 1994." This document corrects that statement by adding the following sentence to precede the one quoted above: "The standard is effective July 12, 1994."

EFFECTIVE DATE: Effective December 22, 1993, the effective date of the standard published at 58 FR 37557 is corrected to be July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Harleigh Ewell at 301–504–0980, ext. 2217.

Dated: December 16, 1993.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 93–31275 Filed 12–21–93; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–93–1630; FR–3210–F–03]

RIN 2502–AF62

Use of Materials Bulletins Used in the HUD Building Product Standards and Certification Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department, under its Building Products Standards and Certification Program, issues Use of Materials Bulletins to provide standards that establish minimum acceptable qualities for certain materials and products to be used in properties subject to mortgages insured by the Department. This final rule adopts the following Use of Materials Bulletins: UMB 39b, Aluminum Fenestration Products; UMB 44d, Carpet; UMB 59b, Wood Fenestration Products; UMB 71a, Polystyrene Foam Insulation Board; UMB 72a, Carpet Cushion; UMB 82a, Sealed Insulating Glass Units; UMB 85a, Poly (vinyl chloride) (PVC) Fenestration Products; UMB 89, Steel Insulated Door Systems; and UMB 100, Solar Water Heating Systems. It also references related national voluntary consensus standards, provides a labeling and third party certification procedure to assure that the building products used in HUD programs meet the appropriate national voluntary consensus standards, supplements the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product, and specifies the frequency with which products must be tested in order to be acceptable to HUD.

EFFECTIVE DATE: This final rule is effective February 1, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donald Fairman, Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490 E, 451 Seventh Street, SW., Mail Room B–133, Washington, DC 20410–8000, telephone voice: (202) 755–7440; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On April 30, 1993 the Department published in the **Federal Register** (58 FR 26212) a proposed rule which would (1) Adopt the Use of Materials Bulletins (UMs) for 39b-Aluminum Fenestration Products, 44d-Carpet, 59b-Wood Fenestration Products, 71a-Polystyrene Foam Insulation Board, 72a-Carpet Cushion, 82a-Sealed Insulating Glass Units, 85a-Poly (vinyl chloride) (PVC) Fenestration Products, 89–Steel Insulated Door Systems, and 100–Solar Water Heating Systems; (2) reference related national voluntary consensus standards; (3) provide a labeling and third party

certification procedure to assure that the building products used in HUD programs meet the appropriate national voluntary consensus standards; (4) supplement the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product; and (5) specify the frequency with which products must be tested in order to be acceptable to HUD.

Discussion of Public Comments

Only five comments were received regarding the following UMs: 39b, 59b, 44d, 71a, 72a, 85a and 100. No comments were received regarding UMs 82a & 89.

UM 39b, 59b & 85a

A window manufacturer requested that the procedures of the National Fenestration Rating Council (NFRC) be used in UM 39b, 59b and 85a to include thermal values. The Department has determined that the NFRC procedures are being changed but that the NFRC procedures would be considered at the time of the next revision of the UMs. In addition, the Department of Energy (DOE) will shortly provide guidance to HUD regarding the labeling of windows under a Congressional mandate and therefore, HUD will not reference the NFRC program until such time as a DOE policy for the labeling of windows has been established. Therefore, no changes have been made to UM 39b, 59b, and 85a.

UM 44d

A major fiber producer objected to the carpet pile density values for continuous and stable nylon being the same. Based on international tests and other data which were not submitted, the fiber producer desired to lower the amount of fiber content for carpet made from filament nylon. Since the commenter stated they are not ready to recommend a performance evaluation scheme and they recommend that the Carpet and Rug Institute review this matter, the Department has decided to consider this issue at the time of the next revision when international and national organizations will have had time to review the test data. No significant changes have been made to UM 44d except for editorial and spelling changes.

UM 71a

One response was received from a trade association that stated that the proposed revision of 71a would result in higher costs to the industry, consumers, and government agencies and have a negative impact on foreign and domestic competition. No estimate of this impact or any other quantifiable data was submitted. Presently, this same trade association sponsors a certification program for polystyrene foam used with roofing products that is more intense than the program described in UM 71a and this trade organization has indicated that there have been no objections to the cost of their sponsored certification program. In addition, the Department is working with this same organization, at its request, on a similar third party certification for polyurethane foam insulation. Based on an estimate from the third party validation agency operating the trade association's certification program, the increased cost per board foot of polystyrene foam due to the HUD certification program would be less than one cent. In addition, there is no evidence that significant amounts of polystyrene foam board, for construction purposes, is being shipped into or out of the United States. All imported polystyrene foam, if used in the construction of houses insured by HUD, would also have to comply to UM 71a. Exported polystyrene foam would not have to comply to UM 71a. Finally, since this rule only applies to products used in houses insured under the HUD mortgage program, which is less than 15% of the total housing market, it is voluntary for the manufacturers to participate. The Department does not consider the cost significant to insure that the products getting to the job site comply with the referenced standard. No change to the proposed rule has been made.

UM 72a

A testing laboratory and a trade association objected to the flammability requirements and test methods referenced. Since the model and local building codes set standards for the flooring system, which is composed of the carpet and the carpet cushion, we have withdrawn the flammability reference for carpet cushion specifically because it duplicates what is already in the building codes. In addition, both commenters discussed the inappropriateness of the pill and the ASTM E–84 Tunnel test for carpet cushion; we find their comments persuasive. Finally, as a result of another comment by the same trade association, we have clarified the description of the test sample by requiring the maximum thickness of each class of cushion be tested. Thus, UM 72a has been changed to eliminate the flammability references and to insert a clarifying statement that "the maximum thickness of each class, commercially available," shall be tested.

UM 100

Only one objection was received from a trade association which cited a new 1993 update to the existing reference standard. This update was reviewed and found to be acceptable and the 1993 date has been added to the reference standard.

The text of the UMs is not being produced in the final rule, because the substance is embodied in new sections of 24 CFR part 200 set forth below. However, copies of the UMs are available for public inspection during regular business hours in the Standards and Products Branch, 490 East L'Enfant Plaza, suite 3214, Washington, DC 20410, and 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 20410–0500.

Regulatory Flexibility Act

The Secretary, in approving this rule for publication, certifies in accordance with 5 U.S.C. 605(b), the Regulatory Flexibility Act, that this rule would not have a significant economic impact on a substantial number of small entities. These UMs would adopt standards that are nationally recognized throughout the affected industry, and their adoption will not create a burden on manufacturers, which are currently meeting the standards.

Executive Order 12866

This final rule was reviewed and approved by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993. Any changes made to the rule as a result of that review are a part of the public docket file in the office of the Rules Docket Clerk listed at the beginning of this preamble.

Semiannual Agenda

This rule was listed as item 1524 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56405, 56427) under Executive Order 12866 and the Regulatory Flexibility Act.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under this order.

Federalism

The General Counsel, as the Designated Official under section 6 (a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and thus are not subject to review under the order. The standards incorporated in this rule were developed in the private sector and are expected to be used generally by the industry nationwide. This rule will not interfere with or preempt State or local government functions.

Incorporation by Reference

These national consensus standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards are available for inspection at the HUD Program Information Center, room 1104, 451 Seventh Street, SW., Washington, DC, the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

List of Subjects in 24 CFR Part 200

Administrative practice and procedures, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is amended to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Section 200.938 is revised to read as follows:

§ 200.938 Supplementary specific requirements under the HUD Building Product Standards and Certification Program for Aluminum Fenestration Products.

(a) *Applicable Standards.* (1) All aluminum fenestration products shall be designed, manufactured, and tested in compliance with the following American National Standards Institute and American Architectural Manufacturers Association standards:

(i) ANSI/AAMA 101–93—Voluntary Specifications for Aluminum and Poly (vinyl/ chloride) (PVC) Prime Windows and Glass Doors;

(ii) ANSI/AAMA 1102.7–89—Voluntary Specifications for Aluminum Storm Doors;

(iii) ANSI/AAMA 1002.10–93—Voluntary Specifications for Insulating Storm Products for Windows and Sliding Glass Doors;

(iv) AAMA 1600–90—Voluntary Specification for Skylights.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. The standards are available from the American Architectural Manufacturers Association, 35 East Wacker Drive, Chicago, IL 60601 or the American Material Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the Administrator to the manufacturer. Each aluminum fenestration product shall be marked as conforming to UM 39b. The label shall be located on each aluminum fenestration product so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedure set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of aluminum fenestration products, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a sample, of the maximum size commercially available, for testing in a laboratory approved by the administrator.

(2) The administrator also shall review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

3. Section 200.939 is revised to read as follows:

§ 200.939 Supplementary specific requirements under the HUD Building Product Standards and Certification Program for Wood Fenestration Products.

(a) *Applicable standards.* (1) All wood fenestration products shall be designed, manufactured, and tested in compliance with the following National Wood Window and Door Association standards:

(i) NWWDA Industry Standard I.S. 2–93—Wood Windows;

(ii) NWWDA Industry Standard I.S. 3–88—Wood Sliding Patio Doors.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. The standards are available from the National Woodwork Manufacturers Association, 400 West Madison Street, Chicago, IL 60606. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the Administrator's validation mark and the manufacturer's certification of compliance with the applicable standards is required to be on the certification label issued by the Administrator to the manufacturer. Each wood fenestration product shall be marked as conforming to UM 59b. The label shall be located on each wood fenestration product so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of wood fenestration products, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a sample, of the maximum size commercially available, for testing in a laboratory approved by the administrator.

(2) The administrator also shall review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

4. Section 200.940 is revised to read as follows:

§ 200.940 Supplementary specific requirements under the HUD Building Product Standards and Certification Program for Sealed Insulating Glass Units.

(a) *Applicable standards.* (1) All sealed insulating glass units shall be designed, manufactured, and tested in compliance with the American Society for Testing and Materials standard: ASTM E–774–92 Standard Specification for Sealed Insulating Glass Units.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference. The standard is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are issued by the administrator to the manufacturer. Each sealed insulating glass unit shall be marked as conforming to UM 82a. The label shall be located on each sealed insulating unit so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sealed insulating glass units, testing and inspection shall be conducted as follows:

(1) At least once a year, the administrator shall visit the manufacturer's facility to select a sample, of the maximum size commercially available, for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

5. Section 200.941 is revised to read as follows:

§ 200.941 Supplementary specific requirements Under the HUD Building Products Standards and Certification Program for Poly (vinyl chloride) PVC Fenestration Products.

(a) *Applicable standards.* (1) All PVC plastic fenestration products shall be designed, manufactured, and tested in compliance with the following American National Standards Institute standard or American Society for Testing and Materials standard:

(i) ANSI/AAMA 101–93—Voluntary Specifications for Aluminum and Poly (vinyl chloride) (PVC) Prime Windows and Glass Doors; or

(ii) ASTM D 4099–89—Standard Specification for Poly (vinyl chloride) (PVC) Prime Windows/Sliding Glass Doors.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. These standards are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018 or the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each PVC fenestration product shall be marked as conforming to UM 85a. The label shall be located on each PVC fenestration product so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in § 200.935(d)(8), concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of PVC fenestration products, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a sample, of the maximum size commercially available, for testing in a laboratory approved by the administrator.

(2) The administrator also shall review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

4. Section 200.945 is added to subpart S to read as follows:

§ 200.945 Supplementary specific requirements under the HUD Building Product Standards and Certification Program for Carpet.

(a) *Applicable standards.* (1) All carpet shall be designed, manufactured, and tested in compliance with the following standards from the American Society for Testing and Materials and the American Association of Textile Chemists and Colorists:

(i) ASTM D418–92—Standard Test Methods for Tuft and Yarn Length of Uncoated Floor Coverings;

(ii) ASTM D1335–67—(Reapproved 1972) Standard Test Method for Tuft Bind of Pile Floor Coverings;

(iii) ASTM D 2646–87—Standard Test Methods for Backing Fabrics;

(iv) ASTM D 3936–80—Standard Test Method for Delamination Strength of Secondary Backing of Pile Floor Coverings;

(v) AATCC Test Method 16e–82—Colorfastness to Light: Water-Cooled Xenon-Arc Lamp, Continuous Light;

(vi) AATCC Test Method 165–86—Colorfastness to Crocking: Carpets—AATCC Crock Meter Method;

(vii) ASTM D 3676–78—(Reapproved 1989) Standard Specification for Rubber Cellular Cushion Used for Carpet or Rug Underlay;

(viii) ASTM D 3574–91—Standard Test Methods for Flexible Cellular Materials—Slab, Bonded and Molded Urethane Foams.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. The standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 and the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, NC 27709. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with UM 44d are required to be on the certification label issued by the Administrator to the manufacturer. The label shall be placed on each carpet every six feet not less than one foot from the edge.

(c) *Periodic tests and quality assurance inspection.* Under the procedure set forth in § 200.935(d)(8), testing and inspection shall be conducted as follows:

(1) Every six months, three samples and one annual field sample of carpet

shall be submitted to the Administrator for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program of the U.S. Department of Commerce.

(2) The administrator also shall review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

5. Section 200.947 is added to subpart S to read as follows:

§ 200.947 Building Product Standards and Certification Program for Polystyrene Foam Insulation Board.

(a) *Applicable standards.* (1) All polystyrene foam insulation board shall be designed, manufactured, and tested in compliance with the American Society for Testing and Materials (ASTM) standard C-578-92, Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference. The standard is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's certification of compliance with the applicable standards and the type of board are required to be on the certification label issued by the administrator to the manufacturer.

(c) *Periodic tests and quality assurance inspection.* Under the procedure set forth in § 200.935(d)(8), testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample of each certified polystyrene foam insulation board for testing by a laboratory approved by the administrator.

(2) The administrator also shall review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

6. Section 200.948 is added to subpart S to read as follows:

§ 200.948 Building Product Standards and Certification Program for Carpet Cushion.

(a) *Applicable standards.* (1) All carpet cushion shall be designed, manufactured, and tested in compliance with the following standards from the American Society for Testing and Materials:

(i) ASTM D 1667-76—(Reapproved 1990) Standard Specification for Flexible Cellular Materials—Vinyl Chloride Polymers and Copolymers (Closed-Cell Foam);

(ii) ASTM D2646-87—Standard Test Methods for Backing Fabrics;

(iii) ASTM D629-88—Standard Test Methods for Quantitative Analysis of Textiles;

(iv) ASTM D3574-91—Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams;

(v) ASTM D3676-78—Standard Specification for Rubber Cellular Cushion Used for Carpet or Rug Underlay.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. The standards are available from the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark, the manufacturer's certification of compliance with the applicable standards, and the type and class all are required to be on the certification label issued by the administrator to the manufacturer.

(c) *Periodic tests and quality assurance inspection.* Under the procedure set forth in § 200.935(d)(8), testing and inspection shall be conducted as follows:

At least every six months, the administrator shall visit the manufacturer's facility to select a sample of each certified carpet cushion for testing by a laboratory approved by the administrator.

(2) The administrator also shall review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

9. Section 200.949 is added to subpart S to read as follows:

§ 200.949 Building Product Standards and Certification Program for Exterior Insulated Steel Door Systems.

(a) *Applicable standards.* (1) All Exterior Insulated Steel Door Systems shall be designed, manufactured, and tested in compliance with the following standards from the American Society for Testing and Materials and Insulated Steel Door Systems Institute:

(i) ASTM A591/A591M-89—Standard Specification for Steel Sheet, Electrolytic-Zinc Coated, for Light Coating Mass Applications;

(ii) ISDSI-100-90—Door Size Dimensional Standard and Assembly Tolerances for Insulated Steel Door Systems;

(iii) ISDSI-101-83—(Reapproved 1989) Air Infiltration Performance Standard for Insulated Steel Door Systems;

(iv) ISDSI-102-84—Installation Standard for Insulated Steel Door Systems;

(v) ISDSI-104-86—Water Penetration Performance Standard for Insulated Steel Door Systems;

(vi) ISDSI-105-80—Test Procedure and Acceptance Criteria for Physical Endurance for Steel Doors and Hardware Reinforcings;

(vii) ISDSI-106-80—Test Procedure and Acceptance Criteria for Prime Painted Steel Surfaces for Steel Doors and Frames;

(viii) ISDSI-107-80—Thermal Performance Standard for Insulated Steel Door Systems;

(ix) ASTM F476-84—(Reapproved 1991) Standard Test Methods for Security of Swinging Door Assemblies.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. These standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 or the Insulated Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Avenue, Cleveland, OH 44107. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's certification of compliance with the applicable standards is required to be on the certification label issued by the administrator to the manufacturer.

(c) *Periodic tests and quality assurance inspection.* Under the procedure set forth in § 200.935(d)(8), testing and inspection shall be conducted as follows:

(1) At least every four years, the administrator shall visit the manufacturer's facility to select a sample of each certified exterior insulated steel door system for testing by an approved laboratory in accordance with the applicable standard.

(2) The administrator also shall review the quality assurance procedures every year to assure that they are being followed by the manufacturer.

10. Section 200.950 is added to subpart S to read as follows:

§ 200.950 Building Product Standards and Certification Program for Solar Water Heating System.

(a) *Applicable standards.* (1) All solar water heating systems shall be designed, manufactured, and tested in compliance with Solar Rating and Certification Corporation (SRCC) Document OG–300–93, Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems: An Optional SWH System Certification and Rating Program. Section 10 of the SRCC standard has been omitted because it was considered proprietary, since it describes an administrative program specifically carried out by SRCC.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference. The standard is available from the Solar Rating and Certification Corporation, 777 North Capitol Street, NE., suite 805, Washington, DC 20002. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each solar water heating system shall be marked as conforming to UM 100. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspection.* Under the procedure set forth in § 200.935(d)(8), testing and inspection shall be conducted as follows:

(1) The Administrator shall visit the manufacturer's factory every two years to assure that the initially accepted quality assurance procedures are being followed.

(2) At least every four years, the administrator shall visit the manufacturer's facility to select a sample of each certified solar water heating system for testing by a laboratory approved by the administrator.

(d) *Warranty.* The manufacturer shall provide, at no cost, a full five-year warranty against defects in material or workmanship, on the absorber plate, cooling passages, and the collector (excluding any glass), running from the date of installation of the solar water heating system. The warranty also shall include the full costs of field inspection, parts, and labor required to remedy the defects, and will include the cost of replacement at the site if required. This warranty is not required to cover defects resulting from exposure to harmful materials, fire, flood, lightning, hurricane, tornado, hailstorms, earthquakes, or other acts of God, vandalism, explosions, harmful chemicals or other fluids, fumes or vapors. This exclusion will apply to the operation of the collector under excessive pressures or excessive flow rates, misuse, abuse, negligence, accidents, alterations, falling objects or other causes beyond the control of the manufacturer. Following the initial five years, the manufacturer shall provide a limited no-cost five-year warranty for collector parts on a prorata allowance basis.

Dated: December 10, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8500]

RIN 1545–AG98

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under section 704 of the Internal Revenue Code relating to allocations with respect to property contributed by a partner to a partnership. Changes to the applicable law were made by the Tax Reform Act of 1984 (the 1984 Act) and the Revenue Reconciliation Act of 1989 (the 1989 Act). The final regulations affect partnerships and their partners and are necessary to provide guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: David Edquist at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document adds § 1.704–3 to the Income Tax Regulations (26 CFR part 1) under sections 704(c)(1)(A) and 704(c)(3), and revises existing §§ 1.704–1(b)(1)(vi), 1.704–1(b)(2)(iv), and 1.704–1(c). The IRS and Treasury are also contemporaneously issuing temporary regulations that address issues reserved in the final regulations.

Background

On December 24, 1992, the IRS published in the **Federal Register** a notice of proposed rulemaking (57 FR 61353) amending the Income Tax Regulations (26 CFR part 1) under section 704. These amendments were proposed to implement section 704(c) as amended by the 1984 Act and the 1989 Act. The notice provided rules relating to allocations reflecting built-in gain or loss on property contributed to a partnership. Comments responding to the notice were received, and a public hearing was held on April 16, 1993. After considering the comments and the statements made at the hearing, the IRS and Treasury adopt the proposed regulations as revised by this Treasury decision.

Explanation of Provisions

General Principles and Approach

The final regulations generally adopt the provisions of the proposed regulations with respect to property contributed with built-in gain or loss. Accordingly, under the final regulations, if a partner contributes property to a partnership, the partnership can use any reasonable method of making allocations so that the contributing partner receives the tax burdens and benefits of any built-in gain or loss.

The final regulations specifically describe two reasonable methods of making allocations under section 704(c). These are the traditional method and the traditional method with curative allocations. The remedial allocation method is a third reasonable method that is permissible under the temporary regulations that are being issued in conjunction with these final regulations. In addition to these described methods, other reasonable allocation methods meeting the requirements of section 704(c) are also acceptable. Section 1.704–3(e) contains special rules and exceptions.

The final regulations allow a partnership to use different reasonable allocation methods with respect to different items of section 704(c) property. However, the allocation

method used for an item of section 704(c) property must be consistently applied to that item of property by both the partnership and the partners from year to year. In addition, the overall method or combination of methods used by the partnership must be reasonable under the facts and circumstances. In exercising its authority under § 1.704–3 to make adjustments if a partnership's allocation method is not reasonable, the IRS can make adjustments regardless of the provisions contained in the partnership agreement.

The final regulations also provide special rules and exceptions that have been revised from those contained in the proposed regulations. These rules and exceptions apply regardless of the allocation method chosen by the partnership and include a *de minimis* rule for small disparities and an aggregation rule for certain property.

Additional Reasonable Methods

Comments were received requesting additional reasonable methods. Several comments requested that the "undivided interests method" contained in section 704(c)(3) prior to amendment by the 1984 Act be included specifically as a reasonable method. Under the undivided interests method, allocations of depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership were determined as though the undivided interests had not been contributed to the partnership. After consideration, the IRS and Treasury have decided not to add the undivided interests method as a specific reasonable method described in the final regulations because it appears to be of very limited application. However, the use of this method in appropriate situations may be reasonable.

The comments also suggested including as a specifically described reasonable method an allocation method used in the oil and gas industry. Under this method, each partner is, in essence, allocated all of the depreciation or depletion from each item of property the partner contributes to the partnership (or from property purchased with cash contributed by that partner). Upon disposition of the contributed property, remaining built-in gain or loss is allocated to the contributing partner, and any additional gain or loss is allocated according to the partnership agreement. The IRS and Treasury have also decided not to add this method as a specific reasonable method described in the final regulations because, although it may be common in the oil and gas industry, it does not appear to be a generally applicable method. However, the use of this method in appropriate situations may be reasonable. The IRS is considering issuing further guidance on this method.

One comment suggested that the final regulations adopt as a safe harbor the use of the traditional method with a curative allocation of gain upon sale of the property. Under this approach, the anti-abuse rule would not apply to allocations following the safe harbor. Another comment suggested that the anti-abuse rule be deleted and that a curative allocation upon sale of the property be mandatory. Both of these suggestions would have required exceptions to the anti-abuse rule. The IRS and Treasury believe it is appropriate to require that all allocation methods satisfy the anti-abuse rule. Otherwise, the regulations might be interpreted as sanctioning allocation methods undertaken with a view to reducing substantially the present value of the partners' aggregate tax liability. Section 1.704–3(b)(2) *Example 2* describes the use of the traditional method with a curative allocation of gain upon sale that is reasonable under the facts of that example.

Sections 743 and 751

The final regulations provide that a partnership making adjustments under § 1.743–1(b) or 1.751–1(a)(2) must account for section 704(c) property in accordance with the principles of these regulations. The IRS will conform §§ 1.743–1(b) and 1.751–1(a)(2) to incorporate the changes to section 704(c) made in the 1984 Act and the 1989 Act as well as these regulations.

Transfers of Partnership Interests

The final regulations make explicit, in response to a comment, that if a contributing partner transfers the partnership interest, the remaining built-in gain or loss is allocated to the transferee partner.

Transfer of Property Under Section 351

If a partnership transfers an item of section 704(c) property together with other property to a corporation under section 351, in order to preserve that item's built-in gain or loss, the basis in the stock received in exchange for the section 704(c) property is determined as if each item of section 704(c) property had been the only property transferred to the corporation by the partnership.

The Anti-Abuse Rule

Comments requested clarification on the standard the IRS will apply in administering the anti-abuse rule. The final regulations provide an anti-abuse rule that has been revised to respond to concerns raised in comments and to target more specifically abusive transactions. The rule applies to all methods of making section 704(c) allocations, including the methods described in the final and temporary regulations. Under the rule, an allocation method (or combination of methods) is not reasonable if the contribution (or other relevant event) and the allocations with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability. Thus, the final regulations make clear that time-value-of-money concepts are relevant. In addition, the example of abusive curative allocations in the proposed regulations (proposed § 1.704–3(c)(4) *Example 2*, which is *Example 3* in the final regulations) has been clarified to illustrate these governing principles.

Some comments raised the concern that the IRS would use the anti-abuse rule to place taxpayers on the deferred sale method. To address this concern, the temporary regulations that describe the remedial allocation method (the revised deferred sale method) provide that in exercising its authority to make adjustments if a partnership's allocation method is not reasonable, the IRS will not require a partnership to use the remedial allocation method.

Curative Allocations

The final regulations provide that curative allocations are reasonable only if they conform to certain limitations. For example, they may not exceed the amount necessary to offset the effect of the ceiling rule. In addition, the period over which the allocations are made is a factor in determining whether the allocations are reasonable.

Under the proposed regulations, curative allocations could only be made using a tax item that would have the same effect on the partners as the tax item affected by the ceiling rule. Some comments requested clarification of this limitation. Accordingly, the final regulations provide that an allocation of a type that is not expected, at the time the allocation becomes part of the partnership agreement (or at the time the allocation is actually made if the partnership agreement is not sufficiently specific) to have substantially the same effect on each partner's tax liability as the tax item limited by the ceiling rule is generally not reasonable. However, when cost recovery is limited by the ceiling rule, gain from the sale of the contributed property may be used to make a curative allocation if provided in

the partnership agreement in effect for the year of the contribution. The final regulations also provide additional examples of types of permissible and impermissible curative allocations.

The proposed regulations provided that if a partnership did not have tax items sufficient in the amount and of the correct type to offset fully the effect of the ceiling rule, the partnership could choose to make the curative allocation in the next succeeding taxable year in which it had sufficient items. The final regulations generally do not permit these make-up curative allocations. The IRS and Treasury believe that those taxpayers that are concerned about this restriction can choose to use the remedial allocation method described in the temporary regulations. The final regulations provide that a curative allocation is not reasonable to the extent it exceeds the amount necessary to offset the effect of the ceiling rule either for the current taxable year or, in the case of a curative allocation upon disposition of the property, for a prior taxable year. However, a partnership may make curative allocations in a taxable year to offset the effect of the ceiling rule for a prior taxable year if they are made over a reasonable period of time, such as over the property's economic life, and are provided for under the partnership agreement in effect for the year of contribution.

The Remedial Allocation Method

After consideration of the comments received on the deferred sale method contained in the original proposed regulations, the IRS and Treasury have decided to repropose a revised deferred sale method, referred to as the remedial allocation method, and, during the comment period, have issued temporary regulations for current use by taxpayers. In the absence of specific published guidance, it is not reasonable to use a section 704(c) method in which the basis of property contributed to the partnership is increased (or decreased) to reflect built-in gain (or loss) and, except as provided in the temporary remedial allocation method regulations, it is also not reasonable for a partnership to create tax allocations of income, gain, loss, or deduction independent of allocations affecting the partnership book capital accounts.

Small Disparities

The proposed regulations provided that a partnership may disregard the application of section 704(c) to a partner's contributions of property in a single year if (1) for each item of contributed property, the fair market value does not differ from the adjusted tax basis by more than 15 percent of the adjusted tax basis, and (2) the total disparity for all properties contributed by that partner in that year does not exceed $10,000. One comment stated that the 15 percent test should be applied in the aggregate, rather than on each item of property. The final regulations adopt this comment. In addition, comments were received stating that the $10,000 limit was too small. Accordingly, the final regulations raise this limit to $20,000.

Aggregation Rules

In general, the final regulations follow the proposed regulations and provide that, with certain exceptions, property generally may not be aggregated for purposes of making allocations under section 704(c). In response to comments, additional exceptions have been added so that certain other types of properties may be aggregated, such as all property (other than real property) that is included in the same general asset account, and all property with a basis of zero, other than real property. Each type of property must be separately aggregated. Under the final regulations, the IRS may issue additional guidance setting forth other assets for which aggregation is permissible. However, the final regulations clarify that any aggregation of property must also be reasonable under the anti-abuse rule.

The IRS requested and received comments on whether securities partnerships should be able to aggregate built-in gains and losses upon restating their capital accounts. After consideration of the comments received, the IRS and Treasury have determined that further consideration is necessary in order to define securities partnerships broadly enough to offer useful guidance and narrowly enough to prevent abusive allocations. Accordingly, this portion of the final regulations has been reserved and a special rule is being separately proposed that permits aggregation of certain types of property for securities partnerships. However, in recognition of the fact that taxpayers need immediate effective guidance on aggregation by securities partnerships, the IRS and Treasury are contemporaneously issuing temporary regulations allowing aggregation under certain circumstances during the comment period.

Certain Transactions Involving Foreign Persons

The rules of the final regulations relating to dispositions of partnership interests and dispositions by partnerships apply to dispositions by both domestic and foreign persons. To the extent dispositions of property are also described in sections 367(a), 367(d), 897, 1248, or 1491, those sections also apply. Consistent with preserving U.S. taxing jurisdiction, additional requirements applicable to contributions of section 704(c) property and subsequent dispositions involving foreign persons may be issued in the future. Those requirements may include appropriate reporting and recordkeeping requirements. The IRS and Treasury welcome comments regarding the scope of any additional requirements, including whether those requirements should be applied retroactively.

Effective Date

These regulations apply to property contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is David Edquist of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.704–3 also issued under 26 U.S.C. 704(c). * * *

Par. 2. Section 1.704–1 is amended by revising paragraphs (b)(1)(vi), (b)(2)(iv)(*d*)(*3*), and (c) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(vi) *Section 704(c) determinations.* Section 704(c) and § 1.704–3 generally require that if property is contributed by a partner to a partnership, the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to the property are determined so as to take account of the variation between the adjusted tax basis and fair market value of the property. Although section 704(b) does not directly determine the partners' distributive shares of tax items governed by section 704(c), the partners' distributive shares of tax items may be determined under section 704(c) and § 1.704–3 (depending on the allocation method chosen by the partnership under § 1.704–3) with reference to the partners' distributive shares of the corresponding book items, as determined under section 704(b) and this paragraph. (See paragraphs (b)(2)(iv)(*d*) and (b)(4)(i) of this section.) See § 1.704–3 for methods of making allocations under section 704(c), and § 1.704–3T(d)(2) for a special rule in determining the amount of book items if the remedial allocation method is chosen by the partnership. See also paragraph (b)(5) *Example (13)* (i) of this section.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*3*) *Section 704(c) considerations.* Section 704(c) and § 1.704–3 govern the determination of the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to property contributed to a partnership (see paragraph (b)(1)(vi) of this section). In cases where section 704(c) and § 1.704–3 apply to partnership property, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization, or other cost recovery) as computed for book purposes, with respect to the property. See, however, § 1.704–3T(d)(2) for a special rule in determining the amount of book items if the partnership chooses the remedial allocation method. See also *Example (13)* (i) of paragraph (b)(5) of this section. Capital accounts are not adjusted to reflect allocations under section 704(c) and § 1.704–3 (e.g., tax allocations of precontribution gain or loss).

* * * * *

(c) *Contributed property; cross-reference.* See §§ 1.704–3 and 1.704–3T for methods of making allocations that take into account precontribution appreciation or diminution in value of property contributed by a partner to a partnership.

* * * * *

Section 1.704–1T [Removed]

Par. 3. Section 1.704–1T is removed.

Par. 4. Section 1.704–3 is added to read as follows:

§ 1.704–3 Contributed property.

(a) *In general*—(1) *General principles.* The purpose of section 704(c) is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. Under section 704(c), a partnership must allocate income, gain, loss, and deduction with respect to property contributed by a partner to the partnership so as to take into account any variation between the adjusted tax basis of the property and its fair market value at the time of contribution. Notwithstanding any other provision of this section, the allocations must be made using a reasonable method that is consistent with the purpose of section 704(c). For this purpose, an allocation method includes the application of all of the rules of this section (e.g., aggregation rules). An allocation method is not necessarily unreasonable merely because another allocation method would result in a higher aggregate tax liability. Paragraphs (b), (c), and (d) of this section describe allocation methods that are generally reasonable. Other methods may be reasonable in appropriate circumstances. Nevertheless, in the absence of specific published guidance, it is not reasonable to use an allocation method in which the basis of property contributed to the partnership is increased (or decreased) to reflect built-in gain (or loss), or a method under which the partnership creates tax allocations of income, gain, loss, or deduction independent of allocations affecting book capital accounts. See § 1.704–3T(d). Paragraph (e) of this section contains special rules and exceptions.

(2) *Operating rules.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, section 704(c) and this section apply on a property-by-property basis. Therefore, in determining whether there is a disparity between adjusted tax basis and fair market value, the built-in gains and built-in losses on items of contributed property cannot be aggregated. A partnership may use different methods with respect to different items of contributed property, provided that the partnership and the partners consistently apply a single reasonable method for each item of contributed property and that the overall method or combination of methods are reasonable based on the facts and circumstances and consistent with the purpose of section 704(c). It may be unreasonable to use one method for appreciated property and another method for depreciated property. Similarly, it may be unreasonable to use the traditional method for built-in gain property contributed by a partner with a high marginal tax rate while using curative allocations for built-in gain property contributed by a partner with a low marginal tax rate.

(3) *Definitions*—(i) *Section 704(c) property.* Property contributed to a partnership is section 704(c) property if at the time of contribution its book value differs from the contributing partner's adjusted tax basis. For purposes of this section, book value is determined as contemplated by § 1.704–1(b). Therefore, book value is equal to fair market value at the time of contribution and is subsequently adjusted for cost recovery and other events that affect the basis of the property. For a partnership that maintains capital accounts in accordance with § 1.704–1(b)(2)(iv), the book value of property is initially the value used in determining the contributing partner's capital account under § 1.704–1(b)(2)(iv)(*d*), and is appropriately adjusted thereafter (e.g., for book cost recovery under §§ 1.704–1(b)(2)(iv)(*g*)(*3*) and 1.704–3T(d)(2) and other events that affect the basis of the property). A partnership that does not maintain capital accounts under § 1.704–1(b)(2)(iv) must comply with this section using a book capital account based on the same principles (i.e., a book capital account that reflects the fair market value of property at the time of contribution and that is subsequently adjusted for cost recovery and other events that affect the basis of the property).

(ii) *Built-in gain and built-in loss.* The built-in gain on section 704(c) property is the excess of the property's book value over the contributing partner's adjusted tax basis upon contribution. The built-in gain is thereafter reduced

by decreases in the difference between the property's book value and adjusted tax basis. The built-in loss on section 704(c) property is the excess of the contributing partner's adjusted tax basis over the property's book value upon contribution. The built-in loss is thereafter reduced by decreases in the difference between the property's adjusted tax basis and book value.

(4) *Accounts payable and other accrued but unpaid items.* Accounts payable and other accrued but unpaid items contributed by a partner using the cash receipts and disbursements method of accounting are treated as section 704(c) property for purposes of applying the rules of this section.

(5) *Other provisions of the Internal Revenue Code.* Section 704(c) and this section apply to a contribution of property to the partnership only if the contribution is governed by section 721, taking into account other provisions of the Internal Revenue Code. For example, to the extent that a transfer of property to a partnership is a sale under section 707, the transfer is not a contribution of property to which section 704(c) applies.

(6) *Other applications of section 704(c) principles*—(i) *Revaluations under section 704(b).* The principles of this section apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) (reverse section 704(c) allocations). Partnerships are not required to use the same allocation method for reverse section 704(c) allocations as for contributed property, even if at the time of revaluation the property is already subject to section 704(c) and paragraph (a) of this section. In addition, partnerships are not required to use the same allocation method for reverse section 704(c) allocations each time the partnership revalues its property. A partnership that makes allocations with respect to revalued property must use a reasonable method that is consistent with the purposes of section 704(b) and (c).

(ii) *Basis adjustments.* A partnership making adjustments under § 1.743–1(b) or 1.751–1(a)(2) must account for built-in gain or loss under section 704(c) in accordance with the principles of this section.

(7) *Transfers of a partnership interest.* If a contributing partner transfers a partnership interest, built-in gain or loss must be allocated to the transferee partner as it would have been allocated to the transferor partner. If the contributing partner transfers a portion of the partnership interest, the share of built-in gain or loss proportionate to the interest transferred must be allocated to the transferee partner.

(8) *Disposition of property in nonrecognition transaction.* If a partnership disposes of section 704(c) property in a nonrecognition transaction in which no gain or loss is recognized, the substituted basis property (within the meaning of section 7701(a)(42)) is treated as section 704(c) property with the same amount of built-in gain or loss as the section 704(c) property disposed of by the partnership. If gain or loss is recognized in such a transaction, appropriate adjustments must be made. The allocation method for the substituted basis property must be consistent with the allocation method chosen for the original property. If a partnership transfers an item of section 704(c) property together with other property to a corporation under section 351, in order to preserve that item's built-in gain or loss, the basis in the stock received in exchange for the section 704(c) property is determined as if each item of section 704(c) property had been the only property transferred to the corporation by the partnership.

(9) *Tiered partnerships.* If a partnership contributes section 704(c) property to a second partnership (the lower-tier partnership), or if a partner that has contributed section 704(c) property to a partnership contributes that partnership interest to a second partnership (the upper-tier partnership), the upper-tier partnership must allocate its distributive share of lower-tier partnership items with respect to that section 704(c) property in a manner that takes into account the contributing partner's remaining built-in gain or loss. Allocations made under this paragraph will be considered to be made in a manner that meets the requirements of § 1.704–1(b)(2)(iv)(*q*) (relating to capital account adjustments where guidance is lacking).

(10) *Anti-abuse rule.* An allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

(b) *Traditional method*—(1) *In general.* This paragraph (b) describes the traditional method of making section 704(c) allocations. In general, the traditional method requires that when the partnership has income, gain, loss, or deduction attributable to section 704(c) property, it must make appropriate allocations to the partners to avoid shifting the tax consequences of the built-in gain or loss. Under this rule, if the partnership sells section 704(c) property and recognizes gain or loss, built-in gain or loss on the property is allocated to the contributing partner. If the partnership sells a portion of, or an interest in, section 704(c) property, a proportionate part of the built-in gain or loss is allocated to the contributing partner. For section 704(c) property subject to amortization, depletion, depreciation, or other cost recovery, the allocation of deductions attributable to these items takes into account built-in gain or loss on the property. For example, tax allocations to the noncontributing partners of cost recovery deductions with respect to section 704(c) property generally must, to the extent possible, equal book allocations to those partners. However, the total income, gain, loss, or deduction allocated to the partners for a taxable year with respect to a property cannot exceed the total partnership income, gain, loss, or deduction with respect to that property for the taxable year (the ceiling rule). If a partnership has no property the allocations from which are limited by the ceiling rule, the traditional method is reasonable when used for all contributed property.

(2) *Examples.* The following examples illustrate the principles of the traditional method.

Example 1. Operation of the traditional method—(i) *Calculation of built-in gain on contribution.* A and B form partnership AB and agree that each will be allocated a 50 percent share of all partnership items and that AB will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. A contributes depreciable property with an adjusted tax basis of $4,000 and a book value of $10,000, and B contributes $10,000 cash. Under paragraph (a)(3) of this section, A has built-in gain of $6,000, the excess of the partnership's book value for the property ($10,000) over A's adjusted tax basis in the property at the time of contribution ($4,000).

(ii) *Allocation of tax depreciation.* The property is depreciated using the straight-line method over a 10-year recovery period. Because the property depreciates at an annual rate of 10 percent, B would have been entitled to a depreciation deduction of $500 per year for both book and tax purposes if the adjusted tax basis of the property equalled its fair market value at the time of contribution. Although each partner is allocated $500 of book depreciation per year, the partnership is allowed a tax depreciation deduction of only $400 per year (10 percent of $4,000). The partnership can allocate only $400 of tax depreciation under the ceiling rule of paragraph (b)(1) of this section, and it must

be allocated entirely to B. In AB's first year, the proceeds generated by the equipment exactly equal AB's operating expenses. At the end of that year, the book value of the property is $9,000 ($10,000 less the $1,000 book depreciation deduction), and the adjusted tax basis is $3,600 ($4,000 less the $400 tax depreciation deduction). A's built-in gain with respect to the property decreases to $5,400 ($9,000 book value less $3,600 adjusted tax basis). Also, at the end of AB's first year, A has a $9,500 book capital account and a $4,000 tax basis in A's partnership interest. B has a $9,500 book capital account and a $9,600 adjusted tax basis in B's partnership interest.

(iii) *Sale of the property.* If AB sells the property at the beginning of AB's second year for $9,000, AB realizes tax gain of $5,400 ($9,000, the amount realized, less the adjusted tax basis of $3,600). Under paragraph (b)(1) of this section, the entire $5,400 gain must be allocated to A because the property A contributed has that much built-in gain remaining. If AB sells the property at the beginning of AB's second year for $10,000, AB realizes tax gain of $6,400 ($10,000, the amount realized, less the adjusted tax basis of $3,600). Under paragraph (b)(1) of this section, only $5,400 of gain must be allocated to A to account for A's built-in gain. The remaining $1,000 of gain is allocated equally between A and B in accordance with the partnership agreement. If AB sells the property for less than the $9,000 book value, AB realizes tax gain of less than $5,400, and the entire gain must be allocated to A.

(iv) *Termination and liquidation of partnership.* If AB sells the property at the beginning of AB's second year for $9,000, and AB engages in no other transactions that year, A will recognize a gain of $5,400, and B will recognize no income or loss. A's adjusted tax basis for A's interest in AB will then be $9,400 ($4,000, A's original tax basis, increased by the gain of $5,400). B's adjusted tax basis for B's interest in AB will be $9,600 ($10,000, B's original tax basis, less the $400 depreciation deduction in the first partnership year). If the partnership then terminates and distributes its assets ($19,000 in cash) to A and B in proportion to their capital account balances, A will recognize a capital gain of $100 ($9,500, the amount distributed to A, less $9,400, the adjusted tax basis of A's interest). B will recognize a capital loss of $100 (the excess of B's adjusted tax basis, $9,600, over the amount received, $9,500).

Example 2. Unreasonable use of the traditional method—(i) *Facts.* C and D form partnership CD and agree that each will be allocated a 50 percent share of all partnership items and that CD will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. C contributes equipment with an adjusted tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although its remaining economic life is significantly longer. At the time of contribution, C has a built-in gain of $9,000 and the equipment is section 704(c) property. D contributes $10,000 of cash, which CD uses to buy securities. D has substantial net operating loss carryforwards that D anticipates will otherwise expire unused. Under § 1.704–1(b)(2)(iv)(*g*)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. CD sells the equipment during the second year for $10,000 and recognizes a $10,000 gain ($10,000, the amount realized, less the adjusted tax basis of $0).

(ii) *Unreasonable use of method*—(A) At the beginning of the second year, both the book value and adjusted tax basis of the equipment are $0. Therefore, there is no remaining built-in gain. The $10,000 gain on the sale of the equipment in the second year is allocated $5,000 each to C and D. The interaction of the partnership's one-year write-off of the entire book value of the equipment and the use of the traditional method results in a shift of $4,000 of the precontribution gain in the equipment from C to D (D's $5,000 share of CD's $10,000 gain, less the $1,000 tax depreciation deduction previously allocated to D).

(B) The traditional method is not reasonable under paragraph (a)(10) of this section because the contribution of property is made, and the traditional method is used, with a view to shifting a significant amount of taxable income to a partner with a low marginal tax rate and away from a partner with a high marginal tax rate.

(C) Under these facts, if the partnership agreement in effect for the year of contribution had provided that tax gain from the sale of the property (if any) would always be allocated first to C to offset the effect of the ceiling rule limitation, the allocation method would not violate the anti-abuse rule of paragraph (a)(10) of this section. See paragraph (c)(3) of this section. Under other facts, (for example, if the partnership holds multiple section 704(c) properties and either uses multiple allocation methods or uses a single allocation method where one or more of the properties are subject to the ceiling rule) the allocation to C may not be reasonable.

(c) *Traditional method with curative allocations*—(1) *In general.* To correct distortions created by the ceiling rule, a partnership using the traditional method under paragraph (b) of this section may make reasonable curative allocations to reduce or eliminate disparities between book and tax items of noncontributing partners. A curative allocation is an allocation of income, gain, loss, or deduction for tax purposes that differs from the partnership's allocation of the corresponding book item. For example, if a noncontributing partner is allocated less tax depreciation than book depreciation with respect to an item of section 704(c) property, the partnership may make a curative allocation to that partner of tax depreciation from another item of partnership property to make up the difference, notwithstanding that the corresponding book depreciation is allocated to the contributing partner. A partnership may limit its curative allocations to allocations of one or more particular tax items (e.g., only depreciation from a specific property or properties) even if the allocation of those available items does not offset fully the effect of the ceiling rule.

(2) *Consistency.* A partnership must be consistent in its application of curative allocations with respect to each item of section 704(c) property from year to year.

(3) *Reasonable curative allocations*—(i) *Amount.* A curative allocation is not reasonable to the extent it exceeds the amount necessary to offset the effect of the ceiling rule for the current taxable year or, in the case of a curative allocation upon disposition of the property, for prior taxable years.

(ii) *Timing.* The period of time over which the curative allocations are made is a factor in determining whether the allocations are reasonable. Notwithstanding paragraph (c)(3)(i) of this section, a partnership may make curative allocations in a taxable year to offset the effect of the ceiling rule for a prior taxable year if those allocations are made over a reasonable period of time, such as over the property's economic life, and are provided for under the partnership agreement in effect for the year of contribution. See paragraph (c)(4) *Example 3* (ii)(C) of this section.

(iii) *Type*—(A) *In general.* To be reasonable, a curative allocation of income, gain, loss, or deduction must be expected to have substantially the same effect on each partner's tax liability as the tax item limited by the ceiling rule. The expectation must exist at the time the section 704(c) property is obligated to be (or is) contributed to the partnership and the allocation with respect to that property becomes part of the partnership agreement. However, the expectation is tested at the time the allocation with respect to that property is actually made if the partnership agreement is not sufficiently specific as to the precise manner in which allocations are to be made with respect to that property. Under this paragraph (c), if the item limited by the ceiling rule is loss from the sale of property, a curative allocation of gain must be expected to have substantially the same effect as would an allocation to that partner of gain with respect to the sale of the property. If the item limited by the ceiling rule is depreciation or other cost recovery, a curative allocation of income to the contributing partner must be expected to have substantially the same effect as would an allocation to

that partner of partnership income with respect to the contributed property. For example, if depreciation deductions with respect to leased equipment contributed by a tax-exempt partner are limited by the ceiling rule, a curative allocation of dividend or interest income to that partner generally is not reasonable, although a curative allocation of depreciation deductions from other leased equipment to the noncontributing partner is reasonable. Similarly, under this rule, if depreciation deductions apportioned to foreign source income in a particular statutory grouping under section 904(d) are limited by the ceiling rule, a curative allocation of income from another statutory grouping to the contributing partner generally is not reasonable, although a curative allocation of income from the same statutory grouping and of the same character is reasonable.

(B) *Exception for allocation from disposition of contributed property.* If cost recovery has been limited by the ceiling rule, the general limitation on character does not apply to income from the disposition of contributed property subject to the ceiling rule, but only if properly provided for in the partnership agreement in effect for the year of contribution or revaluation. For example, if allocations of depreciation deductions to a noncontributing partner have been limited by the ceiling rule, a curative allocation to the contributing partner of gain from the sale of that property, if properly provided for in the partnership agreement, is reasonable for purposes of paragraph (c)(3)(iii)(A) of this section even if not of the same character.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Reasonable and unreasonable curative allocations—(i) *Facts.* E and F form partnership EF and agree that each will be allocated a 50 percent share of all partnership items and that EF will make allocations under section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. E contributes equipment with an adjusted tax basis of $4,000 and a book value of $10,000. The equipment has 10 years remaining on its cost recovery schedule and is depreciable using the straight-line method. At the time of contribution, E has a built-in gain of $6,000, and therefore, the equipment is section 704(c) property. F contributes $10,000 of cash, which EF uses to buy inventory for resale. In EF's first year, the revenue generated by the equipment equals EF's operating expenses. The equipment generates $1,000 of book depreciation and $400 of tax depreciation for each of 10 years. At the end of the first year EF sells all the inventory for $10,700, recognizing $700 of income. The partners anticipate that the inventory income will have substantially the same effect on their tax liabilities as income from E's contributed equipment. Under the traditional method of paragraph (b) of this section, E and F would each be allocated $350 of income from the sale of inventory for book and tax purposes and $500 of depreciation for book purposes. The $400 of tax depreciation would all be allocated to F. Thus, at the end of the first year, E and F's book and tax capital accounts would be as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	350	350	350	Sales income.
9,850	$4,350	9,850	9,950	

(ii) *Reasonable curative allocation.* Because the ceiling rule would cause a disparity of $100 between F's book and tax capital accounts, EF may properly allocate to E under paragraph (c) of this section an additional $100 of income from the sale of inventory for tax purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	450	350	250	Sales income.
9,850	4,450	9,850	9,850	

(iii) *Unreasonable curative allocation.* (A) The facts are the same as in paragraphs (i) and (ii) of this *Example 1*, except that E and F choose to allocate all the income from the sale of the inventory to E for tax purposes, although they share it equally for book purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	700	350	0	Sales income.
9,850	4,700	9,850	9,600	

(B) This curative allocation is not reasonable under paragraph (c)(3)(i) of this section because the allocation exceeds the amount necessary to offset the disparity caused by the ceiling rule.

Example 2 Curative allocations limited to depreciation—(i) *Facts.* G and H form partnership GH and agree that each will be

allocated a 50 percent share of all partnership items and that GH will make allocations under section 704(c) using the traditional method with curative allocations under paragraph (c) of this section, but only to the extent that the partnership has sufficient tax depreciation deductions. G contributes property G1, with an adjusted tax basis of $3,000 and a fair market value of $10,000, and H contributes property H1, with an adjusted tax basis of $6,000 and a fair market value of $10,000. Both properties have 5 years remaining on their cost recovery schedules and are depreciable using the straight-line method. At the time of contribution, G1 has a built-in gain of $7,000 and H1 has a built-in gain of $4,000, and therefore, both properties are section 704(c) property. G1 generates $600 of tax depreciation and $2,000 of book depreciation for each of five years. H1 generates $1,200 of tax depreciation and $2,000 of book depreciation for each of 5 years. In addition, the properties each generate $500 of operating income annually. G and H are each allocated $1,000 of book depreciation for each property. Under the traditional method of paragraph (b) of this section, G would be allocated $0 of tax depreciation for G1 and $1,000 for H1, and H would be allocated $600 of tax depreciation for G1 and $200 for H1. Thus, at the end of the first year, G and H's book and tax capital accounts would be as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$3,000	$10,000	$6,000	Initial contribution.
<1,000>	<0>	<1,000>	<600>	G1 depreciation.
<1,000>	<1,000>	<1,000>	<200>	H1 depreciation.
500	500	500	500	Operating income.
8,500	2,500	8,500	5,700	

(ii) *Curative allocations.* Under the traditional method, G is allocated more depreciation deductions than H, even though H contributed property with a smaller disparity reflected on GH's book and tax capital accounts. GH makes curative allocations to H of an additional $400 of tax depreciation each year, which reduces the disparities between G and H's book and tax capital accounts ratably each year. These allocations are reasonable provided the allocations meet the other requirements of this section. As a result of their agreement, at the end of the first year, G and H's capital accounts are as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$3,000	$10,000	$6,000	Initial contribution.
<1,000>	<0>	<1,000>	<600>	G1 depreciation.
<1,000>	<600>	<1,000>	<600>	H1 depreciation.
500	500	500	500	Operating income.
8,500	2,900	8,500	5,300	

Example 3. Unreasonable use of curative allocations—(i) *Facts.* 1J and K form partnership JK and agree that each will receive a 50 percent share of all partnership items and that JK will make allocations under section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. J contributes equipment with an adjusted tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although it has an estimated remaining economic life of 10 years. J has substantial net operating loss carryforwards that J anticipates will otherwise expire unused. At the time of contribution, J has a built-in gain of $9,000, and therefore, the equipment is section 704(c) property. K contributes $10,000 of cash, which JK uses to buy inventory for resale. In JK's first year, the revenues generated by the equipment exactly equal JK's operating expenses. Under § 1.704–1(b)(2)(iv)(g)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. In addition, at the end of the first year JK sells all of the inventory for $18,000, recognizing $8,000 of income. The partners anticipate that the inventory income will have substantially the same effect on their tax liabilities as income from J's contributed equipment. Under the traditional method of paragraph (b) of this section, J and K's book and tax capital accounts at the end of the first year would be as follows:

J		K		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
4,000	4,000	4,000	4,000	Sales income.
9,000	5,000	9,000	13,000	

(ii) *Unreasonable use of method.* (A) The use of curative allocations under these facts to offset immediately the full effect of the ceiling rule would result in the following book and tax capital accounts at the end of JK's first year:

J		K		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
4,000	8,000	4,000	0	Sales income.
9,000	9,000	9,000	9,000	

(B) This curative allocation is not reasonable under paragraph (a)(10) of this section because the contribution of property is made and the curative allocation method is used with a view to shifting a significant amount of partnership taxable income to a partner with a low marginal tax rate and away from a partner with a high marginal tax rate, within a period of time significantly shorter than the economic life of the property.

(C) The property has only one year remaining on its cost recovery schedule even though its economic life is considerably longer. Under these facts, if the partnership agreement had provided for curative allocations over a reasonable period of time, such as over the property's economic life, rather than over its remaining cost recovery period, the allocations would have been reasonable. See paragraph (c)(3)(ii) of this section. Thus, in this example, JK would make a curative allocation of $400 of sales income to J in the partnership's first year (10 percent of $4,000). J and K's book and tax capital accounts at the end of the first year would be as follows:

J		K		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
4,000	4,400	4,000	3,600	Sales income.
9,000	5,400	9,000	12,600	

(d) *Remedial allocation method.* [Reserved]

(e) *Exceptions and special rules*—(1) *Small disparities*—(i) *General rule.* If a partner contributes one or more items of property to a partnership within a single taxable year of the partnership, and the disparity between the book value of the property and the contributing partner's adjusted tax basis in the property is a small disparity, the partnership may—

(A) Use a reasonable section 704(c) method;

(B) Disregard the application of section 704(c) to the property; or

(C) Defer the application of section 704(c) to the property until the disposition of the property.

(ii) *Definition of small disparity.* A disparity between book value and adjusted tax basis is a small disparity if the book value of all properties contributed by one partner during the partnership taxable year does not differ from the adjusted tax basis by more than 15 percent of the adjusted tax basis, and the total gross disparity does not exceed $20,000.

(2) *Aggregation.* Each of the following types of property may be aggregated for purposes of making allocations under section 704(c) and this section if contributed by one partner during the partnership taxable year.

(i) *Depreciable property.* All property, other than real property, that is included in the same general asset account of the contributing partner and the partnership under section 168.

(ii) *Zero-basis property.* All property with a basis equal to zero, other than real property.

(iii) *Inventory.* For partnerships that do not use a specific identification method of accounting, each item of inventory, other than securities or similar investment interests (as defined in § 1.704–3T(e)(3)).

(iv) *Other aggregated property.* Types of property designated in guidance published in the Internal Revenue Bulletin.

(v) *Letter rulings.* Other property as permitted by the Commissioner in a letter ruling.

(3) *Securities partnerships.* [Reserved]

(f) *Effective date.* This section applies to property contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 1, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31004 Filed 12–21–93; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8501]

RIN 1545–AR74

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 704 of the Internal Revenue Code relating to the remedial allocation method with respect to property contributed by a partner to a partnership, and allocations with respect to securities and similar investments owned by a partnership. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Revenue Reconciliation Act of 1989. The temporary regulations affect partnerships and their partners and are necessary to provide guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 21, 1993.

FOR FURTHER INFORMATION CONTACT: David Edquist at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 704(c)(1)(A) and

704(c)(3) of the Internal Revenue Code (Code).

Background

Contributions to and distributions from partnerships are generally tax free under sections 721 and 731, respectively. Section 704(c) requires that income, gain, loss, and deduction with respect to property contributed to a partnership by a partner be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Similar principles apply to partnerships restating their capital accounts under § 1.704–1(b)(4)(i).

Final regulations under section 704(c)(1)(A) and 704(c)(3) were filed with the **Federal Register** on December 21, 1993. The final regulations reserve two sections: (1) The remedial allocation method, and (2) aggregation of securities and similar investments by securities partnerships for purposes of section 704 (b) and (c). These temporary regulations address those issues.

Explanation of Provisions

Remedial Allocation Method

The proposed regulations published by the IRS in the **Federal Register** on December 24, 1992 (FR 61345) (the original proposed regulations) included the deferred sale method as a reasonable allocation method. The IRS and Treasury included the deferred sale method in the original proposed regulations because it provided a method to eliminate the distortions created by the ceiling rule. In essence, the deferred sale method provided additional cost recovery deductions for the noncontributing partners, which were offset by deferred gain to the contributing partner. In addition, the method prevented the ceiling rule from creating distortions upon the sale of the contributed property due to post-contribution changes in value.

After considering the many comments received concerning the deferred sale method and upon further review by the IRS and Treasury, it was determined that the results of the deferred sale method in the original proposed regulations could be achieved using a less complex method. Therefore, the IRS and Treasury have included a revised deferred sale method referred to as the remedial allocation method in these temporary regulations. The remedial allocation method is being issued by temporary regulation because the IRS and Treasury believe that taxpayers should be permitted to use the remedial allocation method during the comment period. Use of the remedial allocation method is subject to the anti-abuse rule contained in the final regulations.

The remedial allocation method contained in these temporary regulations permits the use of remedial allocations to achieve results substantially similar to the results under the deferred sale method contained in the original proposed regulations without the complexity of that method. Remedial allocations are tax allocations of income or gain created by the partnership that are offset by tax allocations of loss or deduction created by the partnership. Remedial allocations are in addition to other allocations made by a partnership and have no effect on the partnership book capital accounts. Under the remedial allocation method of these temporary regulations, if the ceiling rule results in a book allocation to a noncontributing partner different from the corresponding tax allocation, the partnership makes a remedial allocation of income, gain, loss, or deduction to the noncontributing partner equal to the full amount of the limitation caused by the ceiling rule, and a simultaneous, offsetting remedial allocation of deduction, loss, gain, or income to the contributing partner.

The amount of book items allocated to each partner is determined in the same manner as under the deferred sale method of the original proposed regulations. Therefore, the ceiling rule amount is determined differently under the remedial allocation method of these temporary regulations than under the other allocation methods contained in the final regulations (which must use the rules of § 1.704–1(b)(2)(iv)(g)(3) to determine book cost recovery). Under the remedial allocation method, the portion of book basis in the property equal to the tax basis in the property at the time of contribution is recovered in the same manner as the tax basis (generally over the property's remaining recovery period under section 168(i)(7) or other applicable section of the Code). The remainder of the partnership's book basis in the property (the amount by which book basis exceeds adjusted tax basis) is recovered using any applicable recovery period and depreciation (or other cost recovery) method available to the partnership for newly-purchased property placed in service at the time of contribution.

A remedial allocation is reasonable only to the extent it equals the amount necessary to offset the effect of the ceiling rule for that taxable year and only if it has the same effect on each partner's tax liability as the item limited by the ceiling rule. Thus, if the item limited by the ceiling rule is depreciation or other cost recovery, the offsetting remedial allocation of income to the contributing partner must consist of the same type of income that the contributed property produces. Similarly, if the item limited by the ceiling rule is capital loss from the sale of contributed property, the offsetting remedial allocation to the contributing partner must be capital gain from the sale of that property.

In determining whether a remedial allocation of income has the same effect on each partner's tax liability as the item limited by the ceiling rule, all of the provisions of the Code apply as if the remedial allocation had actually been realized by the partnership. For example, assume a partner contributes to a partnership appreciated nondepreciable property that, if sold, would generate capital gain. The property thereafter declines in value so that the ceiling rule limits the amount of capital gain allocable to the contributing partner on a subsequent sale. The partnership must make a remedial allocation of capital gain to the contributing partner, and an equal offsetting remedial allocation of capital loss to the noncontributing partner. These allocations would be subject to all the rules normally applicable to capital gains and capital losses, as if the amounts had actually been realized by the partnership. As a further illustration of this principle, if the item limited by the ceiling rule is loss from the sale of stock of a controlled foreign corporation (CFC), section 1248 applies to the remedial allocation of income to the contributing partner as if it were gain from the sale of that property (provided that the requirements of section 1248 are otherwise satisfied). If a remedial allocation of gain to the contributing partner is characterized as dividend income pursuant to section 1248, other provisions of the Code apply. Further guidance may be published detailing the application of these rules to such transactions.

As noted above, remedial allocations are subject to the general anti-abuse rule of § 1.704–3(a)(10). For example, assume that a partnership holding contributed stock of a CFC causes the CFC to distribute dividends prior to the disposition of the CFC stock by the partnership, and the dividend income is properly allocated among the partners under section 704(b). If the contributing partner would have received a section 704(c) allocation of dividend income pursuant to section 1248 absent the dividend distribution but, as a result of the distribution, the contributing partner would receive a remedial allocation of capital gain, the anti-abuse

rule will apply if the contribution of CFC stock, the dividend distribution, and the remedial allocation are made with a view to reducing substantially the present value of the partners' aggregate tax liability.

In response to comments received on the original proposed regulations, the IRS will not require a partnership to use the remedial allocation method described in these temporary regulations if a partnership's allocation method is not reasonable. In the absence of specific published guidance, the method described in these temporary regulations is the only reasonable section 704(c) method using remedial allocations.

Securities Aggregation

In general, the final regulations under § 1.704–3(e)(2) provide that property may not be aggregated for purposes of making allocations under section 704(c). However, aggregation is permitted for certain specifically defined types of property. In addition, the final regulations state that the IRS and Treasury may provide in guidance published in the Internal Revenue Bulletin that other classes of items may be aggregated for purposes of section 704(c). Aggregation may also be permitted by letter ruling.

Reverse section 704(c) allocations are required with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues property pursuant to § 1.704–1(b)(2)(iv)(*f*). The IRS has received comments that the frequency of capital account restatements under § 1.704–1(b)(4)(i) and the number of partnership assets may make it impractical for securities partnerships to make reverse section 704(c) allocations on an asset-by-asset basis. The comments also maintain that permitting aggregation of securities when making reverse section 704(c) allocations does not significantly increase the potential of abusive allocations. After studying the issue, the IRS and Treasury agree that aggregation of securities should be permitted for certain securities partnerships when making reverse section 704(c) allocations. The temporary regulations provide only for aggregation of securities and similar investments for certain specifically defined partnerships. The IRS and Treasury will consider expanding the types of partnerships that are permitted to aggregate securities and similar investments after receiving comments from taxpayers, and will also consider expanding the type of property interests eligible for aggregation by those partnerships.

The temporary regulations provide that when making reverse section 704(c) allocations, it is generally reasonable for a securities partnership consistently to aggregate all gains and all losses from securities and similar investments. Gains must be aggregated separately from losses.

Securities Partnerships

The temporary regulations provide that for purposes of securities aggregation, a securities partnership is one that: (1) Is diversified as defined by section 851(b)(4), (2) has at least 90 percent of its non-cash assets in securities or similar investment interests described in § 1.704–1(b)(2)(iv)(*f*)(*5*)(*iii*) (consisting of stock, securities, commodities, options, warrants, futures, or similar investments that are readily tradable on an established securities market), (3) either is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), as a Management Company, or does not have 50 percent or more of its capital interests held at any time during the current partnership year by five or fewer persons, determined in accordance with section 707(b)(3), and (4) makes all of its allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner that provides management services to the partnership).

The IRS and Treasury recognize that there are other ways to define a securities partnership. For example, it is possible to define these partnerships in terms of the number of accounting entries that would be needed on an asset-by-asset method. The IRS and Treasury welcome comments on how to define a securities partnership.

Effective Date

These temporary regulations apply to contributions of property to a partnership and revaluations of securities and similar investments made on or after December 21, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is David Edquist of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAXES

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

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

Section 1.704–3T also issued under 26 U.S.C. 704(c). * * *

Par. 2. Section 1.704–3T is added to read as follows:

§ 1.704–3T Contributed property (temporary).

(a) through (c) [Reserved]

(d) *Remedial allocation method*—(1) *In general.* For contributions of property to a partnership and restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993, a partnership may adopt the remedial allocation method described in this paragraph by making reasonable remedial allocations to eliminate ceiling rule disparities between tax items of noncontributing partners and corresponding book items (as computed under paragraph (d)(2) of this section). Remedial allocations are tax allocations of income or gain that are offset by tax allocations of loss or deduction. These tax allocations are created by the partnership and have no effect on the partnership's book capital accounts. Under this method the partnership determines the amount of book items under paragraph (d)(2) of this section and determines the distributive share of these items under section 704(b). The partnership then makes tax allocations using the methodology set forth in § 1.704–3(b)(1) to avoid shifting the tax consequences of built-in gain or loss. If the ceiling rule (as defined in § 1.704–3(b)(1)) results in a book allocation to a noncontributing partner different from the corresponding tax allocation, the partnership makes a remedial allocation of income, gain,

loss, or deduction to the noncontributing partner equal to the full amount of the limitation caused by the ceiling rule, and a simultaneous, offsetting remedial allocation of deduction, loss, gain, or income to the contributing partner. In the absence of specific published guidance, the method described in this paragraph is the only reasonable section 704(c) method using remedial allocations.

(2) *Determining the amount of book items.* Under the remedial allocation method, for purposes of subchapter K the partnership determines the amount of book items in the following manner rather than under the rules of § 1.704–1(b)(2)(iv)(*g*)(*3*). The portion of the partnership's book basis in the property equal to the adjusted tax basis in the property at the time of contribution is recovered in the same manner as the adjusted tax basis in the property is recovered (generally, over the property's remaining recovery period under section 168(i)(7) or other applicable Internal Revenue Code section). The remainder of the partnership's book basis in the property (the amount by which book basis exceeds adjusted tax basis) is recovered using any applicable recovery period and depreciation (or other cost recovery) method available to the partnership for newly-purchased property placed in service at the time of contribution.

(3) *Type.* Remedial allocations of income, gain, loss, or deduction must have the same effect on each partner's tax liability as the tax item limited by the ceiling rule. This means that, when relevant, such attributes as the source, character, or (e.g., under section 469) nature of the item limited by the ceiling rule must be taken into account. Thus, if the item limited by the ceiling rule is loss from the sale of contributed property, the offsetting remedial allocation to the contributing partner must be gain from the sale of the property. If the item limited by the ceiling rule is depreciation or other cost recovery, the offsetting remedial allocation of income to the contributing partner must be of the same type of income that the contributed property produces.

(4) *Limitation on adjustments by the Internal Revenue Service.* In exercising its authority under § 1.704–3 to make adjustments if a partnership's allocation method is not reasonable, the Internal Revenue Service will not require a partnership to use the remedial allocation method described in this paragraph (d).

(5) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. Remedial allocation method—(i) *Facts.* L and M form partnership LM and agree that each will be allocated a 50 percent share of all partnership items. The partnership agreement provides that LM will make allocations under section 704(c) using the remedial allocation method under paragraph (d) of this section and that the straight-line method will be used to recover excess book basis. L contributes depreciable property with an adjusted tax basis of $4,000 and a fair market value of $10,000. The property is depreciable using the straight-line method with a 10-year recovery period and has 4 years remaining on its recovery period. M contributes $10,000, which the partnership uses to purchase land. Except for the depreciation deductions, LM's expenses equal its income in each year of the 10 years commencing with the year the partnership is formed.

(ii) *Years 1 through 4.* Under the remedial allocation method of paragraph (d) of this section, LM has book depreciation for each of its first 4 years of $1,600 [$1,000 ($4,000 tax basis divided by the 4-year remaining recovery period) plus $600 ($6,000 excess of book value over tax basis, divided by the *new* ten-year recovery period)]. Under the partnership agreement, L and M are each allocated 50 percent ($800) of the book depreciation. M is allocated $800 of tax depreciation and L is allocated the remaining $200 of tax depreciation ($1,000 – $800). See paragraph (d)(1) of this section. No remedial allocations are made because the ceiling rule does not result in a book allocation of depreciation to M different from the tax allocation. The allocations result in capital accounts at the end of LM's first 4 years as follows:

L		M		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<3,200>	<800>	<3,200>	<3,200>	Depreciation.
6,800	3,200	6,800	6,800	

(iii) *Subsequent Years.* (A) For each of years 5 through 10, LM has $600 of book depreciation ($6,000 excess of initial book value over adjusted tax basis divided by the 10-year recovery period that commenced in year 1), but no tax depreciation. Under the partnership agreement, the $600 of book depreciation is allocated equally to L and M. Because of the application of the ceiling rule in year 5, M would be allocated $300 of book depreciation, but no tax depreciation. Thus, at the end of LM's fifth year L and M's book and tax capital accounts would be as follows:

L		M		
Book	Tax	Book	Tax	
$6,800	$3,200	$6,800	$6,800	End of year 4.
<300>	.....	<300>	.....	Depreciation.
6,500	3,200	6,500	6,800	

(B) Because the ceiling rule would cause an annual disparity of $300 between M's book and tax capital accounts, LM must make remedial allocations of $300 of tax depreciation deductions to M under the remedial allocation method, for each of years 5 through 10. LM must also make offsetting remedial tax allocations to L of $300 of income, which must be of the same type as income from the property. At the end of year 5, LM's capital accounts are as follows:

L		M		
Book	Tax	Book	Tax	
$6,800	$3,200	$6,800	$6,800	End of year 4.
<300>	.....	<300>	.....	Depreciation.

L		M		
Book	Tax	Book	Tax	
	300	.....	<300>	Remedial allocations.
6,500	3,500	6,500	6,500	

(C) At the end of year 10, LM's capital accounts are as follows:

L		M		
Book	Tax	Book	Tax	
$6,500	$3,500	$6,500	$6,500	End of year 5.
<1,500>	.....	<1,500>	.....	Depreciation.
	1,500	.....	<1,500>	Remedial allocations.
5,000	5,000	5,000	5,000	

Example 2. Remedial allocations on sale—(i) *Facts.* N and P form partnership NP and agree that each will be allocated a 50 percent share of all partnership items and that NP will make allocations under section 704(c) using the remedial allocation method under paragraph (d) of this section. N contributes Blackacre (land) with an adjusted tax basis of $4,000 and a book value of $10,000. Because N has a built-in gain of $6,000, Blackacre is section 704(c) property. P contributes Whiteacre (land) with an adjusted tax basis and book value of $10,000. At the end of NP's first year, NP sells Blackacre to Q for $9,000 and recognizes a capital gain of $5,000 ($9,000 amount realized, less $4,000 tax basis) and a book loss of $1,000 ($9,000 amount realized less $10,000 book basis). NP has no other items of income, gain, loss, or deduction. If the ceiling rule were applied, N would be allocated the entire $5,000 of tax gain and N and P would each be allocated $500 of book loss. Thus, at the end of NP's first year N and P's book and tax capital accounts would be as follows:

N		P		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	5,000	<500>	.....	Sale of Blackacre.
9,500	9,000	9,500	10,000	

(ii) *Remedial allocation.* Because the ceiling rule would cause a disparity of $500 between P's book and tax capital accounts, NP must make a remedial allocation of $500 of capital loss to P under the remedial allocation method, and an offsetting remedial allocation to N of an additional $500 of capital gain. These allocations result in capital accounts at the beginning of NP's second year as follows:

N		P		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	5,000	<500>	.....	Sale of Blackacre.
	500	.....	<500>	Remedial allocations.
9,500	9,500	9,500	9,500	

(e) (1) and (2) [Reserved]

(3) *Special aggregation rule for securities partnerships*—(i) *General rule.* The frequency of capital account restatements under § 1.704–1(b)(4)(i) and the number of partnership assets may make it impractical for securities partnerships to make reverse section 704(c) allocations on an asset-by-asset basis. Therefore, when making reverse section 704(c) allocations with respect to restatements made on or after December 21, 1993, it is generally reasonable for a securities partnership consistently to aggregate all gains and all losses from securities and similar investments (as defined in § 1.704–1(b)(2)(iv)(*f*)(5)(*iii*)). Gains must be aggregated separately from losses.

(ii) *Securities partnership.* For purposes of paragraph (e)(3)(i) of this section, a securities partnership is one that—

(A) If it were a domestic corporation would satisfy the requirements of section 851(b)(4);

(B) On each revaluation date, holds assets described in § 1.704–1(b)(2)(iv)(*f*)(5)(*iii*) that constitute at least 90 percent of the fair market value of its non-cash assets;

(C) Either is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), as a Management Company, or does not have 50 percent or more of its capital interests held at any time during the current partnership taxable year by five or fewer persons, determined in accordance with section 707(b)(3); and

(D) Makes all of its book allocations in proportion to the partners' relative book capital accounts (except that the partnership may make reasonable special allocations to a partner that provides management services to the partnership).

(iii) *Letter rulings.* The Commissioner may, by letter ruling, permit partnerships not meeting the requirements of this paragraph (e)(3) to

aggregate assets when making reverse section 704(c) allocations.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 1, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93-31005 Filed 12-21-93; 8:45 am]

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26 CFR Part 1

[TD 8502]

RIN 1545-AR57

Reissuance of Mortgage Credit Certificates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the reissuance of mortgage credit certificates. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide guidance to issuers and holders of mortgage credit certificates. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective December 22, 1993.

For dates of applicability of the temporary regulations, see the Explanation of Provisions in the **SUPPLEMENTARY INFORMATION** portion of this document.

FOR FURTHER INFORMATION CONTACT: L. Michael Wachtel, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds temporary regulations to the Income Tax Regulations (26 CFR part 1) to provide guidance under section 25(e)(4) of the Internal Revenue Code (Code) with respect to the reissuance of mortgage credit certificates. Section 25(e)(4) was added to the Code by section 612 of the Tax Reform Act of 1984, 98 Stat. 494, 905.

Explanation of Provisions

Mortgage credit certificates are an alternative to qualified mortgage bonds. Section 143 of the Code permits the issuance of qualified mortgage bonds to provide assistance in financing the purchase of owner-occupied residences when certain income, purchase price, and other requirements are met. An issuer authorized to issue qualified mortgage bonds under section 143 may, instead, elect under section 25 to issue mortgage credit certificates. Under a qualified mortgage credit certificate program, the purchaser of a residence obtains conventional mortgage financing and is permitted a tax credit based on the interest paid on that mortgage.

Section 25 incorporates by reference certain requirements set out for qualified mortgage bonds in section 143. One of those is the requirement in section 143(i)(1) that no part of the proceeds of such an issue is to be used to acquire or replace existing mortgages; thus, proceeds from qualified mortgage bonds cannot be used to refinance home mortgages.

Section 25(e)(4), however, authorizes regulations to permit the reissuance of mortgage credit certificates under conditions designed to prevent any increase in the credit allowable to the certificate holder. Under the authority of section 25(e)(4), these temporary regulations allow the reissuance of mortgage credit certificates in connection with the refinancing of indebtedness to which an existing certificate applies. The regulations require that the reissued certificate be, in effect, a continuation of the existing certificate (with new financing) and that there be no increase in the amount of the tax credit.

These regulations apply to reissuances of certificates with respect to certain past refinancings as well as current or future refinancings of home mortgages. A certificate must be reissued on or after December 22, 1993, and within 1 year after the refinancing. A reissued certificate is effective as of the date of the mortgage refinancing. To the extent otherwise permitted, the holder of a reissued certificate may file an amended federal income tax return to claim credits for the period from the date of refinancing.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is L. Michael Wachtel, Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.25-1T—1.25-8T also issued under 26 U.S.C. 25. * * *

Par. 2. Section 1.25-3T is amended as follows:

1. Paragraph (g)(1)(iii) is added.
2. Paragraph (p) is added.
3. These added provisions read as follows:

§ 1.25-3T Qualified mortgage credit certificate (Temporary).

* * * * *

(g) * * * (1) * * *

(iii) *Reissued certificate exception.* See paragraph (p) of this section for rules regarding the exception in the case of refinancing existing mortgages.

* * * * *

(p) *Reissued certificates for certain refinancings*—(1) *In general.* If the issuer of a qualified mortgage credit certificate reissues a certificate in place of an existing mortgage credit certificate to the holder of that existing certificate, the reissued certificate is treated as satisfying the requirements of this section. The period for which the reissued certificate is in effect begins with the date of the refinancing (that is, the date on which the closing agreement is signed).

(2) *Meaning of existing certificate.* For purposes of this paragraph (p), a certificate is an existing certificate only if it satisfies the requirements of this section. An existing certificate may be the original certificate, a certificate issued to a transferee under paragraph (h)(2)(ii) of this section, or a certificate previously reissued under this paragraph (p).

(3) *Limitations on reissued certificate.* An issuer may reissue a mortgage credit certificate only if all of the following requirements are satisfied:

(i) The certificate is reissued to the holder of an existing certificate with respect to the same property to which the existing certificate relates.

(ii) The reissued certificate entirely replaces the existing certificate (that is, the holder cannot retain the existing certificate with respect to any portion of the outstanding balance of the certified mortgage indebtedness specified on the existing certificate).

(iii) The certified mortgage indebtedness specified on the reissued certificate does not exceed the outstanding balance of the certified mortgage indebtedness specified on the existing certificate.

(iv) The reissued certificate does not increase the certificate credit rate specified in the existing certificate.

(v) The reissued certificate does not result in an increase in the credit that would otherwise have been allowable to the holder under the existing certificate for any taxable year.

(vi) The issuer reissues the certificate on or after December 22, 1993, but not later than the date that is 1 year after the date of the refinancing.

(4) *Example.* The following example illustrates the application of paragraph (p)(3)(v) of this section.

Example. A holder of an existing certificate that meets the requirements of this section seeks to refinance the property to which the certificate relates. The final payment on the holder's existing mortgage is due on December 31, 2000; the final payment on the new mortgage would not be due until January 31, 2004. The holder requests that the issuer provide to the holder a reissued mortgage credit certificate in place of the existing certificate. The requested certificate would have the same certificate credit rate as the existing certificate. For each calendar year through the year 2000, the credit that would be allowable to the holder with respect to the new mortgage under the requested certificate would not exceed the credit allowable for that year under the existing certificate. The requested certificate, however, would allow the holder credits for the years 2001 through 2004, years for which, due to the earlier scheduled retirement of the existing mortgage, no credit would be allowable under the existing certificate. Under paragraph (p)(3)(v) of this section, the issuer may not reissue the certificate as requested because, under the existing certificate, no credit would be allowable for the years 2001 through 2004. The issuer may, however, provide a reissued certificate that limits the amount of the credit allowable in each year to the amount allowable under the existing certificate; for example, the reissued certificate could expire on December 31, 2000.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 1, 1993.

Samuel Y. Sessions,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93-31009 Filed 12-21-93; 8:45 am]

BILLING CODE 4830-01-U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Chapter III

[Docket No. RM 93-12]

Copyright Royalty Tribunal; Transfer and Adoption of Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress, pursuant to the Copyright Royalty Tribunal Reform Act of 1993, is adopting on an interim basis the rules and regulations of the now defunct Tribunal found in 37 CFR chapter III. The Office is making only technical changes to those rules and regulations and will conduct a thorough review and revision as part of a future rulemaking.

EFFECTIVE DATE: December 17, 1993.

FOR FURTHER INFORMATION: William Roberts, Senior Attorney, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION:

On December 17, 1993, the President signed into law the Copyright Royalty Tribunal Reform Act of 1993 ("Reform Act"). Pub. L. No. 103-198. Effective immediately upon enactment, the Reform Act amends the Copyright Act, 17 U.S.C., by eliminating the Copyright Royalty Tribunal and transferring its responsibilities and duties to ad hoc copyright arbitration royalty panels, to be administered by the Library of Congress and the Copyright Office. The copyright arbitration royalty panels will be convened by the Librarian of Congress for limited times for the purpose of adjusting rates and distributing royalties collected pursuant to the compulsory licenses of the Copyright Act. *See* 17 U.S.C. 111, 115, 116, 118, 119 and chapter 10.

Although the Reform Act eliminates the Copyright Royalty Tribunal, the Librarian of Congress is expressly directed to adopt immediately the rules and regulations of the Tribunal in their entirety. Those regulations are to remain in effect unless and until the Librarian adopts supplemental or superseding regulations in accordance with the provisions of the Administrative Procedure Act (APA). The Reform Act thereby preserves the Tribunal's rules and regulations from extinction, while granting the Librarian express authority to make future changes.

Complete and immediate adoption of chapter III of title 37 of the Code of Federal Regulations presents certain problems. The change from a single autonomous Tribunal to a system of ad hoc copyright arbitration royalty panels administered by the Library of Congress and the Copyright Office antiquates and eliminates the need for many of the Tribunal's regulations, while at the same time requiring the adoption of various new rules tailored to the new system. It is plainly obvious that a thorough examination and revision of the Tribunal's former rules must be undertaken, as permitted by the Reform Act, in accordance with the rulemaking procedures of the APA. The time required to complete such a rulemaking, however, precludes the possibility of adopting a revision concurrent with the enactment of the Reform Act. Nevertheless, the Reform Act requires the Librarian to adopt the rules and regulations of the Tribunal on the date of enactment "unless and until" they are revised or supplanted by a future rulemaking.

Therefore, under the general rulemaking authority of the Copyright Act, 17 U.S.C. 702, and the specific authority of 17 U.S.C. 802(d), the Copyright Office of the Library of Congress formally adopts the rules and regulations of chapter III of title 37 of the Code of Federal Regulations on an interim basis. It is the intention of the Copyright Office to initiate as soon as possible a rulemaking proceeding to revise these rules and regulations to fully satisfy the requirements of the Reform Act. Until such time, however, the Copyright Office is today making only nonsubstantive technical amendments to the rules and regulations of chapter III of title 37 of the Code of Federal Regulations to conform with procedural requirements.

First, the Copyright Office is renaming the title of chapter III by deleting "Copyright Royalty Tribunal" and inserting "Copyright Office, Library of Congress", as well as changing the authority citation for each part of chapter III. Second, the Office is deleting the reference to the "Copyright Royalty Tribunal" or "Tribunal", including possessives, and replacing it with "copyright arbitration royalty panel and/or Librarian of Congress".

The use of the broad phrase "copyright arbitration royalty panel and/or Librarian of Congress" is necessary at this time since the Tribunal's former duties are split between the panels and the Librarian. Identification of the specific authority in each instance would require a substantial revision of the Tribunal's former regulations, which is outside the scope of today's proceeding. The Copyright Office will address the division of authority in its future rulemaking; today's action is required to eliminate reference to the now defunct Tribunal. Third, the Office is deleting the reference to "Chairman" each place it appears in chapter III, and replacing it with "chairperson" to denote the chairperson of a copyright arbitration royalty panel. Finally, the Office is amending §301.2 to delete the Tribunal's address and inserting the appropriate mailing address at the Copyright Office.

Interim Regulations

In consideration of the foregoing, the Copyright Office of the Library of Congress, under its authority in 17 U.S.C. 802(d), adopts the rules and regulations set forth in chapter III of title 37 of the Code of Federal regulations with the following amendments:

1. The heading for chapter III is revised to read as follows:

Chapter III—Copyright Office, Library of Congress

2. The heading for part 301 is revised to read as follows:

Part 301—Copyright Arbitration Royalty Panel Rules of Procedure

Parts 301 through 311 [Amended]

3. The authority citation for parts 301 through 311 is revised to read as follows:

Authority: 17 U.S.C. 702, 802.

4. The term "Copyright Royalty Tribunal" is revised each place it appears in chapter III to read "copyright arbitration royalty panel and/or Librarian of Congress". "Copyright" is capitalized when the term appears at the beginning of a sentence.

5. The term "Tribunal" is revised each place it appears in chapter III to read "copyright arbitration royalty panel and/or Librarian of Congress". "Copyright" is capitalized when the term appears at the beginning of a sentence.

6. The term "Tribunal's" is revised each place it appears in chapter III to read "copyright arbitration royalty panel's and/or Librarian of Congress's". "Copyright" is capitalized when the term appears at the beginning of a sentence.

7. The term "Chairman" is revised each place it appears in chapter III to read "chairperson". "Chairperson" is capitalized when the term appears at the beginning of a sentence.

8. The term "Chairman's" is revised each place it appears in chapter III to read "chairperson's". "Chairperson's" is capitalized when the term appears at the beginning of a sentence.

9. Section 301.2 of chapter III is revised to read as follows:

§ 301.2 Official address and information.

The official address for all information, matters and proceedings under this chapter is Copyright Office, Copyright Arbitration Royalty Panels, Library of Congress, Washington DC 20557. Telephone (202) 707-8150.

Barbara Ringer,
Acting Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.

[FR Doc. 93-31324 Filed 12-20-93; 10:16 am]
BILLING CODE 1410-08-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 21

RIN 2900-AG77

Veterans Education; Veterans Job Training Act

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: VA (Department of Veterans Affairs) is removing all regulations which govern payments under VJTA (Veterans Job Training Act). VJTA contains a "sunset" provision which has passed. There no longer is anyone training under the Act nor are any payments being made under the Act. This will serve to remove unnecessary regulations from the Code of Federal Regulations.

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-233-2092.

SUPPLEMENTARY INFORMATION: VJTA was a program of job training designed to assist veterans of the Korean Conflict and the Vietnam Era in obtaining employment through training for employment in stable and permanent positions that involve significant training. VA made payments to employers who employed and trained eligible veterans in these jobs. The payments assisted employers in defraying the costs of necessary training.

As amended, VJTA provided that no payments could be made for a job training program which began after March 31, 1990. Since the longest training program for which benefits were payable under VJTA was 15 months long, this meant that the last training for which payments could be made under VJTA took place on June 30, 1991. Furthermore, VA provided by regulation that payments would not be made for any claim submitted by an employer which VA received after September 30, 1993. Since no one is training under VJTA, and no employer is receiving payments under VJTA, there is no longer any need for regulations governing that program. Consequently, VA is removing them.

Normally, VA publishes for notice and comment any amendments to the Code of Federal Regulations. However, the removal of these regulations are technical in nature. As is explained above, no one is receiving payments for training conducted under this program. Hence, VA is removing them without providing for comment period.

The Secretary of Veterans Affairs has certified that removal of these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the removal of these regulations, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Under VJTA payments were made to some small entities. Nevertheless, this certification can be made because VJTA itself provides that veterans may no longer train under this program. Even if these regulations were left in place no payments could be made. Hence, removal of these regulations will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by this removal.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping

requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 22, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 2; part 21, subparts D and F-1 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

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

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

§ 2.66a [Removed and Reserved]

2. Section 2.66a is removed and reserved.

§ 2.99 [Removed and Reserved]

3. Section 2.99 is removed and reserved.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

4. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.4135 [Amended]

5. In § 21.4135 paragraph (y) is removed and reserved.

Subpart F-1—Veterans' Job Training [Removed and Reserved]

6. Subpart F-1 is removed and reserved.

[FR Doc. 93-31201 Filed 12-21-93; 8:45 am]

BILLING CODE 8320-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL-4816-9]

Acid Rain Program: Announcement of Open Meeting on Quarterly Electronic and Magnetic Data Reporting for the CEM Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Title IV of the Clean Air Act (the Act) as amended November 15, 1990, requires the Environmental Protection Agency to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. To implement this statutory mandate, the Acid Rain Program relies on three basic components: the acid rain permit, the market-based allowance system, and continuous emissions monitoring (CEM). The CEM component is critical to provide accurate emissions measurements that ensure source compliance with the reductions mandated under the Act. The CEM regulations, promulgated in the **Federal Register** on January 11, 1993, require electric utilities to submit regular quarterly emissions reports from their certified monitoring systems. The Environmental Protection Agency will hold a meeting to discuss the procedures for electronic data reporting and data processing procedures being developed to implement the reporting provisions contained in the CEM Rule (40 CFR part 75). Data acquisition and handling system vendors, representatives from affected utilities, CEM manufacturers, and other interested parties are encouraged to attend. Utility information system and data processing staff may particularly benefit from this discussion. There is no fee for attendance, however, pre-registration by telephone facsimile is required.

DATES: Two meeting sessions will be held, the first on Tuesday, January 11, 1994, from 1 pm until 5 pm, and the second on Wednesday, January 12, 1994 from 1 pm until 5 pm.

A letter stating the attenders' names, addresses, telephone numbers, meeting session desired and affiliation should be sent by telephone facsimile by Friday, January 7, 1994 to Doris Price, Chief of Technology and Information Systems Section, USEPA/OAR/ARD/SAB at 202-233-9595.

ADDRESSES: Both meeting sessions will be held in the auditorium located at the Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Doris Price, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202)-233-9180.

SUPPLEMENTARY INFORMATION: Attendees must pre-register by telephone facsimile by Friday, January 7, 1993, for one of the two meeting sessions (identical material will be presented in each session). Due to space limitations, no more than 110 pre-registrants will be accepted for each session, and no more than two persons from each organization should pre-register. Seats will be provided for repeat participants (or for those who have not pre-registered) on a first-come, first-served basis.

Dated: December 9, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93-31096 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. 7591]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by

publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program:			
Iowa: Dickinson County, unincorporated areas	190864	November 1, 1993	May 10, 1977.
Kansas: Finney County, unincorporated areas	200099	November 12, 1993	February 28, 1978.
Iowa:			
Boone County, unincorporated areas	190846	November 9, 1993	May 9, 1978.
Fenton, city of, Kossuth County	190437	.....do	November 19, 1975.
Guthrie County, unincorporated areas	190871	.....do	August 23, 1977.
Harpers Ferry, city of, Allamakee County	190316	November 19, 1993	October 29, 1976.
New Eligibles—Regular Program:			
California:			
Loyalton, city of, Sierra County	060361	November 10, 1993	September 1, 1988.
Sierra County, unincorporated areas	060630	November 12, 1993	September 1, 1988.
Reinstatements—Regular Program:			
Pennsylvania: Buckingham, township of, Wayne County	422159	May 12, 1975; Emerg August 19, 1985; Reg August 16, 1993; Susp November 1, 1993; Rein	August 16, 1993.
Reinstatements—Regular Program:			
Maine: Manchester, town of, Kennebec County	230239	May 30, 1975; Emerg October 15, 1980; October 15, 1980; November 22, 1993;	October 15, 1980.
Pennsylvania: Hector, township of, Potter County	421980	June 9, 1975; Emerg December 1, 1986; Reg November 17, 1993; Susp November 22, 1993; Rein	December 1, 1986.
Regular Program Conversions:			
Region III:			
West Virginia: Pocahontas County, unincorporated areas	540283	November 3, 1993; Suspension Withdrawn	October 17, 1989.
Region V:			
Wisconsin: Pierce County, unincorporated area	555571	.....do	November 3, 1993.
Region VI:			
Arkansas: Little Rock, city of, Pulaski County	050181	.....do	November 3, 1993.
Region IX:			
California:			
Mission Viejo, city of, Orange County	060735	.....do	November 3, 1993.
Orange, city of, Orange County	060228	.....do	November 3, 1993.
Orange County, unincorporated areas	060212	.....do	November 3, 1993.
San Juan Capistrano, city of, Orange County	060231	.....do	November 3, 1993.
Region I:			
Connecticut: Stamford, city of, Fairfield County	090015	November 17, 1993; Suspension Withdrawn	November 17, 1993.

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Rhode Island: Johnston, town of, Providence County	440018	do	November 17, 1993.
Region III:			
Pennsylvania:			
Birdsboro, borough of, Berks County	420127	do	December 18, 1979.
Hector, township of, Potter County	421980	do	December 1, 1986.
Menno, township of, Miffin County	421881	do	June 1, 1987.
Warwick, township of, Chester County	421494	do	March 1, 1984.
Region VIII:			
Colorado: Larimer County, unincorporated areas	080101	do	November 17, 1993.

Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 13, 1993.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-31237 Filed 12-21-93; 8:45 am]

BILLING CODE 6718-21-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93-218; DA 93-1477]

Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules regarding listing of major television markets, to change the designation of the Little Rock, Arkansas television market to include the community of Clearwater Florida. This action, taken at the request of Christian Television Corporation, Inc., licensee of television station WCLF(TV), Channel 22 (Independent), Clearwater, Florida, amends the rules to designate the subject market as the Tampa-St. Petersburg-Clearwater, Florida, television market. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 93-218, adopted December 6, 1993, and released December 15, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

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

PART 76—CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 154, 303.

2. Section 76.51 is amended by revising paragraph (a)(28) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(28) Tampa-St. Petersburg-Clearwater, Florida.

* * * * *

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-31194 Filed 12-21-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-207; DA 93-1444]

Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends the listing of major television markets, to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California, television market to include the community of Riverside, California. This action, taken at the request of Fouce Amusement Enterprises, Inc., licensee of television station KRCA, Channel 62 (Independent), Riverside, California, and after evaluation of the comments filed in this proceeding, amends the rules to designate the subject market as the Los Angeles-San Bernardino-Corona-Fontana-Riverside, California, television market. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-207, adopted November 29, 1993, and released December 7, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 154, 303.

2. Section 76.51 is amended by revising paragraph (a)(2) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(2) Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.

* * * * *

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-31132 Filed 12-21-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 87

[FCC 93-505]

Requirements for Remote Communications Outlets and Radionavigation Land Test Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order to make additional unicom frequencies available for unicom stations at airports with remote communications outlets (RCOs) and to clarify the type acceptance requirements for radionavigation land test stations. This action is in response to a request from the Federal Aviation Administration and inquiries that the Commission has received regarding type acceptance requirements. The use of additional unicom frequencies will improve efficiency of airport operations.

EFFECTIVE DATE: December 22, 1993.

FOR FURTHER INFORMATION CONTACT: George Dillon, (202) 632-7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 93-505, adopted November 19, 1993, and released December 10, 1993. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, telephone (202) 857-3800.

Summary of Order

1. This Order adopts changes to part 87 of the Commission's Rules, 47 CFR part 87, concerning the requirements for aeronautical advisory stations (unicoms) located at airports with control tower Remote Communications Outlets (RCOs) and the type acceptance requirements for radionavigation land test stations. This action is a result of a request by the Federal Aviation Administration (FAA) regarding RCOs and inquiries that the Commission has received regarding the type acceptance requirements for radionavigation land test stations. Additionally, this Order makes several minor, editorial amendments to part 87.

2. Section 1.412(c) of the Commission's Rules, 47 CFR 1.412(c), provides that rule changes may be adopted without prior notice where the Commission for good cause finds that notice and comment procedures are unnecessary, so long as the basis for the good cause finding is published with the rule changes. Section 1.412(c) of the Rules reflects the requirements contained in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

3. We find that a notice and comment rule making proceeding in this matter is unnecessary. The rule changes are minor and non-controversial and the public is not likely to be interested in them. Therefore we find for good cause that compliance with the notice and comment procedure of the APA is unnecessary. See 5 U.S.C. 553(b)(B). In addition because the amendments will promote increased safety and efficiency in the aviation service, we find good cause to make them effective immediately upon publication in the **Federal Register**. See 5 U.S.C. 553(d).

4. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and the Regulatory Flexibility Act and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase burden hours imposed on the public; nor will they have a significant impact on a substantial number of small entities.

5. Accordingly, it is ordered that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a), part 87 of the Commission's Rules, 47 CFR part 87 is amended as set forth below, effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 87

Aviation, Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rule

Title 47 of the Code of Federal Regulations, part 87, is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 87.139 is amended by revising paragraph (d) and the table in paragraph (i)(1); and by adding a new sentence at the beginning of paragraph (i) introductory text and a new sentence at the end of paragraph (i)(4) to read as follows:

§ 87.139 Emission limitations.

* * * * *

(d) Except for telemetry in the 1435–1535 MHz band, when the frequency is bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least 43+10 $\log_{10}$ pY dB.

* * * * *

(i) In case of conflict with other provisions of § 87.139, the provisions of this paragraph shall govern for aircraft earth stations. * * *

(i)(1) * * *

Frequency (MHz)	Attenuation (dB) *
.005–1559	83 or (65+10 $\log_{10}$ pY), whichever is greater.
1559–18000 ..	55 or (37+10 $\log_{10}$ pY) **, whichever is greater * * *
* * * * *	

(4) * * * The mask shall be defined by drawing straight lines through the above points.

3. Section 87.145 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d)(5) to read as follows:

§ 87.145 Acceptability of transmitters for licensing.

* * * * *

(b) Each transmitter must be type accepted for use in these services, except as listed in paragraph (d) of this section. However, aircraft stations which transmit on maritime mobile frequencies must use transmitters type accepted for use in ship stations in accordance with part 80 of this chapter. Type acceptance under part 80 is not required for aircraft earth stations transmitting on maritime mobile-satellite frequencies. Such stations must be type accepted under part 87.

(c) Some radio equipment installed on air carrier aircraft must meet the requirements of the Commission and the requirements of the FAA. The FAA requirements may be obtained from the FAA, Aircraft Maintenance Division, 800 Independence Ave., SW., Washington, DC 20591.

(d) * * *

(5) Signal generators when used as radionavigation land test stations (MTF).

* * * * *

4. Section 87.147 is amended by revising the first sentence of paragraph (b), paragraph (d) introductory text, and the third sentence of paragraph (d)(2) to read as follows:

§ 87.147 Authorization of equipment.

* * * * *

(b) ELTs manufactured after October 1, 1988, must meet the output power characteristics contained in § 87.141(i) when tested in accordance with the Signal Enhancement Test contained in subpart N, part 2 of this chapter. * * *

* * * * *

(d) An applicant for type acceptance of equipment intended for transmission in any of the frequency bands listed in paragraph (d)(3) of this section must notify the FAA of the filing of a type acceptance application. The letter of notification must be mailed to: FAA, Spectrum Engineering Division, 800 Independence Ave. SW., Washington, DC 20591 no later than the date of filing of the application with the Commission.

* * * * *

(2) * * * If the FAA objects to the application for equipment authorization, it should mail its objection with a showing that the equipment is incompatible with the National Airspace System to: Office of Engineering and Technology—Laurel Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd., Columbia, MD 21046. * * *

* * * * *

5. Section 87.217 is amended by revising paragraph (a)(1) to read as follows:

§ 87.217 Frequencies.

(a) * * *

(1) 122.950 MHz at airports which have a full-time control tower or full-time FAA flight service station.

* * * * *

6. Section 87.303 is amended by revising the fourth sentence of paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) * * * In the 2310–2390 MHz band, the following frequencies may be assigned on a coequal basis for telemetering and associated telecommand operations in fully operational or expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. * * *

* * * * *

7. Section 87.471 is amended by revising paragraph (b) to read as follows:

§ 87.471 Scope of service.

* * * * *

(b) Radionavigation land test stations are used for the testing and calibration of aircraft navigational aids and associated equipment. When used as radionavigation land test stations (MTF) signal generators must be licensed as radionavigation land test stations (MTF). Transmission must be limited to cases when radiation is necessary and there is no alternative.

* * * * *

[FR Doc. 93–31195 Filed 12–21–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. 48438; Amdt. 10–1]

Privacy Act; Implementation

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: DOT amends its rules implementing the Privacy Act of 1974 to: Add to the list of systems of records exempt from certain provisions of the Act the Coast Guard's Law Enforcement Information System and the Federal Aviation Administration's General Air Transportation Records on Individuals; remove all references to the Alaska Railroad, which is no longer part of DOT; remove all references to system DOT/FAA 805, which was subsumed into another system; revise the authority citation for these rules; provide more detailed explanations for implementing exemptions; and update office names and addresses, and systems of records, that have changed since part 10 was last published.

DATES: This amendment takes effect January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9154, FAX (202) 366–7153.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1992 (57 FR 49446), DOT proposed a number of amendments to its Privacy Act regulations (49 CFR part 10); public comment was invited and none was received. The amendments, as proposed and adopted, are as follows:

1. *General exemption.* Under subsection (j)(2) of the Privacy Act (5 U.S.C. 552a(j)(2)), a system of records may be exempted from almost all provisions of the Act, so long as the system: (1) Is maintained by an agency, or a component of an agency, that performs as its principal function any activity pertaining to the enforcement of criminal laws; and (2) contains: (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. Those provisions of the Act from which such a system may not be exempted are subsections (b) (Conditions of Disclosure); (c) (1) and (2) (Accounting of Certain Disclosures); (e)(4) (A) through (F) (Publication of Existence and Character of System); (e)(6) (Ensure Records are Accurate, Relevant, Timely, and Complete), (7) (Restrict Recordkeeping on First Amendment Rights), (9) (Rules of Conduct), (10) (Safeguards), and (11) (Routine Use Publication); and (i) (Criminal Penalties).

DOT is exempting under subsection (j)(2) a new system of records maintained by the Coast Guard, the Law Enforcement Information System (LEIS). Under 14 U.S.C. 89 and other statutes, the Coast Guard enforces United States criminal laws on the high seas and navigable waters of the United States. This is accomplished by approximately 2,000–4,000 vessel boardings each month during which Coast Guard searches for drugs, weapons, and other contraband, and enforces Federal law regarding fishing, immigration, and other matters. LEIS will gather into one automated system all relevant information from these boardings and other activities.

2. *Specific exemptions.* Under subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within subsection (j)(2), may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject, and subsection (d) to grant to a record subject access to information maintained on him/her under the Act. The purpose for doing so is to prevent the compromise or impairment of law enforcement investigations by alerting individuals

that they are the subject of investigations, and to prevent the disclosure of the identity of sources of information promised confidentiality, in accordance with subsection (k)(2).

DOT is exempting Coast Guard's LEIS and the Federal Aviation Administration (FAA) General Air Transportation Records on Individuals (DOT/FAA 847). Another DOT system of records has already been exempted in this same manner: The Office of Inspector General's Investigative Records System (DOT/OST 100). These additional systems require similar treatment. The amendment also removes any reference to the Administrative Action and Legal Enforcement System maintained by FAA's Office of the Chief Counsel (DOT/FAA 805), which has been subsumed within DOT/FAA 847.

The General Air Transportation Records system is the official repository of records, documents, and papers required in connection with the issuance of airmen certificates by FAA. This includes the type of certificate and ratings held, the date and class of latest medical certificate, and the pilot's certificate number and status (*i.e.*, current, suspended, revoked). The system also serves as the repository for legal documents that relate to accident investigations; preliminary notices of accident injury reports; engineering analyses; witness statements; investigators' analyses; pictures of accident scenes; safety compliance notices; letters of warning, correction, investigation, and proposed and final legal enforcement action; and correspondence of the Offices of the Chief Counsel and of Assistant Chief Counsels for Regions and Centers, and others involved in enforcement cases.

3. *Alaska Railroad.* The Alaska Railroad previously was operated by DOT's Federal Railroad Administration. It was transferred to the State of Alaska in 1985 (Pub. L. 97–468, title VI, January 14, 1983; 96 Stat. 2556). Any references in our Privacy Act regulations to the Railroad, therefore, are obsolete and being deleted.

4. *Authority citation.* The DOT Act was codified in 1983 (Pub. L. 97–449, January 12, 1983; 96 Stat. 2413); the proper citation to the provision authorizing the Secretary to establish rules for the conduct of DOT's business is 49 U.S.C. 322. That change is made herein.

5. In addition, a more detailed explanation is given of the reasons for and impacts of each of the exemptions.

6. Finally, certain FAA offices have been renamed and certain field offices have moved; DOT is taking the opportunity to reflect those changes here. Specifically:

(a) The Civil Aviation Security Service is now known as the Office of Civil Aviation Security;

(b) The National Aviation Facilities Experimental Center is now known as the Technical Center;

(c) The following FAA field office addresses have changed: Alaskan, Central, Southern, and Southwest Regions, and the Western and Pacific Regions have been combined, as have the Rocky Mountain and Northwest Regions; and

(d) The names of offices maintaining records in the Investigative Record System, DOT/FAA 815, and the Civil Aviation Security System, DOT/FAA 813, have changed.

Analysis of regulatory impacts. This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

In accordance with the above, DOT amends 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 is revised to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

§ 10.6 [Amended]

2. Section 10.61(a) is amended by removing therefrom "; and the Federal Railroad Administration, with regard to the Alaska Railroad Special Agents", and by adding "and the" before "Commandant of U.S. Coast Guard".

3. Part I of Appendix A is revised, and part II.A. is amended by revising introductory text, paragraph 12, and concluding text, and adding a new paragraph 13; part II.B is amended by revising paragraphs B., F.3., and G.1.; and part 3(b) to Appendix D is revised, all to read as follows:

* * * * *

Appendix A to Part 10—Exemptions

Part I. General Exemptions

Those portions of the following systems of records that consist of (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(4) (A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request), (7) (Restrict recordkeeping on First Amendment rights), (9) (Rules of conduct), (10) (Safeguards), and (11) (Routine use publication); and (i) (Criminal penalties):

A. The Investigative Records System maintained by the Assistant Inspector General for Investigations, Office of the Inspector General, Office of the Secretary (DOT/OST 100).

B. Police Warrant Files and Central Files maintained by the Federal Aviation Administration (DOT/FAA 807).

C. Law Enforcement Information System, maintained by the Office of Law Enforcement and Defense Operations, U.S. Coast Guard (DOT/CG 613).

D. Investigations and Security Investigative Case Systems, maintained by the Investigations and Security Division, U.S. Coast Guard (DOT/CG 611).

E. The Investigative Records System maintained by the Federal Aviation Administration regarding criminal investigations conducted by offices of Investigations and Security at headquarters and FAA Regional and Center Security Divisions (DOT/FAA 815).

These exemptions are justified for the following reasons:

1. From subsection (c)(3), because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only DOT but also the recipient agency, thereby permitting the record subject to take appropriate measures to impede the

investigation, as by destroying evidence, intimidating potential witnesses, fleeing the area to avoid the thrust of the investigation, etc.

2. From subsections (d), (e)(4) (G) and (H), (f), and (g), because granting an individual access to investigative records, and granting him/her rights to amend/contest that information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

3. From subsection (e)(1), because it is often impossible to determine relevancy or necessity of information in the early stages of an investigation. The value of such information is a question of judgement and timing: what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, DOT may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, DOT should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to DOT that relates to matters incidental to the main purpose of the investigation but that may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

4. From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject of the information. It is not always feasible to rely upon the subject of an investigation as a source for information that may implicate him/her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

5. From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

Part II. Specific Exemptions

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2):

1. Investigative Record System (DOT/FAA 815) maintained by the Federal Aviation Administration at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the FAA Civil Aviation Security Staff at the FAA Technical Center in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

* * * * *

12. Civil Aviation Security System (DOT/FAA 813), maintained by the Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration.

13. Law Enforcement Information System, maintained by the Office of Law Enforcement and Defense Operations, U.S. Coast Guard (DOT/CG 613).

* * * * *

These exemptions are justified for the following reasons:

1. From subsection (c)(3), because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only DOT but also the recipient agency, thereby permitting the record subject to take appropriate measures to impede the investigation, as by destroying evidence, intimidating potential witnesses, fleeing the area to avoid the thrust of the investigation, etc.

2. From subsections (d), (e)(4) (G) and (H), (f), and (g), because granting an individual access to investigative records, and granting him/her rights to amend/disagree with that information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

B. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) of 5 U.S.C. 552a, in accordance with 5 U.S.C. 552a(k)(5):

1. General Air Transportation Records on Individuals, maintained by various offices in the Federal Aviation Administration (DOT/FAA 847).

2. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

These exemptions are justified for the following reasons:

1. From subsection (c)(3), because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only DOT but also the recipient agency, thereby permitting the record subject to take appropriate measures to impede the investigation, as by destroying evidence, intimidating potential witnesses, fleeing the area to avoid the thrust of the investigation, etc.

2. From subsection (d), because granting an individual access to investigative records could interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

* * * * *

F. * * *

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3. Civil Aviation Security System (DOT/FAA 813), maintained by the Office of Civil Aviation Security, Federal Aviation Administration.

* * * * *

G. * * *

* * * * *

1. Investigative Record System (DOT/FAA 815) maintained by the Federal Aviation Administration at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the FAA Civil Aviation Security Staff at the FAA Technical Center in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

* * * * *

Appendix D to Part 10—Federal Aviation Administration

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3. *Systems of Records.* * * *

* * * * *

b. * * *

(1) FAA Headquarters, 800 Independence Avenue SW., Washington, DC 20591;

(2) Alaskan Region, 632 Sixth Avenue, Anchorage, Alaska 99501;

(3) Central Region, 601 East 12th Street, Kansas City, MO 64106;

(4) Southern Region, 3400 Norman Berry Drive, East Point, Georgia 30344 (Mail Address: P.O. Box 20636, Atlanta, Georgia 30320);

(5) Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193–0000;

(6) Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California (Mail Address: P.O. Box 92007, World Postal Center, Los Angeles, California 90009);

(7) Eastern Region, JFK International Airport, Fitzgerald Federal Building, Jamaica, New York 11430;

(8) Mike Monroney Aeronautical Center, 6500 South MacArthur (Mail Address: P.O. Box 25082), Oklahoma City, Oklahoma 73125;

(9) Technical Center, Atlantic City International Airport, New Jersey 08405;

(10) New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803;

(11) Great Lakes Region, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, Illinois 60018; and

(12) Northwest Mountain Region, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

* * * * *

Issued in Washington, DC, on December 14, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93-31112 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 931198-3298; I.D. 101593D]

RIN 0648-AF97

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an interim final rule authorizing the Southwest Regional Director (RD), National Marine Fisheries Service (NMFS), to require the permit holder of a vessel operating in the limited entry longline fishery based in Hawaii to make accommodations for a NMFS observer. The rule requires permit holders or their designated agents (which may include the vessel operator) to provide NMFS with at least 72 hours notice (not including weekends and Federal holidays) prior to each departure from port so the RD can determine if an observer placement will be made. This action is necessary to ensure adequate collection of data on the frequency and nature of interactions between longline fishing gear and sea turtles around Hawaii to ensure the fishery operates in compliance with the Endangered Species Act (ESA).

DATES: Effective January 6, 1994. Comments will be accepted January 21, 1994.

ADDRESSES: Comments on the interim final rule may be sent to Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner at 310-980-4034 or Alvin Katekaru or Gene Nitta at 808-955-8831.

SUPPLEMENTARY INFORMATION: The pelagic fisheries of the western Pacific region, including the longline fishery based in Hawaii, are managed under a fishery management plan (FMP) that was approved in 1987 and subsequently was amended six times. Rules implementing the FMP are found at 50 CFR part 685.

Management measures for the Hawaii longline fishery include a limited entry permit program, logbook reporting requirements, and area closures to prevent conflicts among fishery sectors and to prevent harm to Hawaiian monk seals, listed under the ESA as an endangered species. The closures to protect monk seals were imposed pursuant to a Biological Opinion and Incidental Take Statement issued by NMFS under section 7 of the ESA on May 15, 1991. While takings of Hawaiian monk seals were prohibited, an allowable incidental take of 25 sea turtles was specified in the Incidental Take Statement. Vessel operators are required to report incidental takes of sea turtles as well as interactions with other protected resources.

A review of logbook data for the 1991 fishing year indicated that reported incidental takes of sea turtles exceeded the limit in the Incidental Take Statement. NMFS therefore reinitiated consultations to address this concern. A new Biological Opinion and a new Incidental Take Statement were issued June 10, 1993. While setting a new and higher limit on the incidental take of sea turtles, the Incidental Take Statement also requires NMFS to establish an observer program (initially through voluntary placements and subsequently through a mandatory program) to ensure collection of sufficient data to produce statistically significant results and to evaluate the accuracy of logbooks submitted for the fishery.

NMFS has attempted to place observers on a voluntary program since the opinion was issued, but with little success. Observers had been placed on only two trips by October 15, 1993. At this rate, the level of coverage would not be adequate to provide statistically significant results. If this were to continue, there would be a substantial risk that the incidental take of turtles could erroneously be estimated.

This problem was brought to the attention of the Western Pacific Fishery Management Council (Council) at its meeting September 15-16, 1993. The Council already had indicated its preference to include in Amendment 7 to the FMP a provision under which the RD could require a vessel operator to make accommodations available for a NMFS observer. However, if approved, Amendment 7 would probably not be implemented until April 1994. Regulations to implement the mandatory observer provisions that otherwise would have been contained in Amendment 7 are needed now because the current Biological Opinion and Incidental Take Statement cover only a one-year period (June 10, 1993-June 10, 1994) and data collected will need to be evaluated next summer.

It also was noted that Amendment 3 to the FMP and § 685.11 of the implementing regulations provide a framework for establishing regulations to prevent harm to protected resources. Under this framework, regulations may be promulgated with the concurrence of the Council if the RD determines that additional measures are needed to prevent adverse effects of longline fishing on protected species. The Council concluded at its meeting September 15-16, 1993, that regulations should be promulgated under this procedure immediately to implement the mandatory observer program. Expedited implementation would be consistent with the Incidental Take Statement, which requires a mandatory observer program "as soon as practicable." The public already has had three opportunities to comment on the need for a mandatory observer program: First, when Amendment 3 was proposed with the framework process for implementing an observer program if warranted; second, in the public review of proposed regulations to implement Amendment 3; and third, in the public review period for draft Amendment 7 to the FMP and at Council discussions dealing with Amendment 7.

This rule requires that a permit holder under § 685.15, or a designated agent of the permit holder (the vessel operator is presumed to be a designated agent unless the RD is otherwise advised), provide at least 72 hours advance notice to NMFS of the departure of a longline vessel on a fishing trip around Hawaii (not including weekends and Federal holidays). NMFS will determine whether the permit holder will be required to take an observer on that trip and will advise the owner or designated agent accordingly at least 24 hours (not including weekends and Federal holidays) before the intended departure time. If the RD fails to notify the vessel owner or agent at least 24 hours before intended departure, then the vessel operator may conduct the fishing trip without an observer.

Placements of observers will be in accordance with an Observer Plan developed by NMFS pursuant to the Biological Opinion and Incidental Take Statement. The Observer Plan is a stratified sampling design plan intended to ensure adequate coverage of different segments of the longline fleet so that the total take of turtles can be extrapolated

with known confidence limits. A copy of the Observer Plan may be obtained from the RD (see **ADDRESSES**). The target level of coverage is 10 percent of all trips or between 100 and 125 trips per year at a cost to NMFS of approximately $1 million and with minimal costs to industry. NMFS will reimburse permit holders for reasonable subsistence costs for the observers at a rate to be determined by the RD. For 1993–94, this will be $20 per day. The rule provides the operational procedures and conditions for permit holders, vessel operators, crew and for observers to carry out this program. Provisions regarding observing accommodations have been changed to provide more flexibility to reflect the range of vessel accommodations in this fishery.

Classification

The Assistant Administrator for Fisheries (AA), NOAA, has determined that the measures in this rule are consistent with the Magnuson Act and other applicable law.

The AA finds that there is good cause to implement this requirement through an interim final rule rather than proceeding with advance notice and comment rulemaking procedures. Expeditious implementation of this rule is deemed most consistent with the reasonable and prudent measures of the Biological Opinion and Incidental Take Statement issued after a consultation under section 7 of the Endangered Species Act. A delay in implementing a mandatory observer program increases the risk that sea turtle incidental takes will be erroneously estimated. If the error is an overestimate of incidental take, there could be serious, adverse impacts on individual fishermen (from prosecution for illegal incidental takes when actual turtle incidental take had been below the allowable level) and on the fleet (from subsequent fishery controls reducing catch and income). If the error is an underestimate of incidental take, the need for corrective action to further protect sea turtles would not be detected on a timely basis, and there could be serious adverse impacts on sea turtle populations. The reasons justifying the promulgation of this rule as an interim final rule make it impractical and contrary to the public interest to provide notice and opportunity for prior comment upon, or to delay for more than 15 days the effective date of these regulations, under the provisions of Section 553 (b) and (d) of the Administrative Procedure Act. The public has had several opportunities to comment on the possibility of implementing an observer program, including during review of Amendment 3 and review of draft Amendment 7 to the FMP. Several persons who commented indicated the importance of a mandatory program to obtain reliable data on the take of sea turtles and other protected resources. Finally, interested persons also had opportunity to comment on the mandatory observer program at the Council meeting in September 1993 when the Council concurred that the framework process of Amendment 3 should be used to implement this requirement immediately. No objections were made, and the Council approved the proposal unanimously. Therefore, there already has been substantial public comment. The AA has concluded that these opportunities satisfy the public review requirements of the Magnuson Act and other applicable law, and that the mandate of the Endangered Species Act to use all authorities available to the Agency to further the purposes of that Act warrant implementation of this rule without further opportunity for prior public comment. NMFS is delaying implementation of these regulations for 15 days to provide adequate notice to vessel owners.

The AA has determined that this rule will not affect the coastal zone of Hawaii. The action will not result in a change in fishery patterns; therefore, landings and related economic activity will not change. This determination has been provided to the responsible State agency.

NMFS prepared an environmental assessment for this action, and the AA has concluded that there will be no significant impact on the human environment. Copies of the environmental assessment are available from the RD (see **ADDRESSES**).

This interim final rule contains a collection-of-information subject to the Paperwork Reduction Act. Permit holders or their designated agents will have to notify NMFS at least 72 hours prior to departure on a fishing trip so the Regional Director can determine whether an observer must be taken. If the Regional Director concludes an observer must be taken, the permit holder or designated agent will be so advised and further arrangements will be made as necessary concerning details of time and place of embarkation, observer duties, permit holder, vessel operator and crew responsibilities, and related matters. Vessel owners may submit reimbursed claims for certain observer-related costs. The public reporting burden for this collection is estimated to average 2 minutes per call, plus 1 hour if necessary to meet with NMFS officials and make observer placement arrangements, plus 8 hours for reimbursed claims. This proposed change in allocation has been submitted to the Office of Management and Budget for approval. Send comments regarding this burden estimate or on any other aspect of this collection-of-information to the RD (see **ADDRESSES**) and to the Office of Management and Budget, Paperwork Reduction Project (0648–0214), Washington, DC 20503. The underlying collection-of-information that this action modifies has been approved by the Office of Management and Budget (OMB No. 0648–0214).

The Regulatory Flexibility Act does not apply to this rule because, as an interim final rule, the rule is issued without opportunity for prior public comment. Since good cause existed to waive notice and opportunity for comment under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis needs to be prepared.

This interim final rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

This action is intended to carry out the requirements of the Biological Opinion and Incidental Take Statement issued by NMFS under section 7 of the Endangered Species Act on June 10, 1993. This action will ensure that adequate data will be collected on the amount and nature of incidental takes of turtles in the longline fishery in the western Pacific region. These data are necessary to determine the impacts of take on the species and possible measures to reduce or prevent the take in the future. Therefore, this rule is consistent with the Endangered Species Act.

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

List of Subjects in 50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: December 15, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.5, paragraph (l) is revised and new paragraphs (u), (v), (w), and (x) are added to read as follows:

§ 685.5 Prohibitions.

* * * * *

(l) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under § 685.11 or § 685.18;

* * * * *

(u) Fail to comply with notification requirements set forth in § 685.11;

(v) Fail to comply with the terms and conditions governing the observer program established in § 685.11;

(w) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement; or

(x) Fish in the fishery after failing to comply with the notification requirements in § 685.11.

3. Section 685.11 is revised to read as follows:

§ 685.11 Protected species conservation.

(a) *Notice prior to fishing trip.* The permit holder for a fishing vessel subject to the permit requirements of § 685.15, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip under its permit. Under these regulations for the observer program the vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. The Notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(b) *Observer placement determination.* NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(c) *Conditions of placement.*

(1) The "Notice Prior to Fishing Trip" commits the permit holder to the representations in the Notice. The Notice can be modified by the permit holder or designated agent because of changed circumstance if the Regional Director is promptly provided a modification to the Notice which complies with the notice requirements. The Notice will also be considered modified if the Regional Director and the permit holder or designated agent agree to placement changes.

(2) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer, the vessel must not engage in this fishery without taking the observer.

(3) An NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the Notice or the Notice as modified, and will wait 1 hour for departure.

(4) A permit holder must accommodate an NMFS observer assigned under these regulations. The Regional Director's office and not the observer will address any concerns raised over accommodations.

(5) The permit holder, vessel operator and crew must cooperate with the observer in the performance of the observer's duties, including:

(i) Allowing for the embarking and debarking of the observer;

(ii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iii) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties;

(iv) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer;

(v) Providing sea turtle, marine mammal, or sea bird specimens as requested; and

(iv) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(6) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Director imposes by written notice.

(d) *Living quarters, meals, amenities.* The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew members, unless other arrangements are approved in advance by the Regional Director.

(e) *Reimbursement requirements.* Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Director.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer;

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Fisheries Observer Branch, Southwest Region, in Long Beach, California, at the earliest practical time at (800) 445–0826 or via fax at (310) 980–4027. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213. NMFS must receive reimbursement invoices and documentation within 120 days of the occurrence.

(f) *Female observer accommodations.* If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that

adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

(g) *Additional measures for protected species.* If the Regional Director determines that additional measures are needed in a particular area to prevent adverse effects of longline fishing on protected species, the Regional Director will, with the Council's concurrence, initiate rulemaking, which could include:

(1) Requiring additional reporting from vessels fishing;

(2) Enlarging the protected species zone;

(3) Restricting the type of gear used;

(4) Adopting any other management measures necessary to protect endangered or threatened species;

(5) Requiring observers to be taken in other sectors of the fishery.

(h) *Protected species zone.* The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 685.2.

[FR Doc. 93-31115 Filed 12-21-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 244
Wednesday, December 22, 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 Marketing Service

7 CFR Part 1131

[Docket No. AO-271-A32; DA-92-24]

Milk in the Central Arizona Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Central Arizona Federal milk order by revising the definition of producer-handler to require, in certain cases, a pool payment on seasonal reserve milk supplies disposed of for fluid use. It also recommends removal of the "associated producer" and "associated producer milk" provisions. The decision is based on proposals presented at a public hearing held in Phoenix, Arizona, on February 2-3, 1993.

DATES: Comments are due on or before January 21, 1994.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

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.

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the 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 entry of the ruling.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Central Arizona marketing area. This notice is issued 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).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Phoenix, Arizona on February 2-3, 1993, pursuant to a notice of hearing issued December 21, 1992 (57 FR 62241).

The material issues on the record of hearing relate to:

1. The definition and treatment of *producer-handlers*;
2. The definition and treatment of *associated producers*; and
3. Conforming changes and non-substantive changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The definition and treatment of producer-handlers.* The order should be amended to require producer-handlers (P-H) who distribute packaged fluid milk products other than to retail customers, or who buy more than minimal supplemental milk supplies, to pay into the pool each month a sum that reflects the amount by which (a) the volume of own-farm production marketed as Class I milk in the current month exceeds (b) the volume of own-farm production during the lowest production month during the immediately preceding 12 months. The rate of payment should be based on the difference between the Class I and Class III prices for the current month. At the same time, the P-H definition should be modified to permit a P-H to purchase an unlimited amount of supplemental Class I milk from regulated sources to balance its seasonal variation in production.

A P-H whose sole distribution of packaged fluid milk products was to retail customers (i.e., through the P-H's own retail facility or home delivery route) would be exempt from the pool payment if, during the month, it did not obtain by transfer or acquire for route

disposition more than 5,000 pounds of milk or 5 percent of its fluid milk product disposition for the month, whichever is less, from regulated sources.

At present, there is no type of pool obligation imposed on P–Hs. However, the order limits receipts of supplemental supplies of milk at a P–H's plant to the lesser of 5,000 pounds or 5 percent of its total fluid milk product disposition for the month. These receipts must be obtained by transfer from a pool plant or another order plant.

At the time of the hearing, Heartland Dairy was the largest P–H in the Central Arizona market. Since then, it voluntarily has become a fully regulated handler under the order. Testimony at the hearing indicated that Heartland had been sharing a joint account with a fully regulated handler, Jackson Foremost Foods, to supply Fry's Food Stores, the dominant supermarket chain in the Phoenix area.

The Executive Director of The United Dairymen of Arizona (UDA), a cooperative association in the market, testified that Fry's Food Stores is the principal outlet for Heartland Dairy's fluid milk product distribution in the Central Arizona marketing area. The witness stated that Heartland shares the Fry's account with Jackson Foremost Foods, a fully regulated handler supplied by UDA. He said that when Heartland's deliveries to Fry's are insufficient to cover its commitment, Fry's calls on Jackson to make up the deficit. Jackson, in turn, calls on UDA to supply it with more milk. The witness indicated that this scenario has occurred repeatedly in the last three years, particularly during the low production months of July, August, September, and October, and throughout the year on Fridays and Saturdays.

The UDA spokesman testified that this pattern of operation by Heartland Dairy violates the spirit of the P–H provision. He referenced the Secretary of Agriculture's 1962 decision (27 FR 3923) which states that:

"A producer-handler should be required to maintain his own reserve supply since he is exempted from pooling his Class I sales with other producers. The limitation on the amount of milk which an exempt producer-handler may purchase from pool plants will make it necessary for him to maintain herd production equal to his Class I sales plus a reserve to cover variations in production and sales.

"* * * (P)roducer-handlers' milk sales represent a potential threat to orderly marketing if producer-handlers are permitted to shift their excess burden to other producers. The Central Arizona market is composed of large producers delivering nearly one million pounds a month. If such large volume producers could market their own production entirely as Class I and buy reserve milk to balance daily fluctuations in their production and sales, they would be a disturbing element in the market."

The Vice President of Sales for Shamrock Foods, one of the largest handlers in the Central Arizona market, testified that Heartland Dairy supplied private label milk to the Southwest Supermarket chain in December of 1992, when Shamrock was also supplying milk to Southwest stores. In addition, he said that from time to time Shamrock would get calls from Southwest asking for additional milk when Southwest was not getting its orders filled by Heartland Dairy. It was his understanding, he testified, that when Southwest was required to buy this extra milk from Shamrock, Heartland Dairy would pay the difference in price between what it would have charged Southwest and what Shamrock charged Southwest for this milk.

In this market, the annual variation in producer milk from the lowest production month to the highest production month has averaged 28 percent during the past five years. Given this seasonality in production, and in order to operate with a constant level of Class I sales, a P–H can (1) maintain a fluid milk product distribution level equal to its lowest month's production (typically, August) and send the additional production during the other 11 months to a manufacturing plant, (2) make a commitment to sell fluid milk products equal to its highest month's production (typically, March) and purchase enough supplemental milk during the other 11 months of the year to compensate for the seasonal drop therefrom, or (3) use some combination of (1) and (2) at different levels of Class I sales.

At the present time, these alternatives are not always practicable. The only manufacturing plant within reasonable distance of Heartland Dairy is UDA's butter-powder plant at Tempe, Arizona. There are no other manufacturing plants in the Central Arizona marketing area, except for a cheese plant which is under the same roof as UDA's butter-powder plant and which is fully supplied by UDA, and a yogurt processing plant, LaCorona Yogurt, which, according to the manager of Heartland Dairy, was under contract to buy its milk from Shamrock. Consequently, the only surplus outlet available to Heartland Dairy in this area is UDA's butter-powder plant.

The Heartland Dairy manager testified that when Heartland Dairy sent surplus milk to the UDA butter-powder plant for manufacturing use, it was in the position of having to accept whatever the cooperative was willing to pay for the milk. For example, he said that in December 1992 Heartland sold 427,210 pounds of surplus milk to UDA and was paid $10.25 per hundredweight for it, which was $1.09 less than the order's Class III price.

Buying supplemental milk to even out the P–H's production is essentially not possible under the order's current 5,000-pound or 5-percent limitation.

The evidence in the record indicates that Heartland has been using other ways to handle its seasonal production problem. This has been by sharing joint Class I sales accounts with fully regulated handlers and disposing of fluid milk products outside of the marketing area when extra milk is available.

UDA's proposed solution to address these practices is to ask the market administrator to more closely monitor the P–H's operations and make several subjective judgments regarding whether the P–H is maintaining its own reserve supply. Specifically, the market administrator would be asked to: (1) compare weekly volumes sold to accounts serviced by the P–H and by other handlers under this or any other Federal milk order; (2) determine whether the P–H packages milk in the same label as another handler under this or any other Federal milk order; (3) determine that the P–H's pro rata share of Class I route dispositions in the marketing area during the flush milk production months (March, April, May) are substantially the same as during the short milk production months (July, August, September); and (4) use any other method that will indicate when the P–H is not maintaining the burden of its own reserve supply. Under the proposal, the P–H would be fully regulated for the next 12 months if the market administrator finds that the P–H is not maintaining its own reserve supply.

Another part of the UDA proposal was designed to preclude P–Hs from sharing Class I accounts with fully regulated handlers. In this case, the order would treat packaged fluid milk that is delivered by a P–H to a market outlet which is also serviced by a pool plant (using the same label as the P–H) as having been "acquired for distribution" by the pool plant. In such circumstances, the P–H's milk would be assigned a Class III classification at the pool plant. This procedure would force an equal amount of "producer milk"

into Class I and thereby increase the pool plant's obligation to the pool.

In its brief, UDA stated that, based on the evidence in the record, a producer-handler should be required to carry 135 percent of its monthly Class I sales in its own herd production. To implement this requirement, the cooperative suggested that its proposal be amended by inserting a new paragraph in § 1131.10(a), which would read as follows:

(2) Produces in his own herd a rolling average during the preceding three months of 135 percent of Class I route disposition. If such person's milk production from his own herd falls below 135 percent of Class I route disposition in any such period, such person shall be pooled in the next succeeding month and continue to be pooled until production from his own herd equals or exceeds 135 percent of Class I route disposition for a three month period.

The UDA proposal should not be adopted. It is aimed at the symptoms of the problem, rather than the problem itself. Moreover, it lacks objective standards and instead relies on many subjective judgments, which would make it very difficult to administer and enforce. Finally, it would penalize P-Hs and fully regulated handlers even when a P-H was operating in a totally unobjectionable manner. For example, if a P-H serviced an account with a fully regulated handler and each party contributed a fixed amount of fluid milk products each month to the account, the order, as modified by UDA's proposal, would nonetheless treat the P-H's deliveries as receipts of the pool plant and penalize the pool plant as described above.

A representative of the National Milk Producers Federation (NMPF) appeared at the hearing to present a proposal that was ruled by the Admistrative Law Judge to be outside the scope of the hearing. The NMPF proposal would have limited the size of a P-H. The witness stated that the NMPF was offering the proposal as an alternative to the UDA proposal because, in his opinion, the UDA proposal would be impossible to administer or enforce.

A consultant for Heartland Dairy testified in support of a modified Heartland Dairy proposal that would enable a P-H to purchase unlimited supplies of supplemental milk from any source, but which also would require the P-H to make a payment into the order's marketwide pool each month to compensate the market's producers for carrying Heartland's reserve supply of milk. The consultant stated that the goal of the Federal order program is to insure minimum prices to dairy farmers. This goal, he said, can be accomplished without fully regulating producer-handlers.

The modified proposal of Heartland Dairy calls for the P-H to make a payment into the pool each month based on the difference between the P-H's production in the current month and its lowest month's production during the immediately preceding 12 months. The difference in production between the current month and the lowest month would be prorated to the P-H's utilization of milk in each class in the current month. The payment would then be computed by: (1) multiplying the pounds assigned to Class I by the difference between the Class I price and the blend price; (2) multiplying the pounds assigned to Class II by the difference between the Class II price and the blend price; (3) multiplying the pounds assigned to Class III by the difference between the Class III price and the blend price (a negative value); and (4) adding these products together. If the current month's production were less than the lowest month's production during the preceding 12 months, no payment would be required.

There can be no argument with certain basic facts that must be taken into consideration in resolving the problems described in the hearing record. First, the seasonal variation in production in this market is significant, and this variation in production adversely affects the cost of handling and manufacturing the market's reserve supply of milk. From the evidence in the record, it would appear that this burden falls largely on UDA.

Second, there is really only one place to economically dispose of surplus milk for manufacturing use: UDA's butter-powder plant at Tempe. This lack of viable economic alternatives leads to marketing practices which some parties in the market deem to be "disruptive" and which nearly all parties in the market concede result in an unequal sharing of the cost of maintaining the market's reserve supply of milk.

Third, there is really only one place to obtain supplemental supplies of milk in this market. UDA accounts for 88 percent of the producer milk in the market, and Shamrock Foods accounts for the remaining 12 percent, which is largely used for its own use, except for the amount which it supplies to LaCorona Yogurt.

These facts lead to the conclusion that additional flexibility is needed in the order to permit a P-H to bear its pro rata share of the cost of maintaining the market's reserve supply while, at the same time, operating in a reasonably efficient manner.

Given the limited manufacturing outlets available in the Central Arizona market, the solution to the problems described in the hearing record must be corrected through providing an alternative means for a P-H to bear its share for maintaining its reserve supply of milk. Specifically, we certify that the Administrative Law Judge made the correct decision at the hearing to permit testimony on the modified Heartland Dairy proposal, and we believe this proposal should be adopted, but further modified in several respects.

First, the P-H's payment into the pool should be based on the difference between the Class I price and the Class III price, instead of the blend price. If a P-H were really bearing the burden of its own reserve supply, that reserve supply, by definition, must be used in the utilization of last resort: i.e., Class III. Therefore, it should be recognized that the P-H would only be getting the Class III price or less for its seasonal excess production. Consequently, the payment to the pool should be based on the difference between the Class I price and the Class III price. This is the same treatment that applies to milk that is transferred from a P-H to a pool distributing plant and used in Class I.

If a P-H geared its Class I disposition to its low production month (e.g., August) and disposed of its seasonal excess as Class III utilization, there clearly would be no grounds for alleging that the P-H was not bearing the burden of its own reserve supply. Accordingly, under such circumstances, a payment into the pool, such as proposed by the Heartland Dairy consultant, would be neither necessary nor appropriate.

Therefore, the second modification concerns the computation to determine the amount of milk on which the payment should be based. Since, for the reason described above, there may be circumstances in which no payment would be appropriate, it would be incorrect to use the current month's production in determining the reserve supply upon which to base the payment. Instead, one should subtract the P-H's lowest month's production (within the immediately preceding 12 months) from the current month's Class I sales of own-farm milk in determining the reserve supply on which to compute the payment. Using this computation will avoid penalizing the P-H who has not utilized all of its current month's production in Class I, but who, instead, has utilized some of the seasonal production increase for Class II or III use. The second reason for using Class I sales from own-farm production—as opposed to just Class I sales—is to avoid double-charging the P-H for

supplemental purchases of Class I milk which have already been priced at the Class I price.

The third change which should be made to the Heartland Dairy proposal concerns the source of supplemental milk purchases. As proposed, a P–H would be allowed to purchase milk from any source. This should be changed to restrict such purchases to fluid milk products obtained by transfer from pool plants, other order plants, and cooperative bulk tank handlers. No other sources of supply would be allowed regardless of whether such purchases entered the P–H's plant or were acquired elsewhere.

As noted previously, UDA accounts for 88 percent of the producer milk in the Central Arizona market. Accordingly, the cooperative is the likely source for supplemental milk supplies. Even if the P–H were to obtain transfers from a pool plant operated by another handler, it will, in all likelihood, be UDA milk since the cooperative asssociation supplies all of the pool plants in this market. In view of this, it would be much more efficient to allow the P–H to obtain the milk from UDA in its capacity as a bulk tank handler on milk delivered directly from producers' farms. This milk would be treated as if transferred from a pool plant. It would be classified as Class I milk, and the transferor handler—in this example, the cooperative association bulk tank handler—would account to the pool for it.

In verifying the computation of the P–H's pool payment, the market administrator will require full access to all of the producer-handler's records, including all of the milk production and farm pickup records pertaining to the dairy operations of each of the P–H's farms.

With the provisions adopted here, no restriction is necessary on the amount of supplemental milk which may be purchased by a P–H. It would be expected that a P–H would seek to keep such purchases to a minimum in order to maintain the advantage of its higher-than-market-average utilization. Nevertheless, should a P–H wish to purchase supplemental milk, the pool would receive the Class I price for these purchases, and would also receive the P–H's pool payment to offset the cost for seasonal variation in the P–H's own-farm production used in Class I.

The changes adopted above are designed to apply to P–Hs that supply milk to wholesale outlets. With respect to P–Hs that distribute all of their milk to retail outlets, the order should continue to provide a complete exemption from any pool payment provided that the P–H stays within a 5,000 pound-per-month (or 5 percent of its fluid milk product disposition during the month) limit on supplemental purchases of fluid milk products from regulated sources. As used herein, retail outlets would include only consumers who purchase milk at the P–H's dock, at the P–H's own retail store (wherever located), or who receive the P–H's milk on the P–H's home delivery route. Thus, P–Hs operating under the this total exemption would not be permitted to make any sales to stores that are owned or leased by others, to distributors or jobbers, or to institutions such as schools, hospitals, prisons, nursing homes, etc. Also, the limit on supplemental purchases specifically applies to bulk or packaged fluid milk products that are received by transfer at the P–H's plant, and it applies equally to packaged fluid milk products that are acquired for route disposition to any of the P–H's retail outlets. This means that any acquisition of a fluid milk product, whether delivered to the P–H's plant or retail facility, picked up by the P–H's truck, or acquired in some other way would still count against the 5,000 pound (or 5 percent) limit.

Although UDA did not include any specific order language to address the appropriate size of a P–H, the cooperative attempted to modify the language of its proposal to restrict the P–H exemption to a "family-type farm operation." The Aministrative Law Judge presiding at the hearing disallowed the modification, but permitted the testimony as an "offer of proof." We concur with the Judge that this modification is beyond the scope of the hearing.

2. *The definition and treatment of associated producers.* A proposal by The United Dairymen of Arizona to remove all language from the order relating to "associated producer" should be adopted. UDA's general manager testified that UDA had proposed the associated producer provisions at a hearing held on November 9–10, 1982. The purpose of these provisions, he explained, was to enable a dairy farmer in the Phoenix area to retain "producer" status on a portion of his milk which he was unable to market to an Order 131 handler.

The UDA witness stated that the Phoenix producer never availed himself of these provisions, but that a dairy farmer from California had "exploited" the provision during a 21-month period from June 1987 through February 1989. He said that this dairy farmer had drawn $192,340 out of the pool in the form of "phantom freight" on more than 8 million pounds of milk diverted to a nonpool plant in California.

The "associated producer" provision now in the order is not a provision that is commonly found in Federal orders. Normally, a pool plant operator who regularly receives a dairy farmer's milk will willingly serve as the handler for the milk when it is not needed at the pool plant and must be diverted to a nonpool plant for manufacturing use. In the Central Arizona market, however, a pool plant operator who had received a dairy farmer's milk was not willing to bear responsibility for the milk when it was diverted to a nonpool plant. Accordingly, UDA proposed, and the Secretary adopted—with some modifications, the "associated producer" provisions.

The producer for whom the "associated producer" provision was intended did not appear at the hearing to present any opposition testimony, but did submit a brief in which he explained that he was unable to attend the hearing because of a flooding problem. In his brief, he stated that the associated producer provision is needed because "the pool should service all producers in it, not just a select few." He suggested, however, that it be modified to restrict it to "producer milk originating in the geographical boundaries of Order 131." He did not indicate that he has used the provision or plans to use it in the future, but implied that it should be kept as a safeguard.

Under the associated producer provisions, a producer is permitted to divert a certain portion of his/her milk to a nonpool plant for Class III use if 50 percent of that person's milk is "producer milk" in the current month and in each of the immediately preceding two months. On the milk diverted to the nonpool plant, the producer draws a payment from the pool based on the difference between the order uniform price and the Class III price for the month.

The non-member dairy farmer who inspired the cooperative's 1982 proposal has never used the associated producer provision and now markets his milk through UDA. According to the UDA general manager, the California producer who had used the provision for a 21-month period joined UDA in the fall of 1989 and stopped using the provision in February 1989.

The associated producer provisions, when used, have been difficult to administer. In a letter referenced by the UDA witness at the hearing, the Order 131 market administrator is quoted as stating that he had "no handle under the order for determining the volume of

milk shipped from a producer's farm to a nonpool plant because there were no reporting requirements" with which to verify the information supplied by the producer. In view of the difficulty of administering the associated producer provision, its lack of use during the past three years, the potential for its abuse, and the limited opposition to its removal, there is no valid reason to keep it in the order. Under these circumstances, it no longer effectuates the declared policy of the Act and should be removed.

3. *Conforming and non-substantive changes.* Certain conforming changes are needed to implement the proposed changes adopted above. In particular, § 1131.9 (Handler) will have to be changed to allow a cooperative bulk tank handler to deliver milk for its account to a producer-handler; § 1131.30 (Reports of receipts and utilization) will have to be modified to report the P–H's own-farm production and supplemental milk purchases each month; § 1131.42 (Classification of transfers and diversions) will have to be modified to provide for the classification of milk transferred to a P–H from a cooperative bulk tank handler; § 1131.60 (i.e., Handler's value of milk for computing uniform price) will have to be amended to include the value of the pooled milk of P–Hs; and § 1131.61 (Computation of uniform price) will have to be changed to accommodate the pooling of a portion of each P–H's milk. In addition, § 1131.71 (Payments to the producer-settlement fund) will have to be amended to provide for the P–H's payment into the pool.

Other changes of a minor and non-substantive nature should also be made to the order at this time to remove obsolete language from the Class I price provision and to correct errors in § 1131.44 (i.e., change "ilk" to "milk") and § 1131.72 (i.e., change "for" to "from").

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Central Arizona order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Central Arizona marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1131 be amended as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR part 1131 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1131.9, paragraph (c) is revised to read as follows:

§ 1131.9 Handler.

* * * * *

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to the pool plant of another handler or to the plant of a producer-handler defined in § 1131.10 in a tank truck owned and operated by, or under contract to, such cooperative association. In the case of milk delivered to the pool plant of another handler, the pool plant operator will be the handler for such milk if both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month in which such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples;

* * * * *

3. Paragraph (a)(1)(ii) of § 1131.10 is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer from pool plants or other order plants, or from handlers described in § 1131.9(c);

* * * * *

4. In § 1131.12, paragraph (b)(4) is revised to read as follows:

§ 1131.12 Producer.

* * * * *

(b) * * *

(4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant.

§§ 1131.21 and 1131.22 [Removed]

5. Sections 1131.21 and 1131.22 are removed.

6. In § 1131.30, paragraph (d) is redesignated as paragraph (e), the words "(a) through (c)" in that redesignated paragraph are changed to read "(a) through (d)", and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk produced from the handler's own-farm production for the month, showing separately the production of each farm unit from which milk is received at the handler's plant;

(2) Receipts of milk from handlers described in § 1131.9(c);

(3) Fluid milk products and bulk fluid cream products received by transfer, or acquired for route disposition, from pool plants and other order plants;

(4) Receipts of other source milk not reported pursuant to paragraph (d)(3) of this section;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

§ 1131.32 [Amended]

7. In § 1131.32, the words "a producer-handler or" are removed from the introductory text of paragraph (a).

§ 1131.33 [Removed]

8. Section 1131.33 is removed.

9. In § 1131.42, the words "pursuant to § 1131.22 or" are removed from paragraph (d)(2)(vi), and the introductory text of paragraph (c) is revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred from a pool plant or a handler described in § 1131.9(c) to a producer-handler under this or any other order shall be classified:

* * * * *

§ 1131.44 [Amended]

10. In § 1131.44, the word ".ilk" is changed to "milk" in paragraph (a)(4).

11. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

12. In § 1131.60, the introductory text is revised, the word "and" is removed at the end of paragraph (h), the period at the end of paragraph (i) is changed to a semicolon followed by the word "and", and a new paragraph (j) is added to read as follows:

§ 1131.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1131.9(b) and (c) and § 1131.10 as follows:

* * * * *

(j) Add, for each producer-handler described in § 1131.10, except a producer-handler whose receipts and acquisitions pursuant to § 1131.10(a)(1)(ii) do not exceed the lesser of 5,000 pounds of fluid milk products or 5 percent of its fluid milk products disposition during the month and whose total distribution of packaged fluid milk products is solely to retail consumers, an amount resulting from the following computations:

(1) Determine the producer-handler's Class I sales from own-farm production for the current month and its lowest monthly own-farm production in the immediately preceding 12 months;

(2) Subtract the producer-handler's lowest month's production from its Class I sales from own-farm production in the current month. Any resulting number less than zero shall be deemed to be zero; and

(3) Multiply the pounds of milk calculated in paragragh (j)(2) by the difference between the Class I price and the Class III price for the current month.

13. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is revised to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

14. In § 1131.71, the introductory text of paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added as follows:

§ 1131.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler, except a handler described in § 1131.10, shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

* * * * *

(b) On or before the 13th day after the end of the month, each handler described in § 1131.10, except those which are exempt from such payment pursuant to § 1131.60(j), shall pay to the market administrator the amount computed pursuant to § 1131.60(j).

* * * * *

§ 1131.72 [Amended]

15. In the section heading for § 1131.72, the word "for" is changed to "from".

16. In § 1131.72, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b).

17. In § 1131.73, paragraph (d)(2) is revised to read as follows:

§ 1131.73 Payments to producers and to cooperative associations.

* * * * *

(d) * * *

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74 and, in the case of pool plants, the location adjustment applicable pursuant to § 1131.52, less payment made pursuant to paragraph (d)(1) of this section.

§ 1131.77 [Amended]

18. In § 1131.77, the last sentence is removed.

§ 1131.85 [Amended]

19. In § 1131.85, paragraph (b) is removed.

Dated: December 15, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93-31258 Filed 12-21-93; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 93-084-2]

Interstate Movement of Mexican-Origin Cattle; Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: We are reopening and extending the period for the public to comment on a proposed rule to add certain certification requirements for Mexican-origin cattle moved in interstate commerce. Extending the comment period will give interested persons additional time to prepare and submit comments.

DATES: Consideration will be given only to comments received on or before February 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief,

Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–084–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4923.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1993, we published in the **Federal Register** (58 FR 59959–59962, Docket No. 93–084–1) a proposed rule to amend the interstate movement regulations, contained in 9 CFR part 71, to require all Mexican-origin cattle moved in interstate commerce to be accompanied by a certificate issued by a representative of the Animal and Plant Health Inspection Service, a State representative, or an accredited veterinarian in the State from which the cattle are to be moved. Comments on the proposed rule were required to be received on or before December 13, 1993.

We received several requests for an extension of the comment period to allow interested parties additional time to prepare comments on the proposal. In response to these requests, we are reopening and extending the comment period for the proposed rule for an additional 60 days. We will consider all comments that are received on or before February 14, 1994.

Done in Washington, DC, this 17th day of December 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–31219 Filed 12–21–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 93–086–1]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to prohibit the importation of Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers from Mexico into the United States. The incidence of tuberculosis in these cattle is significantly higher than in other breeds. Since 1991, Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers traced back to Mexico have accounted for more than half of the tuberculosis-infected cattle identified at slaughter in the United States. This action appears necessary to prevent tuberculosis-exposed Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers from Mexico from spreading the disease to U.S. cattle.

DATES: Consideration will be given only to comments received on or before February 22, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–086–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals, including cattle from Mexico, to prevent the introduction into the United States of communicable diseases of livestock.

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis (TB) causes weight loss, general debilitation, and sometimes death. Section 92.427(c) of the regulations requires, among other things, the following: That cattle imported into the United States from Mexico come from a herd that has been tuberculin-tested, with negative results, between 3 and 12 months before the date the cattle are offered for entry into the United States or, if steers, that each steer has been tuberculin-tested, with negative results, either within 60 days before the date the steers are offered for entry into the United States or at the port of entry; or have originated in a herd declared tuberculosis-accredited by the Government of Mexico, provided that they have moved directly to the U.S. port of entry from their herd of origin and have not commingled with cattle from any herd of unlike status. In addition, § 92.427(c) requires that breeding cattle be detained at the port of entry until tested for tuberculosis with negative results.

The regulations are intended to prevent the importation of TB-infected cattle into the United States. Despite the regulations, however, more than half of all cattle with tuberculous lesions detected at slaughter in the United States during the past decade have been traced back to Mexico.

During the 18 months ending March 31, 1993, 1,090 TB-infected cattle were detected at slaughter in the United States. Of the 713 TB-infected cattle that were identified as being of Mexican origin, 478 (67 percent) were identified as Holstein or Holstein cross-bred steers and Holstein or Holstein cross-bred spayed heifers. Holsteins are a dairy breed.

Based on reports from Mexican cattlemen's associations, we conservatively estimate the incidence of tuberculosis in dairies in Mexico to be higher than 20 percent. This contrasts with the incidence of tuberculosis in U.S. dairies which, at less than 0.01 percent, is statistically insignificant.

Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers comprise approximately 12.5 percent of the cattle imported from Mexico into the United States. Few non-Holstein dairy cattle are currently imported from Mexico into the United States. Compared with TB infection in beef cattle, the level of TB infection in dairy cattle imported from Mexico is disproportionately high. We project that we could drastically reduce the number of TB-lesioned cattle found at slaughter in the United States by prohibiting the importation from Mexico of Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers. Extrapolating from this figure, we would expect this action to reduce the risk of exposing U.S. cattle to tuberculosis.

We would continue to permit importation of Holstein and Holstein cross-bred breeding cattle because few such cattle are imported, and the TB-testing required of breeding cattle in § 92.427(c)(4) appears adequate to detect infection in breeding cattle.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed 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.

Of the approximately 1 million Mexican cattle imported from Mexico into the United States during 1991, the most recent year for which complete data are available, we estimate that 12 percent were Holstein and Holstein cross-bred steers (in the 1991 data, spayed heifers were counted as steers). During the same year, the U.S. cattle population totaled 99.4 million head. Thus, imported Mexican Holstein and Holstein cross-bred steers accounted for less than one percent of the total U.S. bovine population.

The total value of imported Mexican Holstein and Holstein cross-bred steers was close to $45 million in 1991, less than one-tenth of one percent of the 1991 value of the U.S. live cattle inventory, which was estimated at more than $64 billion.

Approximately 48,000 cattle feedlots were operating in the United States during 1991. Of those, 620 feedlots concentrated in western States regularly handle Mexican cattle. Approximately 67 of the feedlots handling Mexican cattle can be considered small entities, which is considered as having less than a 1,000 head capacity. They account for less than one percent of all domestic feedlots. We do not expect this action to significantly affect U.S. importers because they can replace the Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers currently imported from Mexico with other breeds of feeder cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Executive Order 12778.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

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

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

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.427, a new paragraph (c)(5) would be added to read as follows:

§ 92.427 Cattle from Mexico.

* * * * *

(c) * * *

(5) The importation of Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 16th day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31183 Filed 12–21–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No: EE-RM-93-701]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, requires the Department of Energy (DOE or the Department) to administer an energy conservation program for certain major household appliances and commercial equipment. Among other program elements, the Act requires that standard methods of testing be prescribed for each covered product. The purpose of today's document is to propose an amendment to the existing Department of Energy (DOE or the Department) clothes washer test procedure to clarify an ambiguity in the testing procedures. The proposed testing procedures will be required for clothes washers that are designed to lock out the warm water rinse from the normal cycle, so that only the cold water rinse is available.

DATES: The Department will accept comments, data, and information regarding this notice not later than Thursday, March 24, 1994.

Oral views, data, and arguments may be presented at a public hearing to be held in Washington, DC, beginning at 9:30 a.m. on Thursday, February 24, 1994. Requests to speak at the hearing must be received by the Department no later than 4 p.m., Monday, February 14, 1994. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., Friday, February 18, 1994.

ADDRESSES: Written comments and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Amendment of the Test Procedure for Clothes Washers, Docket No. EE–RM–93–701, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

The hearing will be held at the U.S. Department of Energy, Forrestal Building, room 1E-245, 1000 Independence Avenue, SW., Washington, DC.

Requests may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled, "Amendment of the Test Procedure for Clothes Washers," (Docket No. EE-RM-93-701), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section VII of this notice.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94-163, as amended by the National Energy Conservation Policy Act, Public Law 95-619, the National Appliance Energy Conservation Act of 1987, Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100-357, and the Energy Policy Act of 1992, Public Law 102-486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The products currently subject to this Program (often referred to as "covered products") include clothes washers, the subject of today's notice.

Under the Act, the Program consists essentially of three parts: testing, labeling, and the Federal energy conservation standards. Violations of the standard, as determined under the test procedure, are subject to civil penalties. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and must not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by, the product except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2). However, the 180-day period referred to in section 323(c)(2) may be extended for a period of up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. Section 323(c)(3). Test procedures appear at 10 CFR part 430, subpart B.

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured energy use of a covered product, the DOE is required to amend the related energy conservation standard accordingly. In determining the amended standard, the DOE is required to measure the energy efficiency or energy use of representative samples of covered products which minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. Section 323(e)(2).

B. Background

The clothes washer test procedure was originally proposed by notice issued May 11, 1977 (42 FR 25329, May 17, 1977). Subsequently, the Department published the original clothes washer test procedure on September 28, 1977 (42 FR 49802) with the only amendment being an editorial change in the title of Appendix J on June 29, 1979 (44 FR 37938).

Whirlpool Corporation (Whirlpool) has designed a new line of clothes washers to meet the appliance energy conservation standard established by DOE that becomes effective May 14, 1994. Whirlpool is obligated to test these clothes washers for compliance with the new standard using the test procedure regulations set forth in 10 CFR part 430, subpart B, appendix J. The new clothes washers have been designed to lock out the warm rinse setting in the cycle Whirlpool has designated as the "normal cycle" under the regulations and thus only a cold water rinse is available on that cycle. Warm water rinses are available on all other cycles.

Whirlpool interprets the test procedure to require that all testing be conducted in the "normal cycle" as defined in § 1.10, 10 CFR part 430, subpart B, appendix J, and to require that the temperature selector be set to the hottest setting that is available in the normal cycle. Representatives of Whirlpool met with DOE officials to discuss the company's interpretation. The DOE concluded that Whirlpool's interpretation, while inconsistent with the underlying purpose of the test procedure, has sufficient legal basis to necessitate an amendment of the test procedure in order to avoid material understatements of actual energy consumption.

II. Discussion

Paragraph 3.2 of 10 CFR, part 430, subpart B, appendix J, sets forth a sequence of steps that a manufacturer is required to follow in order to establish testing conditions. Relevant provisions, with emphasis added on the term "normal cycle," provide as follows:

3.2 *Test cycle.* Establish the testing conditions set forth in 2 of this Appendix.

3.2.1 *Per-cycle electrical energy consumption.* Set the water level selector at a maximum fill and insert the appropriate test load, if applicable. Activate the *normal cycle* of the clothes washer and also any suds-saver switch.

3.2.1.1 Measure the electrical energy consumption of the clothes washer for a complete *normal cycle.*

3.2.2 *Hot water consumption for a normal cycle with the water level selector at maximum fill.*

3.2.2.1 Set the water level selector at maximum fill and insert the appropriate test load, if applicable. Activate the *normal cycle* of the clothes washer and also any suds-saver switch.

[1] Part B of Title III of EPCA, as amended, is referred to in this proposed rule as the "Act." Part B of Title III is codified at 42 U.S.C. 6291-6309.

3.2.2.2 For automatic clothes washers set the wash/rinse temperature selector to the hottest setting available (hot/warm) * * *

3.2.2.3 Measure the number of gallons of hot water used to fill the tub for the wash cycle.

3.2.2.4 Measure the total number of gallons of hot water used for all deep rinse cycles.

3.2.2.5 Measure the total gallons of hot water used for all spray rinse cycles.

3.2.2.6 For automatic clothes washer repeat 3.2.2.3, 3.2.2.4, and 3.2.2.5 for each of the other wash/rinse temperature selections available that use hot water * * *

The term "normal cycle" is defined in the test procedure as follows: " 'Normal cycle' means the cycle **recommended by the manufacturer** for washing cotton and/or linen clothes." Paragraph 1.10 (emphasis added). The text of the definition neither specifically requires an independent temperature selector nor specifically provides for an alternative cycle to be used for testing purposes if the cycle "recommended" for washing cotton and/or linen clothes only uses a cold water rinse.

The DOE proposes to amend the clothes washer test procedure in today's notice to establish and clarify the testing procedure that will be required when the warm water rinse is locked out in the normal cycle so that only the cold water rinse is available.

The Department, following consultation with the National Institute of Standards and Technology, proposes to prorate the hot water consumption between the temperature combination settings in the normal cycle and the cycle with the greatest hot water consumption for each temperature combination setting that has a warm rinse locked out of the normal cycle. In addition, the Department also proposes the following definitions in today's notice: most energy intensive cycle, defined as the non-normal cycle which uses the most hot water energy when tested for a given wash/rinse temperature combination setting, and non-normal cycle, defined as a cycle other than the normal cycle, exclusive of any manually selected pre-washes or rinses. The proposed amendments to the test procedure require that all temperature combination settings in the normal cycle be tested. Next, each temperature combination setting which uses a warm rinse and is locked out in the normal cycle is to be tested in its most energy intensive cycle. The total hot water energy consumed for a washing cycle is then calculated following the amended equation of Section 4.1 by summing the hot water consumption of the temperature combination settings available in the normal cycle and the highest hot water consumption of each locked-out temperature combination setting tested on its respective most energy intensive cycle. The Department believes that the proposed amendments to the clothes washer test procedure will capture the actual energy consumption of the machine and thereby provide reliable data to assist consumers in making informed purchasing decisions.

Since these machines which offer the warm rinse lock-out design feature have not been distributed in commerce, data regarding the effect of this feature on consumer selection of the normal cycle are unavailable. Whirlpool alleges that the normal cycle is the cycle used most often and that this will continue despite the warm rinse lock-out control. Whirlpool proposes that DOE use industry data regarding consumer selection of the normal and other cycles, based on consumer choices among currently available cycles. Preliminary data, supplied by Whirlpool, indicate consumers select the normal cycle approximately 75 percent of the time; another cycle 25 percent of the time.

Therefore, the Department today proposes to amend the clothes washer test procedure by adopting 75 percent as the prorating factor for the temperature combination settings in the normal cycle that locks out the warm rinse and 25 percent for the locked out wash/rinse temperature combination settings tested in their respective most energy intensive cycle(s). The Department will revise today's proposal in order to reflect actual consumer usage of machines that offer the warm rinse lock-out design feature as these data become available.

The above modifications are not expected to change the related existing energy efficiency standard for this appliance. The Department believes that the proposed amendments in today's notice will have a minimal impact on the clothes washer industry because of the limited availability of machines which have this unique feature. To the Department's knowledge, until Whirlpool's planned lock-out design, clothes washers have offered all available wash/rinse temperature combinations in their normal cycles. Typically, 97 percent of the energy used by the clothes washer is for heating water, which is currently captured by the test procedure. Because of this, retesting with today's proposed amendments to the test procedure would be unnecessary. Therefore, the Department has determined that no change in the energy efficiency standard would be required under 42 U.S.C. 6293(e)(2) by this proposed clarification of the test procedure.

The Department will ensure that manufacturers have adequate lead time (specifically, one year following promulgation of the final rule) to implement any changes necessary to make their clothes washers comply with the 10 CFR. 430.32(g) energy efficiency standard, measuring compliance using the new test procedure.

III. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for her comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the Program will be used only to standardize the measurement of energy usage and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. The Department, therefore, has determined that prescribing test procedures under the Program is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. This rulemaking, which amends existing part 430 of title 10 and will not change the environmental effect of such regulation, is an item which is "categorically excluded (A5)" by the Department of Energy's regulations on National Environmental Policy Act Implementing Procedures. (10 Code of Federal Regulations, part 1021) (57 FR 15122, April 24, 1992) (Appendix A to subpart D, Categorical Exclusion A5.). Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

IV. Regulatory Planning and Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–345) (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis and that it be published at the time the proposed rule is published. This requirement

(which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule will marginally affect the clothes washer manufacturers. As previously discussed, the test procedure would not have significant economic impact, but rather, it would simply provide common testing methods. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VI. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department has identified a substantial direct effect that today's proposed rule might have on State governments. It would preempt inconsistent State regulations. However, DOE has concluded that such effect is not sufficient to warrant preparation of a federalism assessment. The Department knows of no such inconsistent state regulations. Moreover, if there are any such state regulations, the Act provides for subsequent State petitions for exemption. Thus, a determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. If DOE receives such a petition, it will then be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

VII. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the proposed test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Amendment of the Test Procedure for Clothes Washers, Docket No. EE-RM-93-701". Ten (10) copies are requested to be submitted. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfect™ 5.1 be provided. All submittals received by the date specified at the beginning of this notice will be considered by DOE before final action is taken on the proposed amendments.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed test procedures, to make a written request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Amendment of the Test Procedure for Clothes Washers, Docket No. EE-RM-93-701," both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of group or class of persons that have such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to twenty (20) minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such

issues. If the time provided is insufficient or inconvenient, the Department will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Public Comments

The Department is interested in receiving comments and data concerning the accuracy and workability of the proposed amendments to the clothes washer test procedure. Also, the Department welcomes discussion on improvements or alternatives to these approaches. In particular, DOE is interested in gathering comments on the following:

- The appropriateness of using 75 percent to prorate temperature combination settings in the normal cycle for clothes washers which lock out the warm rinse.
- The appropriateness of the proposed definitions—most energy intensive cycle and non-normal cycle.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, December 10, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of title 10, of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309

2. In Appendix J to Subpart B of part 430, paragraphs 1.10 through 1.18 are redesignated as paragraphs 1.12 through 1.20, respectively, and new paragraphs 1.10 and 1.11 are added to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

* * * * *

1.10 *Most energy intensive cycle* means the non-normal cycle which uses the most hot water energy when tested for a given wash/rinse temperature combination setting.

1.11 *Non-normal cycle* means a cycle other than the normal cycle, exclusive of any manually selected pre-washes or rinses.

* * * * *

3. Paragraphs 3.2, 3.2.2, 3.2.2.2, 3.2.3, 3.2.4, 3.3.2 and 3.3.3 of appendix J to subpart B of part 430 are revised to read as follows:

* * * * *

3.2 *Test cycle.* Establish the testing conditions set forth in section 2 of this Appendix and test all hot water consuming wash/rinse temperature combination settings. All wash/rinse temperature combination settings available on the machine are to be tested in the normal cycle. If the warm rinse is locked out in the normal cycle such that only the cold rinse is available, test all temperature combination settings available in the normal cycle followed by testing of each locked out temperature combination settings in its most energy intensive cycle.

* * * * *

3.2.2 *Hot water consumption with the water level selector at maximum fill.*

* * * * *

3.2.2.2 For automatic clothes washers, set the wash/rinse temperature combination selector to the hottest setting available. For semiautomatic clothes washers, open the hot water faucet valve completely and close the cold water faucet valve completely to achieve the hottest wash/rinse temperature setting (hot/hot).

* * * * *

3.2.3 *Hot water consumption with the water level selector at minimum fill.* Set the water level at minimum fill and insert the appropriate test load, if applicable. Activate the normal cycle of the clothes washer and also any suds-saver switch. Repeat sections 3.2 2.2 through 3.2.2.7.

3.2.4 *Hot water consumption for clothes washers that incorporate a partial fill during the rinse cycle.* Where the procedures in sections 3.2.2 and 3.2.3 cannot be used for clothes washers that incorporate a partial fill during the rinse cycle, activate any suds-saver switch and operate the clothes washer for the complete normal cycle, and the most energy intensive cycle(s), if applicable, at both the maximum and the minimum water fill level for each of the wash/rinse temperature combination setting that use hot water. Measure the total hot water consumed during each test.

* * * * *

3.3.2 Total the hot water measured at maximum fill level for each wash/rinse temperature combination setting in the normal cycle and each required wash/rinse temperature combination setting on its most energy intensive cycle, V_i, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

3.3.3 Total the hot water measured at minimum fill level for each wash/rinse temperature combination setting in the normal cycle and each required wash/rinse temperature combination setting on its most energy intensive cycle, V_j, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

* * * * *

4. Paragraphs 3.2.2.8 through 3.2.2.8.4 and paragraphs 3.2.3.1 and 3.2.3.1.1 of Appendix J to Subpart B of Part 430 are added to read as follows:

* * * * *

3.2.2.8 Perform additional tests for automatic clothes washers that lock out the warm water rinse in the normal cycle so that only the cold rinse is available.

3.2.2.8.1 Set the cycle selector to a non-normal cycle. Set the wash/rinse temperature selector to the hottest untested temperature combination setting that uses a warm rinse locked out in the normal cycle and repeat sections 3.2.2.3, 3.2.2.4 and 3.2.2.5.

3.2.2.8.2 Repeat section 3.2.2.8.1 under the same non-normal cycle for the remaining untested wash/rinse temperature combination settings that use a warm rinse locked out in the normal cycle.

3.2.2.8.3 Repeat sections 3.2.2.8.1 and 3.2.2.8.2 on all remaining non-normal cycles.

3.2.2.8.4 The cycle having the highest measured total gallons of hot

water consumption among the non-normal cycles tested in sections 3.2.2.8.1 through 3.2.2.8.3 shall be the most energy intensive cycle for that particular wash/rinse temperature combination setting.

* * * * *

3.2.3.1 Perform additional tests for automatic clothes washers that lock out the warm water rinse in the normal cycle such that only the cold rinse is available.

3.2.3.1.1 Repeat tests as required in sections 3.2.2.8.1, 3.2.2.8.2, 3.2.2.8.3, and 3.2.2.8.4.

* * * * *

5. Paragraph 4.1 of appendix J to subpart B of part 430 is revised to read as follows:

* * * * *

4.1 *Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, V_{max}, and for the minimum water fill level, V_{min}, expressed in gallons per cycle and defined as:

$$V_{max} = X_1 \sum_{i=1}^{n} [V_i \times TUF_i \times L_i] + X_2 [TUF_W \times S_H]$$

where:

V_i = Reported hot water consumption in gallons per cycle at maximum fill for each wash/rinse temperature combination setting offered on the clothes washer, as provided in section 3.3.2.

TUF_i = Applicable temperature use factor corresponding to wash/rinse temperature combination setting as shown in section 5 or 6. Each TUF number in section 5 is used once for temperature combination setting(s) not locked out in the normal cycle. Each TUF number is used twice for temperature combination setting(s) locked out in the normal cycle.

L_i = Factor to account for locking out the warm rinse in the normal cycle.

1 for clothes washers that do not lock out the warm rinse in the normal cycle.

0.75 for temperature combination setting(s) that locks out the warm rinse in the normal cycle.

0.25 for temperature combination setting(s) in the most energy intensive cycle(s).

n = Number of wash/rinse temperature combination settings under test, as recorded in section 3.3.2. (n is equal to the number of TUFs corresponding to the temperature combination settings in section 5 or 6 for clothes washer that do not lock out the warm rinse. n is equal to the number of TUFs of the available temperature combination settings in the normal cycle plus twice the number of locked out temperature combination settings for clothes washers that lock out the warm rinse.)

TUF_w = Temperature use factor for warm wash setting.

For clothes washers equipped with the suds-saver feature:

X_1 = Frequency of use without the suds-saver feature = 0.86.

X_2 = Frequency of use with the suds-saver feature = 0.14.

For clothes washers not equipped with the suds-saver feature:

X_1 = 1.0

X_2 = 0.0

S_H = Fresh make-up water measured during suds-return cycle at maximum water fill level.

and

$$V_{min} = X_1 \sum_{j=1}^{n} [V_j \times TUF_j \times L_j] + X_2 [TUF_W \times S_L]$$

where:

V_j = Reported hot water consumption in gallons per cycle at minimum fill for each wash/rinse temperature combination setting offered on the clothes washer, as provided in section 3.3.3.

TUF_j = As defined above.

L_j = As defined above.

n = As defined above.

TUF_W = As defined above.

S_L = Fresh make-up water measured during suds-return cycle at minimum water fill level.

X_1 = As defined above.

X_2 = As defined above.

* * * * *

6. Paragraphs 5.1 through 5.3 of appendix J to subpart B of part 430 are revised to read as follows:

5.1 *Five temperature selection.*

Wash/rinse temperature setting	Temperature use factor (TUF)
Hot/Warm	0.18
Hot/Cold	0.12
Warm/Warm	0.30
Warm/Cold	0.25
Cold/Cold	0.15

5.2 *Four temperature selection.*

Wash/rinse temperature setting	Temperature use factor (TUF)
Alternate I:	
Hot/Warm	0.18
Hot/Cold	0.12
Warm/Cold	0.55
Cold/Cold	0.15
Alternate II:	
Hot/Warm	0.18
Hot/Cold	0.12
Warm/Warm	0.30
Warm/Cold	0.40
Alternate III:	
Hot/Cold	0.12
Warm/Warm	0.18
Warm/Cold	0.55
Cold/Cold	0.15

5.3 *Three temperature selection.*

Wash/rinse temperature setting	Temperature use factor (TUF)
Alternate I:	
Hot/Warm	0.30
Warm/Cold	0.55
Cold/Cold	0.15
Alternate II:	
Hot/Cold	0.30
Warm/Cold	0.55
Cold/Cold	0.15
Alternate III:	
Hot/Cold	0.30
Warm/Warm	0.55
Cold/Cold	0.15

[FR Doc. 93-31105 Filed 12-21-93; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-92; Notice No. SC-93-8-NM]

Special Conditions: Learjet, Inc., Model 45 Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Learjet Inc., Model 45 airplane. This new airplane will have a novel and unusual design feature associated with an unusually high operating altitude (51,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received by February 7, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-92, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM-92." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-92." The postcard will be date stamped and returned to the commenter.

Background

On January 27, 1992, Learjet Inc., (Learjet), 8220 West Harry Street, Wichita, KS 67209-2942, or P.O. Box 7707, Wichita, KS 67277-7707, applied for a new type certificate in the transport airplane category for the Model 45 airplane. The Learjet Model 45 is a T-tail, low wing, medium sized business jet powered by two Garrett TFE 731-20-lb. turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 3,500 pounds thrust, with auto performance. The airplane will be capable of operating with two flight crewmembers and a maximum of ten passengers (standard is eight passengers). The type design of the Learjet Model 45 series airplane contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include the relatively small passenger cabin volume and a high operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the Learjet 45 series airplanes; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Learjet must show, except as provided in § 25.2, that the Model 45 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25-1 through 25-75. In addition, the proposed certification basis for the Model 45 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36-1 through the amendment in effect at the time of certification. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 45 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The Learjet Model 45 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 51,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747,

Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125, and Cessna Model 560. The special conditions for the Cessna Model 650 or previously certified Learjet models are considered the most applicable to the Model 45 and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, the proposed special conditions would require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, the proposed special conditions would require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition, therefore, would require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Learjet Model 45 series airplanes:

Operation to 51,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25.365(d), using a factor of 1.67 instead of the 1.33 factor prescribed.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this propose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent

malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

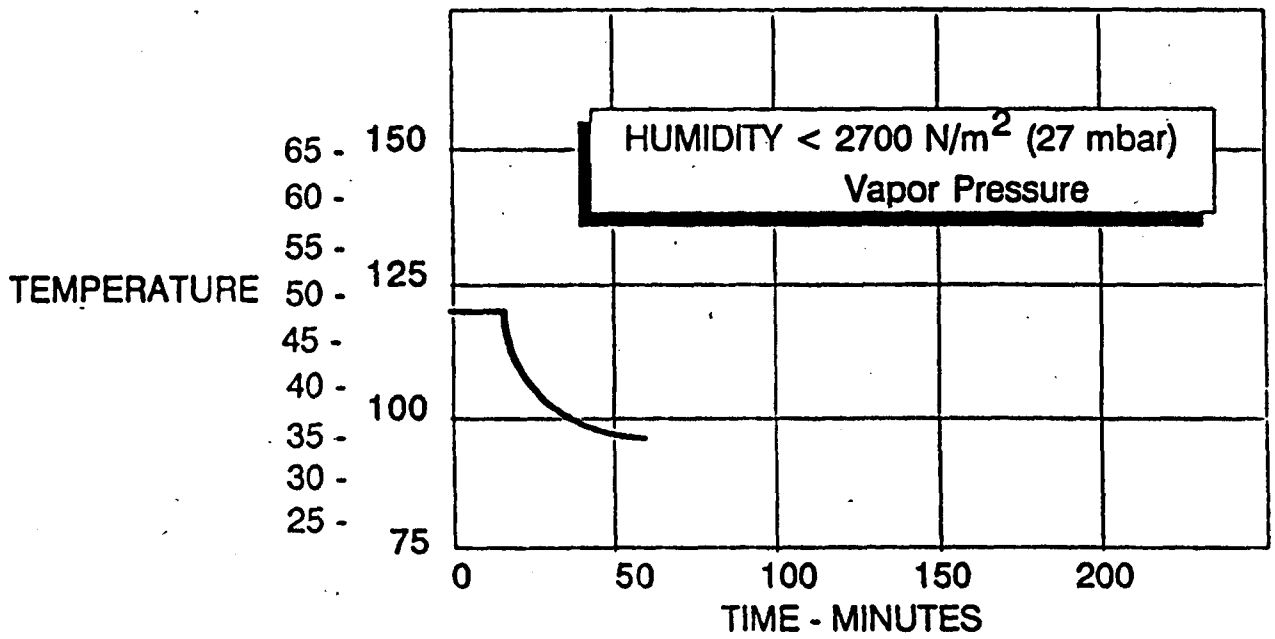
Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for passengers.

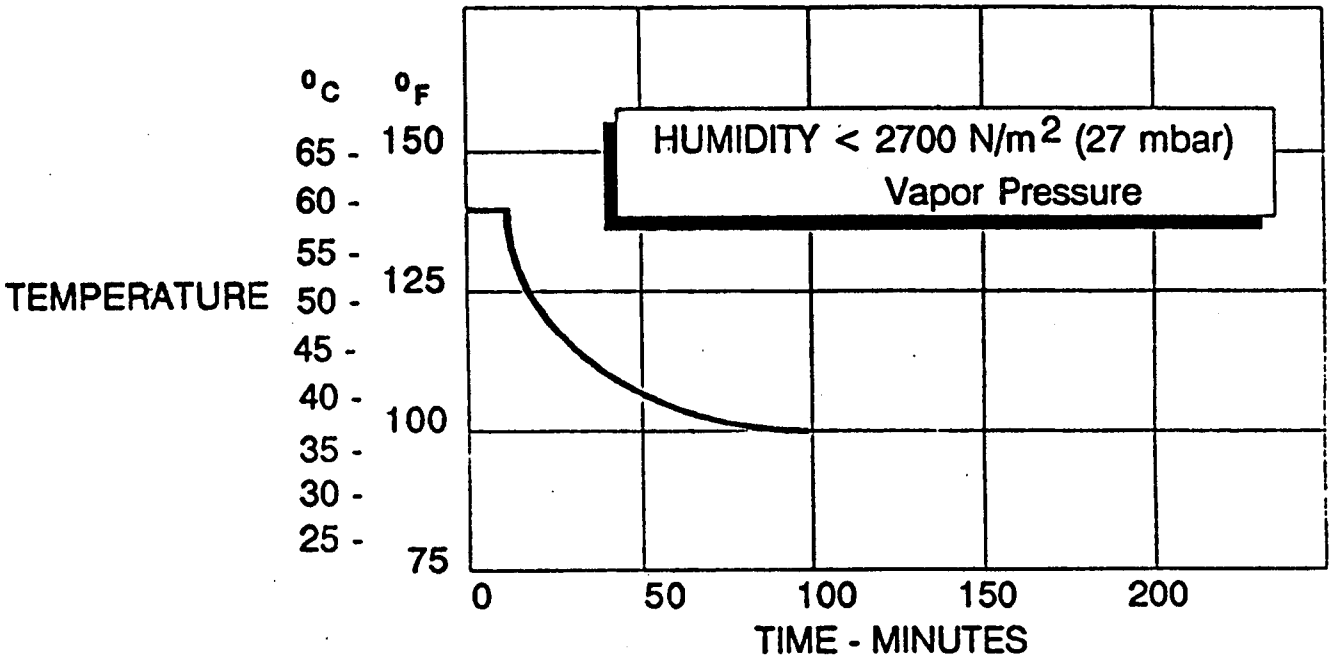
(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910-13-M



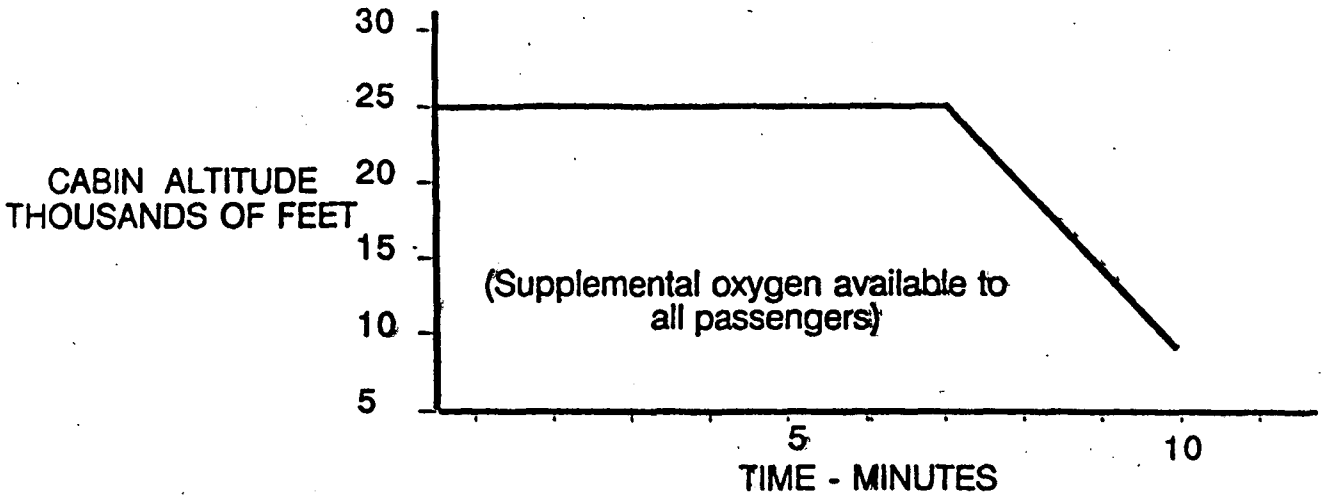
TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



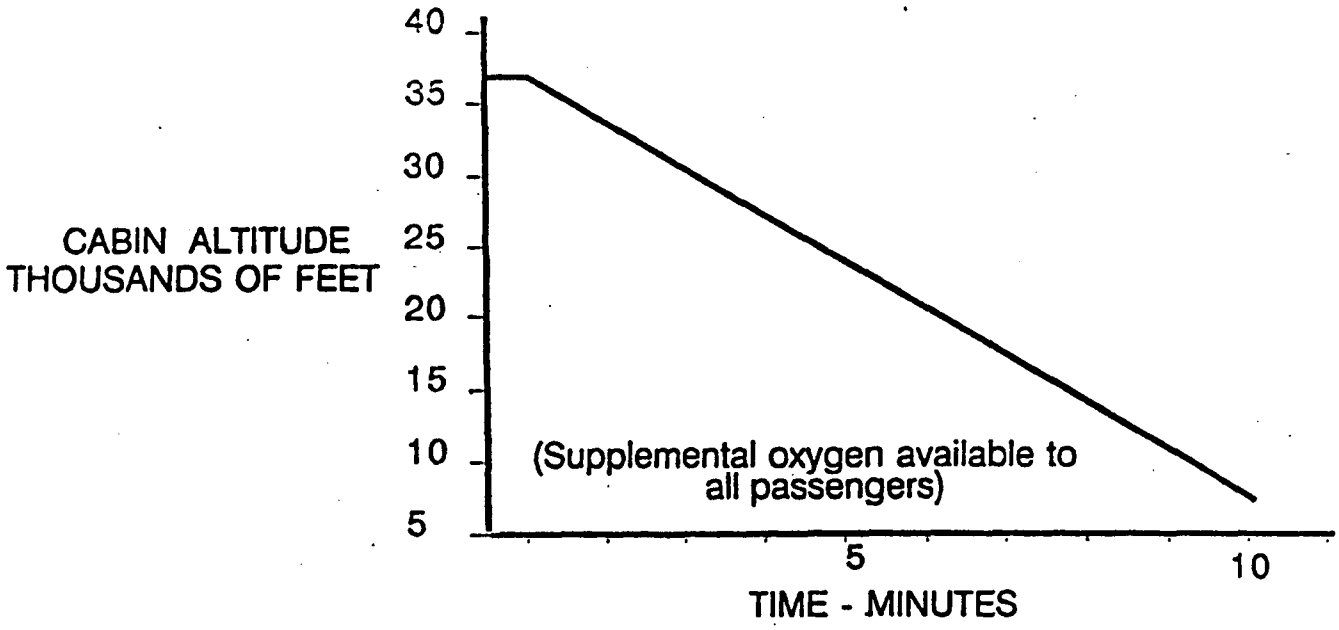
TIME - TEMPERATURE RELATIONSHIP

FIGURE 2



CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

Issue in Renton, Washington, on December 14, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, ANM-100.

[FR Doc. 93-31243 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 93-NM-163-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, that currently requires the incorporation of specific maximum brake wear limits into the maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by that AD are intended to prevent loss of braking effectiveness during a high energy RTO. This action would require that a new part number be permanently marked on certain brakes when modified to meet the new brake wear limits.

DATES: Comments must be received by February 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5336; fax (310) 988-5210.

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 shall 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 Number 93-NM-163-AD." 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, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On May 11, 1993, the FAA issued AD 93-09-10, Amendment 39-8576 (58 FR 29347, May 20, 1993), applicable to all McDonnell Douglas Model DC-8 airplanes, to require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in that AD are not met. The AD also requires that new maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The requirements of that AD are intended to prevent loss of braking effectiveness during a high energy RTO.

AD 93-09-10 contains a table which indicates that a maximum brake wear limit of 0.5 inch is to be applied to Bendix brakes having part number 2601412-1. However, if these same brakes are modified in accordance with McDonnell Douglas Service Bulletin 32-181, dated October 29, 1992, they then will be identified as part number 2601412-2 brakes, and may comply with an increased maximum wear limit of 0.75 inch. That particular McDonnell Douglas service bulletin referred to Allied-Signal Aerospace Company (Bendix Wheels and Brakes Division) Service Bulletin 2601412-32-001, Revision 1, dated August 28, 1992, for specific procedures for modifying the brakes and changing the part number. The procedures in the Allied-Signal service bulletin do not instruct operators to actually change the part number of the modified brakes, but instead recommend that operators conspicuously identify the brake assembly, such as with a color code marking, to indicate that it has been modified.

Upon further review, the FAA finds that this procedure for identifying the modified brake (color code marking) is unacceptable and may contribute to a potentially unsafe condition under certain circumstances. Because of the location of the color code marking on the modified brake assembly, and because the color code marking is not of a permanent quality, it has the tendency to wear off over time and with continued use of the brakes. This poses several problems:

1. If a future change is necessary to the modified brakes, it may not be possible to identify modified brakes accurately if the color code marking has worn off.

2. There is a possibility that modified brakes whose color code marking has worn off could be commingled with unmodified brakes.

3. Brakes that have not been modified may incorrectly be assumed to be modified brakes whose color code marking has worn off.

In the case of Item 3, a potential unsafe condition could arise if the operator were to apply the incorrect increased brake wear limit of 0.75 inch to an unmodified brake, rather than the correct limit of 0.5 inch. This situation could adversely affect braking effectiveness during a high energy rejected takeoff.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 32-181, Revision 2, dated August 25, 1993, that describes a means to modify part number 2601412-1 brakes to part number 2601412-2 brakes, so that an increased maximum brake wear limit of 0.75 inch may be applied to the modified brake. This service bulletin references Allied-Signal Aerospace Company (Bendix Wheels and Brakes Division) Service Bulletin 2601412-32-001, Revision 3, dated July 14, 1993, for specific modification instructions. The Allied-Signal service bulletin contains instructions for permanently marking (re-identifying) the modified brake with the new part number ("2601412-2").

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93-09-10. It would continue to require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in the AD are not met, and that specific wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal also would specify that brakes originally having part number 2601412-1 may be reidentified as part number 2601412-2 brakes (and thereby comply with an increased brake wear limit) if they are modified and permanently marked in accordance with the revised McDonnell Douglas service bulletin described previously. The only change to the existing AD would be a revision of the information that appears under the table of wear limits in paragraph (a); that information would now refer to the revised McDonnell Douglas service bulletin as the appropriate service document for modification procedures relevant to part number 2601412-1 brakes.

There are approximately 337 McDonnell Douglas Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry were affected by AD 93-09-10, and would continue to be affected by this proposed supersedure of that AD. It takes approximately 80 work hours per airplane to accomplish the actions currently required by AD 93-09-10, and the average labor rate is $55 per work hour. (There are 8 brakes per airplane.) The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is approximately $5,600 per airplane. Based on these figures, the current cost impact of AD 93-09-10 on U.S. operators is estimated to be $2,220,000, or $10,000 per airplane.

The total cost figure indicated above is presented as if no operator has yet accomplished the requirements of AD 93-09-10 (or this proposed supersedure of that AD). However, because AD 93-09-10 was effective on June 21, 1993, and operators were given 180 days to comply with it, the FAA assumes that the majority of affected operators have already accomplished the requirements of that AD.

The only foreseeable additional costs that may be imposed by this proposed supersedure of AD 93-09-10 would be the cost of reidentifying (permanently marking) any modified brakes that were previously marked by a color code marking. The costs associated with that procedure are expected to be minimal.

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 removing amendment 39-8576 (58 FR 29347, May 20, 1993), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93-NM-163-AD. Supersedes AD 93-09-10, Amendment 39-8576.

Applicability: All Model DC-8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after June 21, 1993 (the effective date of AD 93-09-10, Amendment 39-8576), inspect the main landing gear brakes having the part numbers indicated below to determine wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake that is within this limit.

Douglas brake part No.	Bendix part No.	Maximum wear limit (inches)
5610206-5001	150787-1	0.7
	150787-2	0.7
5713612-5001	151882-1	0.7
	151882-2	0.7
5773335-5001	154252-1	0.5
5773335-5501	154252-2	0.5
5759262-5001	2601412-1	0.5
	*2601412-2	0.75

*Brakes having this part number include part number 2601412-1 brakes that have been modified and permanently marked in accordance with McDonnell Douglas Service Bulletin 32-181, Revision 2, dated August 25, 1993.

(b) Within 180 days after June 21, 1993, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

(c) 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, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

(d) 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.

Issued in Renton, Washington, on December 16, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-31180 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93-ANM-30]

Proposed Establishment of Class E Airspace; John Day, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at John Day, Oregon. This action is necessary to accommodate a new instrument approach procedure at John Day State Airport, John Day, Oregon. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before January 29, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-30, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-30, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at John Day, Oregon, to accommodate a new instrument approach procedure at John Day State Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and the airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for the airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 John Day, Oregon [New]

John Day State Airport

(Lat. 44°24'14" N, long. 118°57'49" W)

That airspace extending from 700 feet above the surface within a 4-mile radius of the John Day State Airport and within 2 miles either side of the 094° LORAN/RNAV initial approach course extending from the 4-mile radius to 14.5 miles west of the airport.

* * * * *

Issued in Seattle, Washington, on December 6, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-31246 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-19]

Proposed Amendment to Class E Airspace; La Grande, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the La Grande, Oregon, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at La Grande/Union County Airport, La Grande, Oregon. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before January 29, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-19, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-19, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Telephone (206) 227-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at La Grande, Oregon, to accommodate a new instrument approach procedure at La Grande/Union County Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36296; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 La Grande, OR [Revised]

La Grande/Union County Airport, OR
(Lat. 45°17'21" N, long. 118°00'22" W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 45°38'59" N, long. 118°02'04" W, extending eastwardly to lat. 45°37'00" N, long. 117°44'34" W, on the east by a line extending to lat. 45°15'29" N, long. 117°49'04" W, on the south by a line extending to lat. 45°17'29" N, long. 118°07'04" W, on the west by a line extending to the point of beginning and within a 4.3-mile radius of the La Grande/

Union County Airport; and within 2 miles each side of the extended centerline of runway 16 at the La Grande/Union County Airport extending from the 4.3-mile radius to 13 miles north of the airport.

* * * * *

Issued in Seattle, Washington, on December 6, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-31244 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-7]

Proposed Establishment of Class E Airspace; Louisburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Louisburg, North Carolina. A Standard Instrument Approach Procedure (SIAP) to the Franklin County Airport has been developed and controlled airspace from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations within controlled airspace. If approved, the operating status of the airport would change from VFR to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: January 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93-ASO-7, Manager, System Management Branch, ASO-530, P. O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305-5200.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ASO-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Louisburg, North Carolina. A SIAP based on the Raleigh-Durham Very High Frequency Omnidirectional Range (VOR) has been established to serve the Franklin County Airport. Controlled airspace extending from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME-A SIAP at the Franklin County Airport. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, in effect as of September 16, 1993, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ASO NC E5 Louisburg, NC [New]

Franklin County Airport, NC
(Lat. 36°01'26" N, Long. 78°19'47" W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Franklin County Airport.

* * * * *

Issued in College Park, Georgia, on December 3, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93-31254 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-8]

Proposed Alteration of Jet Route J-50

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter the description of Jet Route J-50 between Lufkin, TX, and Alexandria, LA. There is a small bend between these two points and this action would realign that segment as a direct route. This action would save fuel.

DATES: Comments must be received on or before February 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 93-ASW-8, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193-0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ASW-8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Jet Route J-50 located in the vicinity of Lufkin, TX. Currently, there is a small bend in the route between Lufkin, TX, and Alexandria, LA, and this action would realign Jet Route J-50 as a direct route between these two points. This action would save fuel. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J-50 [Revised]

From Shafter, CA, via Paradise, CA; INT Paradise 093° and Blythe, CA, 282° radials; Blythe; INT Blythe 096° and Gila Bend, AZ, 312° radials; Gila Bend; Stanfield, AZ; San Simon, AZ; INT San Simon 105° and El Paso, TX, 275° radials; El Paso; INT El Paso 093° and Wink, TX, 266° radials; Wink; Abilene, TX; Waco, TX; Lufkin, TX; Alexandria, LA; McComb, MS, to Crestview, FL.

* * * * *

Issued in Washington, DC, on December 14, 1993.

Willis C. Nelson,

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

[FR Doc. 93-31255 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 239, 240, 270, and 274

[Release Nos. 33-7037; 34-33350; IC-19957; S7-33-93]

RIN 3235-AA69

Amendments to Proxy Rules for Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") is proposing for public comment amendments to the proxy rules applicable to registered investment companies under the Investment Company Act of 1940 and the Securities Exchange Act of 1934 to revise the information required in investment company proxy statements. The proposed amendments are intended to improve the disclosure provided to investment company shareholders in proxy statements.

DATES: Comments must be received on or before March 18, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-33-93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Special Counsel, or Kenneth J. Berman, Deputy Chief, Office of Disclosure and Adviser Regulation, Division of Investment Management, (202) 272-2107, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10-6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is proposing for comment:

(1) An amendment to Schedule 14A (17 CFR 240.14a-101) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "1934 Act") to add a new item 22 that would include the specific requirements applicable to the proxy statements of management investment companies ("funds") registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "1940 Act"). Item 22 would replace rules 20a-2 (17 CFR 270.20a-2) and 20a-3 (17 CFR 270.20a-3) under the 1940 Act, which would be rescinded;

(2) Corresponding amendments to the general requirements for proxies in Regulation 14A (17 CFR 240.14a-1) under section 14(a) of the 1934 Act (15 U.S.C. 78n(a)), including, among other things, items 7, 8, and 10 of Schedule 14A and related requirements of Regulation S-K (17 CFR 229 *et seq.*), to clarify the requirements applicable to funds and to exempt funds from certain proxy disclosure requirements that are not relevant to funds;

(3) Amendments to Forms N-1A (17 CFR 274.11A), N-2 (17 CFR 274.11a-1), and N-3 (17 CFR 274.11b) to conform the compensation disclosure requirements of those forms to the proposed proxy statement requirements; and

(4) An amendment to Form N-14 (17 CFR 239.23), the registration statement form for the registration of securities issued by investment companies in business combination transactions, to require a comparative fee table in the disclosure documents delivered in connection with such transactions.

The proposed amendments would update the fund proxy rules to reflect current matters on which fund shareholders are commonly asked to vote, improve the disclosure provided to shareholders, and simplify the preparation of fund proxy statements.

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Executive Summary

The Commission is proposing to revise the disclosure requirements for fund proxy statements to update the proxy disclosure requirements for funds and to simplify the preparation of fund proxies. The proposed amendments would consolidate into a new item 22 in Schedule 14A disclosure requirements previously set forth in rules 20a-2 and 20a-3. The provisions of rules 20a-2(a) and 20a-2(b), as proposed to be modified, would be incorporated in proposed item 22. Proposed item 22 would include:

(i) In paragraph (a), definitions applicable to item 22 and certain general requirements;

(ii) In paragraph (b), disclosure requirements applicable to solicitations in connection with the election of directors;

(iii) In paragraph (c), disclosure requirements applicable to solicitations in connection with approval of an investment advisory contract or an amendment thereto; and

(iv) In paragraph (d), disclosure requirements applicable to solicitations in connection with a distribution plan pursuant to rule 12b-1 under the 1940 Act [17 CFR 270.12b-1].

Item 22 would eliminate certain of the current disclosure requirements concerning matters that are not directly relevant to solicitations to elect directors or to approve an investment advisory contract. New provisions would be added to improve the disclosure provided to shareholders, including, among other things, a table showing compensation paid to all directors. Item 22 also would specify information required in fund proxy statements when a fund seeks approval of a distribution plan under rule 12b-1. Rule 20a-1 would be retained, with minor technical and conforming changes, to implement the Commission's authority with respect to proxies under section 20(a) of the 1940 Act; rules 20a-2 and 20a-3 would be rescinded.

The Commission also is proposing other amendments to the general proxy requirements in Regulation 14A and Schedule 14A, and related requirements in Regulation S-K to accommodate proposed item 22 and to make certain requirements more appropriate to disclosure for funds.

I. Background

The 1940 Act proxy rules, adopted in 1960 under section 20(a) of the 1940 Act

[15 U.S.C. 80a–20(a)],[1] supplement the general proxy disclosure requirements in Regulation 14A under section 14(a) of the 1934 Act.[2] The fund-specific proxy disclosure rules address certain matters expressly required by the 1940 Act to be submitted for shareholder approval, including the approval of an investment advisory contract and the election of members of the board of directors.[3]

In the recent study of investment company regulation, Protecting Investors: A Half Century of Investment Company Regulation ("Protecting Investors Report"),[4] the Division of Investment Management recognized the continuing importance of board of director oversight of investment company affairs, especially the "watchdog" function performed by independent directors.[5] The Division also emphasized that shareholder voting continues to play a valuable role in fund regulation.[6] The information that must be sent to shareholders in connection with a vote serves to keep shareholders informed. In addition, the knowledge that shareholders must vote on matters, such as an increase in the investment adviser fee, operates as a deterrent to self-dealing. The proxy rules are designed to elicit disclosure that achieves these goals.

Consistent with the conclusions in the Protecting Investors Report, the Commission is proposing to update the proxy rules to reflect current matters on which fund shareholders are typically asked to vote and changes in the fund industry since the proxy rules were adopted in 1960.[7] The amendments are designed to improve the disclosure provided to shareholders in fund proxy statements by placing greater emphasis on information that is directly relevant to specific matters submitted to a shareholder vote and by eliminating disclosure that may not be pertinent to the matters being voted upon and which is, in most cases, available in other disclosure documents. The proposed amendments are part of the Commission's continuing efforts to assure that material information is provided to fund investors in a concise, comprehensible format that facilitates investor decision-making.[8]

II. Discussion

A. Item 22 of Schedule 14A: Reorganization of Disclosure Rules

Currently, funds preparing proxy statements must refer to several sets of rules relating to proxy statement disclosure, including Regulation 14A and Schedule 14A under the 1934 Act, Regulation S–K,[9] and rules 20a–2 and 20a–3 under the 1940 Act.[10] The proposed amendments would simplify the preparation of proxies by consolidating into a new item 22 to Schedule 14A disclosure requirements previously set forth in rules 20a–2 and 20a–3. In addition, the proposed new item would be applicable to information statements required to be distributed by funds pursuant to recently adopted amendments to the 1934 Act.[11]

The provisions of rules 20a–2(a) (17 CFR 270.20a–2(a)) and 20a–2(b) (17 CFR 270.20a–2(b)), as proposed to be modified, would be incorporated in proposed item 22. As discussed in more detail below, certain of these provisions would be deleted and new provisions would be added, including, among other things, a table showing compensation paid to all directors. In addition, item 22 would specify information required in fund proxy statements when a fund seeks approval of a distribution plan under rule 12b–1. Rule 20a–1 would be retained, with minor technical and conforming changes, to implement the Commission's authority with respect to proxies under section 20(a) of the 1940

[1] Investment Company Act Rel. No. 2978 (Feb. 26, 1960) (25 FR 1865 (Mar. 3, 1960)).

[2] Section 20(a) provides the Commission with the authority to adopt rules regulating the solicitation of proxies by funds. On the effective date of the 1940 Act, the Commission adopted rule 20a–1 (17 CFR 240.20a–1) (originally rule N–20A–1) which, among other things, required fund proxy statements to include, as appropriate, the information required to be disclosed in non-investment company proxy statements by the rules adopted under section 14(a) of the 1934 Act. Investment Company Act Rel. No. 9 (Nov. 1, 1940) (5 FR 4366 (Nov. 5, 1940)).

[3] Section 15(a) (15 U.S.C. 80a–15(a)) requires shareholder approval of the investment advisory contract, and section 16(a) (15 U.S.C. 80a–16(a)) sets forth the requirements for the election of directors. Shareholder approval also is required under section 13 of the 1940 Act (15 U.S.C. 80a–13) when a fund: (i) changes its classification as an open-end or closed-end company or changes from a diversified to a non-diversified company; (ii) borrows money, issues senior securities, underwrites securities issued by others, purchases or sells real estate or commodities, or makes loans to other persons, except as stated in the recital of policy set forth in the fund's registration statement; (iii) deviates from the concentration policy set forth in its registration statement; (iv) deviates from any investment policy that is changeable only by a shareholder vote or that is a fundamental policy under section 8(b)(3) (15 U.S.C. 80a–8(b)(3)); or (v) changes the nature of its business so as to cease being an investment company. Shareholders also are required to ratify the selection of public accountants if an annual meeting is held. Section 32(a)(2) (15 U.S.C. 80a–31(a)(2)). Matters for which shareholder approval is required under section 13 or section 32(a)(2) (other than the selection of accountants which is addressed by item 9 of Schedule 14A) are not subject to special proxy rules under the 1940 Act; rather, they are required to be described in substantially the same detail as those matters specifically referred to in Schedule 14A. Item 20 of Schedule 14A.

[4] Sec, Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Corporate Governance 251–289 (May 1992).

[5] Protecting Investors Report at 253–254.

[6] *Id.*

[7] The Commission has, since 1960, adopted only one amendment to the 1940 Act proxy rules, amending rule 20a–2(a)(7) (17 CFR 270.20a–2(a)(7)) to require fund proxy statements to include specified information regarding the brokerage placement practices of investment advisers. Investment Company Act Rel. No. 10569 (Jan. 30, 1979) (44 FR 7869 (Feb. 7, 1979)). Other amendments have been proposed but not adopted. *See* Investment Company Act Rel. No. 3931 (Mar. 18, 1964) (29 FR 3777 (Mar. 26, 1964)) (proposed disclosure of certain adviser financial information and other information relating to underwriters and the principal underwriting contract); Investment Company Act Rel. No. 7087 (Mar. 31, 1972) (37 FR 6758 (Apr. 4, 1972)) (proposal to prohibit a fund from adjourning a shareholders' meeting if a properly constituted quorum was present). In a letter to the Director of the Division of Investment Management, dated July 1, 1986, the Investment Company Institute suggested revisions to the proxy rules applicable to funds to reflect the growth of, and changes in, the fund industry.

[8] See, e.g., Investment Company Act Rel. No. 19382 (Apr. 6, 1993) (58 FR 19050 (Apr. 12, 1993)) (adopting simplified financial highlights table and management's discussion of fund performance requirement for open-end funds); Investment Company Act Rel. No. 19342 (Mar. 5, 1993) (58 FR 1614 (Mar. 25, 1993)) (proposing to permit sales of mutual fund shares marketed directly to the public to proceed directly from off-the-page prospectuses); Investment Company Act Rel. No. 19115 (Nov. 20, 1992) (57 FR 56826 (Dec. 1, 1992)) (adopting fee table and simplified financial highlights table for closed-end fund prospectuses); Investment Company Act Rel. No. 16245 (Feb. 2, 1988) (53 FR 3868 (Feb. 10, 1988)) (adopting uniform formula for calculation of fund performance claims); Investment Company Act Rel. No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)) (adopting fee table for open-end fund prospectuses).

[9] Regulation S–K includes the generally applicable disclosure items for filings under, among other things, the 1934 Act.

[10] The other items in Schedule 14A would continue to be applicable, as appropriate, to fund proxy statements. Schedule 14A includes provisions governing the form and content of all proxy statements such as, among other things, information concerning the date, time, and place of the meeting of shareholders (item 1), amendments of the charter, by-laws or other corporate documents (item 19), and voting procedures (item 21).

[11] Amendments to section 14(c) of the 1934 Act (15 U.S.C. 78n(c)) were enacted in the Shareholder Communications Improvement Act of 1990 ("SCIA"). Pub. L. 101–550, 104 Stat. 2713. When proxies are not solicited in connection with a shareholder meeting, issuers of securities registered under section 12 of the 1934 Act (15 U.S.C. 781) are required by section 14(c) to transmit to shareholders information substantially similar to that contained in the proxy statement. These requirements are set forth in Regulation 14C (17 CFR 240.14c–1) and Schedule 14C thereto (17 CFR 240.14c–101). Schedule 14C refers to Schedule 14A for most of the requirements for information statements. Under the SCIA amendments, funds are now subject to the information statement requirement. Rules implementing the change were adopted by the Commission on January 3, 1992. Investment Company Act Rel. No. 18467 (Jan. 6, 1992) (57 FR 1096 (Jan. 10, 1992)).

Act;[12] rules 20a–2 and 20a–3 would be rescinded.

The proposed amendments would not modify the basic format of fund proxy statements. Item 22 would include a new requirement concerning the format for disclosure, however, when one proxy statement solicits shareholder votes for more than one fund or for multiple portfolios of series investment companies ("series funds").[13] While this manner of solicitation is more efficient and less costly, it may be confusing to shareholders. Therefore, the Commission is proposing that, when a fund proxy statement includes multiple proposals requiring the separate vote of shareholders of more than one fund or portfolio of a series fund, the fund includes a table at the beginning of the proxy statement summarizing each proposal and indicating which fund or series shareholders are being requested to approve each proposal.[14] This proposal would improve the proxy disclosure by allowing shareholders to direct their attention to proposals that are applicable to the fund or portfolio in which they invest. Comment is requested on other methods of clarifying the presentation of multiple proposals in fund proxy statements, such as requiring separate proxy statement "supplements" for each fund or portfolio describing the matters applicable to that fund or portfolio.[15]

B. General Provisions: Item 22(a)

As proposed, paragraph (a) of item 22 would provide the definition of terms used in item 22.[16] Item 22(a) also would include general proxy disclosure requirements, such as the name and address of the fund's investment adviser, principal underwriter, and administrator,[17] and would contain the filing fee requirements.[18] In addition, item 22(a) would require, as is currently required by rule 20a–2, disclosure of transactions by directors in the securities of the investment adviser or its parent(s) or subsidiaries in proxy solicitations involving the election of directors or approval of an investment advisory contract.[19] This disclosure provides information about potential conflicts of interests of directors.[20]

Item 22(a) would require fund proxy statements seeking approval of proposals that would increase fees or expenses to include a comparative fee table showing the amount of fees and expenses currently paid by fund shareholders and the amount of fees and expenses shareholders would have paid if the matter being voted on had been in effect.[21] The fee table is intended to assist shareholders in assessing the full effect of a proposed fee increase.[22]

The Commission is proposing to include in item 22(a) a requirement that a fund state in the proxy statement whether it intends to inform shareholders of the voting results in a periodic report or other document transmitted to shareholders.[23] Funds currently report voting results in Form N–SAR [17 CFR 274.101], the fund semi-annual report filed with the Commission; however, filings on Form N–SAR are not disseminated to shareholders.

C. Election of Directors

The 1940 Act and the Commission's rules assign important responsibilities to fund directors,[24] who are required to be elected by shareholders.[25] The

[12] The Commission is proposing minor technical amendments to rule 20a–1 to delete references to rules 20a–2 and 20a–3 and to add references to, among other things, Regulation 14A and Schedule 14A. In addition, the filing fee requirement in rule 20a–1(c) (17 CFR 270.20a–1(c)) would be moved to subparagraph (a)(2) of proposed item 22.

[13] A series fund is a fund comprised of two or more portfolios, each of which has a distinct investment objective with assets specifically allocated to that portfolio; investors' interests in such a fund are limited to those portfolios in which they invest. Each portfolio operates for many purposes like a separate fund although the portfolios are all part of the same business entity with one board of directors. Series funds are specifically permitted under section 18(f)(2) of the 1940 Act [15 U.S.C. 80a–18(f)(2)].

[14] Subparagraph (a)(3)(ii) of proposed item 22. To assure that shareholders are not confused in casting their vote, a separate proxy card is required for each fund or portfolio.

[15] See, e.g., Item 902 of Regulation S–K (17 CFR 229.902) (requiring separate disclosure supplements for each entity proposed to be included in certain "roll-up" transactions).

[16] The proposed definitions in subparagraph (a)(1) would include, among other things, certain definitions that currently appear in rule 8b–2 under the 1940 Act (17 CFR 270.8b–2) that were previously referred to in rule 20a–2(c) (17 CFR 270.20a–2(c)).

[17] Subparagraph (a)(3)(i) of proposed item 22. "Administrator" would be defined, as it is in item 5(c) of Form N–1A, as any person or persons who provide significant administrative or business management services to the fund. Subparagraph (a)(1)(i) of proposed item 22.

[18] Subparagraph (a)(2) of proposed item 22. The filing fee would continue to be $125.

[19] Rule 20a–2(a)(8) [17 CFR 270.20a–2(a)(8)]. Subparagraph (a)(4) of proposed item 22.

[20] The proposed item would not require disclosure of information, as is currently required by rule 20a–2(a)(8), about securities transactions by officers of the fund (who generally are employees of the investment adviser) or officers, general partners, or parents of the investment adviser in the securities of the investment adviser. These transactions may not be relevant to proxy statements related to the election of directors or the approval of an investment advisory contract.

[21] Subparagraph (a)(3)(iii) of proposed item 22. This requirement would apply to proposals that would cause an increase in fees directly, such as a proposal to increase the investment advisory fee, or indirectly, such as a change of investment adviser that would result in an increase in other expenses. These fees could include administrative, custodial, or transfer agent fees. The proposed fee table would be required to be prepared in accordance with the applicable items of Form N–1A, in the case of a open-end fund, Form N–2, in the case of a closed-end fund, or Form N–3, in the case of investment companies that are separate accounts offering variable annuity contracts.

[22] A narrative description of the effect of the proposed fee, in lieu of the fee table, would be required where approval is sought only for a change in asset breakpoints that would not have increased the fee for previous years because the assets of the fund have not reached the breakpoint. Instruction 1 to subparagraph (a)(2)(iii) of proposed item 22.

[23] Subparagraph (a)(3)(iv) of proposed item 22.

[24] These responsibilities include, among other things: (i) evaluation and approval of the investment advisory contract (sections 15(a) and 15(c) (15 U.S.C. 80a–15(c))), the principal underwriting contract (section 15(c)), and use of fund assets for the distribution of shares (rule 12b–1); (ii) selection of independent public accountants (section 32(a)(1) (15 U.S.C. 80a–31(a)(1))); (iii) oversight of securities transactions with affiliates to the extent such transactions are permitted under various rules (section 10(f) (15 U.S.C. 80a–10(f)) and rule 10f–3 (17 CFR 270.10f–3), section 17(a) (15 U.S.C. 80a–17(a)) and rule 17a–7 (17 CFR 270.17a–7), and section 17(e) (15 U.S.C. 80a–17(e)) and rule 17e–1 (17 CFR 270.17e–1)); (iv) approval and oversight of certain portfolio security depositary arrangements (section 17(f) (15 U.S.C. 80a–17(f)) and rule 17f–4 (17 CFR 270.17f–4)); (v) approval of certain procedures relating to the calculation of the fund's net asset value (section 2(a)(41) (15 U.S.C. 80a–2(a)(41)), section 22(c) (15 U.S.C. 80a–22(c)) and rule 22c–1 (17 CFR 270.22c–1)); (vi) approval of size of repurchase offer and adoption of procedures regarding portfolio liquidity for repurchase offers by closed-end management investment companies (rule 23c–3 (17 CFR 270.23c–3)); and (vii) various determinations in connection with the establishment of a stable per share price and the portfolio management of a "money market" fund (rule 2a–7 (17 CFR 270.2a–7)). In addition, directors are subject to general standards of fiduciary duty to the fund and its shareholders under the 1940 Act (section 36(a) of the 1940 Act (15 U.S.C. 80a–35(a))) and under state law, *see* 3 Fletcher CYC Corp. § 838; Hanson Trust plc v. MLSCM Acquisition, Inc., 781 F.2d 264, 275 (2d Cir. 1986); Smith v. Van Gorkom, 488 A.2d 858, 872–73 (Del. 1985); see also Burks v. Lasker, 441 U.S. 471 (1979).

[25] Section 16(a). The 1940 Act does not require that shareholders annually elect directors. Section 16(a) generally provides that no person shall serve as a director of a fund unless elected by shareholders; however, it also provides that vacancies occurring between shareholder meetings may be filled in any otherwise legal manner, if, immediately after filling the vacancy, at least two-thirds of the directors have been elected by shareholders. If, at any time, less than a majority of a fund's directors have been elected by shareholders, section 16(a) requires the fund to convene promptly a shareholder meeting to fill any existing vacancies. Unless these provisions of the 1940 Act are applicable, the frequency of election of directors is governed by state law. John Nuveen & Co. Inc. (pub. avail. Nov. 18, 1986); Lutheran Brotherhood Money Market Fund, Inc. (pub. avail. Mar. 10, 1983).

For historical and other reasons, most funds are organized under the laws of Massachusetts or Maryland. The organizational and operational requirements of Massachusetts business trusts are not specified by statute, and a fund's essential structure is contained in the trust agreement, which generally includes a provision eliminating the need for annual shareholder meetings to elect directors. See generally Jones, Moret and Storey, The Massachusetts Business Trust and Registered

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Division of Investment Management examined the role of directors in the Protecting Investors Report and concluded that the oversight function performed by the board of directors, particularly independent directors, benefits investors.[26] In particular, the Protecting Investors Report emphasized the central role of directors under the 1940 Act in policing potential conflicts of interest between a fund and its investment adviser.[27]

The disclosure requirements for directors are designed to inform shareholders about a director's background, as well as associations that could affect the independence of directors. Thus, when funds solicit votes for the election of directors, the proxy statement must include disclosure under the 1940 Act proxy rules about the relationships and transactions between a director[28] and the fund's investment advisers,[29] in addition to the more general disclosure concerning directors called for by items 7 and 8 of Schedule 14A.[30] Item 22 would continue to include these requirements,[31] with proposed modifications as described below.

(1) Item 22(b) would require information concerning the director's relationships or transactions with fund administrators as well as investment advisers and underwriters. Such relationships may pose potential conflicts of interest of which fund shareholders should be aware.[32]

(2) Item 22(b) would require expanded disclosure of whether the director previously had a material interest in, or relationship with, the investment adviser, principal underwriter, administrator, or any of their respective affiliates.[33] Even if the director is no longer an "interested person,"[34] his or her prior relationships with fund affiliates may be material to a shareholder's assessment of the nominee's independence. The Commission requests comment on whether disclosure of past relationships should be limited to a specified period, *e.g.*, five or ten years, or a longer or shorter period.

(3) Item 22(b) would require a description of any non-routine litigation in which a director or an affiliated person is a party adverse to the fund or any of its affiliated persons.[35] This new item would replace item 7(a) of Schedule 14A with a requirement more specifically tailored to funds.

(4) The proposed amendments would not include detailed disclosure currently required regarding the investment adviser (for example, a certified balance sheet of the adviser),[36] the investment advisory contract,[37] and brokerage commission practices.[38] This information may not be directly relevant to the election of directors. Moreover, most of this information is available to shareholders in other fund disclosure documents.[39]

To simplify the preparation of fund proxies, the Commission is proposing to incorporate the director-specific information required by paragraphs (b) and (d) of item 7 of Schedule 14A into item 22.[40] Directors who are "interested persons" of the fund would continue to be identified with an asterisk and a description of the relationships, events or transactions that cause such persons to be "interested."[41]

Another proposed amendment would modify the requirement for a listing of all the other directorships of a director.[42] Directors frequently serve on many boards of funds in the same fund complex.[43] Under such circumstances, disclosure of this information results in long lists of directorships for related funds that may not provide shareholders with information about the qualifications and other competing responsibilities of a director. Funds would be required to state, if applicable, that a director serves on the board of other funds in the identified fund complex and to specify the number of the boards on which the director

Investment Companies, 13 Del. J. of Corp. L. 421 (1988). Maryland amended its corporate code in 1989 to permit fund charters or by-laws to provide that annual meetings are not required to be held in any year in which the election of directors is not required by the 1940 Act. Maryland Corporations Code § 2-501(b).

[26] Protecting Investors Report at 253. The Division recommended, however, some changes to improve the structure and responsibilities of fund boards of directors. To enhance board independence, the Division recommended amending section 10(a) of the 1940 Act (15 U.S.C. 80a-10) to require a majority of the directors be independent instead of, as is now required, at least 40%. Id. at 266. The Division also recommended eliminating requirements in 1940 Act rules that unnecessarily burden directors with consideration of operational matters in order to allow directors to devote their attention to important conflict of interest issues. *Id.* In accordance with this recommendation, the Commission recently adopted amendments that eliminate annual review requirements in rules 10f-3, 17a-7, 17e-1, 17f-4, and 22c-1 and require instead that directors make and approve changes only when necessary. Investment Company Act Rel. No. 19719 (Sept. 17, 1993) (58 FR 49919 (Sept. 24, 1993)).

[27] Protecting Investors Report at 255.

[28] The term director as used hereinafter includes nominees for director, or in the case of a Massachusetts business trust, trustees or nominees for trustee, unless the context otherwise requires.

[29] Rule 20a-2(a).

[30] Item 7 (by reference to Regulation S-K) requires information on, among other things, certain material legal proceedings adverse to the fund involving directors (instruction 4, item 103 of Regulation S-K (17 CFR 229.103)), the identity of directors and their business experience (item 401 of Regulation S-K), and certain relationships and related transactions (item 404 of Regulation S-K (17 CFR 229.404)). Under item 7(e), disclosure also is required concerning audit, nominating, and compensation committees of the board of directors. Item 8 requires information on director compensation (by reference to item 402 of Regulation S-K (17 CFR 229.402)).

[31] As under current rules, proposed item 22(b) would, among other things, require (i) disclosure of whether a director is an officer, employee, director, partner, or shareholder of the investment adviser (subparagraph (b)(1)); (ii) information concerning any material interest that the director has in the fund's principal underwriter or administrator (subparagraph (b)(2)); and (iii) information concerning material transactions between the director and the fund's investment adviser, administrator or distributor or any of their respective parents and subsidiaries (subparagraph (b)(3)).

[32] Subparagraph (b)(2) of proposed item 22.

[33] Subparagraphs (b)(1) and (2) of proposed item 22.

[34] Section 10 of the 1940 Act generally requires that at least 40% of a fund's board of directors consist of persons who are not "interested persons" (as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19))) of the fund. Congress intended that the independent directors "supply an independent check on management and provide a means for the representation of shareholder interests in investment company affairs." S. Rep. No. 91-184, 91st Cong., 1st Sess. 32 (1969).

[35] Subparagraph (b)(5) of proposed item 22.

[36] Rules 20a-2(a) (1)-(4) and 20a-2(a)(9) (17 CFR 270.20a-2(a) (1)-(4) and (9)).

[37] Rule 20a-2(a)(6) (17 CFR 270.20a-2(a)(6)).

[38] Rule 20a-2(a)(7).

[39] Information concerning the investment advisory contract is set forth in a fund's prospectus. Forms N-1A (items 2 and 5), N-2 (items 3 and 9), and N-3 (items 3 and 6). Brokerage information is required in the fund's Statement of Additional Information ("SAI"), which is part of the two-part disclosure documents required to be furnished or made available to investors. Forms N-1A (item 17), N-2 (item 21), and N-3 (item 22).

[40] Subparagraph (b)(4) of proposed item 22. By its terms, the provisions of paragraph (c) of item 7 are not applicable to funds. Investment companies would continue to be subject to the general corporate governance disclosure requirements in paragraphs (e)-(g) of item 7. These requirements include the identification and composition of committees of the board (paragraph (e)), the number of meetings of the board (paragraph (f)), and disclosure of disagreements associated with the resignation of a director (paragraph (g)).

The disclosure required by proposed subparagraph (b)(4) also applies to officers of the fund as is currently required by paragraph (b) of item 7. Subparagraph (b)(4) would, however, limit the information required for separate accounts sponsored by insurance companies to that relating to executive officers of the sponsoring insurance company who are directly or indirectly engaged in activities relating to the separate accounts. Instruction 2 to subparagraph (b)(4) of proposed item 22. This amendment would eliminate extended disclosure concerning officers of the sponsoring insurance company who are not involved in the administration of the separate account.

[41] Instruction 1 to paragraph (4) of proposed item 22(b).

[42] Item 7(b) requires this information by reference to item 401(e) of Regulation S-K.

[43] Item 22 would include a definition of fund complex. See infra note 49 and accompanying text.

serves.[44] The Commission requests comment on whether other director disclosure requirements may be appropriate to assure that proxy statements provide useful information about directors to shareholders.

D. Management Compensation

Fund proxy statements are required to include information in proxy statements about the compensation of fund directors and officers in connection with the election of directors or proposals seeking shareholder approval of benefit plans in which directors or officers will participate. These requirements are now included in item 8 of Schedule 14A, which references Regulation S-K and fund registration statement forms.[45] The Commission is proposing amendments that would consolidate the disclosure requirements for management compensation paid by funds to directors and officers in paragraph (b) of item 22.[46] The proposed disclosure would reformat existing requirements and expand the information provided for directors, particularly in the case of directors who serve as such for more than one fund in a fund complex, as defined in item 22. These directors often receive substantial annual fees for their activities on a number of boards of funds sponsored by a single investment adviser or underwriter, although the amount paid by a single fund (and disclosed to shareholders) may not be particularly significant. In addition, many fund complexes have established retirement plans for their independent directors. The aggregate benefit package that a director receives as a result of his or her relationship to a fund complex could be material to a shareholder's assessment of the director's independence.

Currently, funds must disclose in proxy statements related to the election of directors or approval of benefit plans for directors compensation paid to directors under any standard arrangements. This disclosure also must include any other arrangements that will result in compensation to a director (such as consulting agreements). The required information about compensation is limited to compensation paid to the director by the fund soliciting the proxy statement. The Commission is proposing to revise this disclosure to require a compensation table setting forth for each director: (i) Aggregate compensation paid by the fund; (ii) the total compensation received from all funds in a fund complex on the boards of which the director serves; (iii) pension or retirement benefits accrued during the year; and (iv) estimated annual benefits upon retirement. In addition, item 22(b) would require a description of the material provisions of any pension or other benefit plan applicable to directors and other arrangements under which a director may be compensated.[47] The proposed format is intended to set forth director compensation more clearly, to provide better disclosure of benefits other than compensation received by a director, and, for directors who serve on the boards of more than one fund in a fund complex, to furnish more comprehensive information about the director's total compensation.[48]

Proposed item 22 would define fund complex as two or more funds that have a common investment adviser (or which have advisers that are affiliates) or, with respect to open-end funds, a common principal underwriter.[49] The Commission requests comment on whether this definition will serve to elicit relevant information about compensation paid to directors by related entities. For example, should the definition also include funds with common administrators?

The compensation disclosure required for fund officers would remain the same under the proposed amendments except for minor revisions. Because most funds are externally managed, fund executive officers generally do not have formal management roles and receive no compensation from the fund. As currently required, however, compensation received by the three highest paid executive officers having aggregate compensation from a fund exceeding $60,000 would have to be disclosed in the compensation table. To make the disclosure of management compensation uniform, the compensation disclosure required to appear in the SAI portion of a fund's registration statements would be amended to be consistent with item 22.[50] In addition, to alert prospective investors that this information, as well as information concerning the background of fund management, is available in the SAI, the Commission is proposing to amend fund registration statement forms to require that a statement to this effect appear in the prospectus.[51]

E. Approval of Investment Advisory Contract

Approval of the investment advisory contract is one of the express shareholder voting requirements in the 1940 Act.[52] Specific disclosure requirements for proxies solicited in connection with the approval of an investment advisory contract are currently included in rule 20a-2(b), and these requirements, as proposed to be modified, would be set forth in paragraph (c) of item 22. Proxy statements must include, among other things, information concerning the investment adviser,[53] the existing investment advisory contract, if any,[54] the circumstances, if applicable, of any action or termination or proposed termination of the existing investment

[44] Proposed instruction to item 401(e) of Regulation S-K. The modification would apply to documents and reports by all issuers (not only funds) that are required to provide the information about fund directorships called for by item 401(e). Information concerning service as a director of other companies, including companies registered under section 12 of the 1934 Act, would continue to be required.

[45] Item 8 of Schedule 14A (by reference to item 402(g) of Regulation S-K). Item 8 also incorporates for funds the management compensation disclosure requirements in fund registration statements forms. Forms N-1A (item 14), N-2 (item 18), and N-3 (item 20). Prior to recent revisions to the management compensation disclosure for operating companies, funds had been subject to the general compensation disclosure requirements of item 402. In the recent revisions, funds were excluded from amended item 402 and instead made subject to the registration statement form requirements. Securities Act Rel. No. 6962 (Oct. 16, 1992) (57 FR 48125 (Oct. 21, 1992)).

[46] Subparagraph (b)(6) of proposed item 22.

[47] Similar disclosure would be required with respect to plans affecting officer compensation. In addition, business development companies would disclose in proxies information concerning options granted to officers or directors that is currently required by item 402 of Regulation S-K.

[48] When a fund seeks shareholder approval of a benefit plan, funds also will be required to include the information required by item 10 of Schedule 14A as proposed to be modified to address specific fund issues.

[49] Subparagraph (a)(1)(vi) of proposed item 22.

[50] Forms N-1A (item 14), N-2 (item 18), and N-3 (item 20).

[51] Proposed amendments to Forms N-1A (item 5(a)), N-2 (item 9.1.d), and N-3 (item 6(a)). As is currently the case, however, fund registration statements also would require disclosure of the compensation received by certain affiliated persons and members of the fund's advisory board.

[52] Section 15(a).

[53] These requirements include: the name, address and principal occupation of the principal executive officer and each director or general partner of the adviser (rule 20a-2(b)(1) (17 CFR 270.20a-2(b)(1)) incorporating rule 20a-2(a)(2); proposed subparagraph (c)(2) of item 22); the names and addresses of all parents of the adviser and the basis for control (rule 20a-2(b)(1) incorporating rule 20a-2(a)(3); proposed subparagraph (c)(3) of item 22); the beneficial owners of 10% or more of the securities of the adviser (rule 20a-2(b)(1) incorporating rule 20a-2(a)(4); proposed subparagraph (c)(4) of item 22); and the identification of any director of the fund that is an officer, director, or has a material interest in the investment adviser (rule 20a-2(b)(1) incorporating rule 20a-2(a)(5) (17 CFR 270.20a-2(a)(5)); proposed subparagraph (c)(5) of item 22).

[54] Current rule 20a-2(b)(1) incorporating rule 20a-2(a)(1); proposed subparagraph (c)(1) of item 22.

advisory contract,[55] and the nature of action to be taken on the advisory contract.[56] The Commission is proposing to modify certain of the disclosure requirements as described below.

(1) The requirement that, among other things, all general partners of the investment adviser be identified[57] would be limited to those general partners of the investment adviser receiving the five largest economic interests in the partnership or having significant management responsibilities.[58] Comment is requested on whether general partners that have significant management responsibilities relating to the fund also should be identified.

(2) A new item would be added to require a discussion of the material factors considered by the board in recommending that fund shareholders approve an investment advisory contract.[59] This disclosure would include a general discussion of the type of information considered by directors in fulfilling their responsibilities under section 15(c) of the 1940 Act to evaluate the terms of an investment advisory contract.[60] These factors may include, among other things, the qualifications of the investment adviser, the range of services provided by the investment adviser, and the financial condition of the adviser. Comment is requested on whether these or any other factors should be specifically required to be discussed.

(3) Under the current rules, funds must disclose the rate and amount of the advisory fee charged to each of any other funds advised by the investment adviser.[61] This requirement may result in a long list of funds and fees and may convey minimal useful information because different fees may reflect differences in fund size, investment policies, and other factors that are not disclosed in the proxy statement. Therefore, the Commission is proposing to require the disclosure of fees paid to the investment adviser by other funds, if any, with substantially similar investment objectives.[62] For example, the adviser of a fund that primarily invests in domestic equity securities would disclose the rate and amount of advisory fees for other funds it advises that primarily invest in domestic equity securities.

(4) Currently, funds must disclose extensive information concerning brokerage allocation and commissions.[63] This information is duplicative of disclosure required in other documents[64] and may not be directly relevant to evaluation of an investment advisory contract proposal. Therefore, the Commission is proposing amendments to require disclosure of only the amount and percentage of brokerage commissions paid to affiliates of the investment adviser.[65] Item 22 also would require similar compensation information for other entities affiliated with the investment adviser that provide services to the fund, such as transfer agents or custodians.[66]

(5) The Commission also is proposing to eliminate the requirement that a proxy statement seeking a shareholder vote on the advisory contract contain a certified balance sheet of the adviser.[67] This requirement is intended to permit shareholders to evaluate the financial capabilities of the investment adviser. The Commission believes that the evaluation of the financial condition of the adviser may be more appropriately the responsibility of the Board of Directors in formulating a recommendation to approve the advisory contract.[68] In lieu of the balance sheet, item 22 would require that funds disclose in their proxy statements any financial condition of the adviser that is reasonably likely to impair the financial ability of the adviser to fulfill its commitment to the fund under the proposed advisory contract.[69] This requirement is consistent with the existing requirement that an adviser to a fund must disclose to the fund any financial condition that is reasonably likely to impair its ability to fulfill its contractual commitments.[70]

Approval of Distribution Plan

Rule 12b–1 under the 1940 Act permits the use of fund assets to finance the distribution of shares under certain conditions, one of which is shareholder approval of a distribution plan ("Rule 12b–1 Plan") and amendments to a Rule 12b–1 Plan that would materially increase the amount spent for distribution.[71] There are currently no express proxy statement disclosure requirements regarding the submission of a Rule 12b–1 Plan for shareholder approval. Because of the importance of such a shareholder vote, the Commission is proposing to amend the proxy rules to address consideration of a Rule 12b–1 Plan and plan amendments. These proposed requirements reflect, in many respects, disclosure currently made in proxy statements.

Paragraph (d) of proposed item 22 would set forth the disclosure requirements for fund proxy statements that solicit shareholder approval of Rule 12b–1 Plans (or amendments).[72] Item 22(d) would require a description of the proposed action and the reasons shareholders are being requested to vote on adoption (or amendment) of a Rule 12b–1 Plan.[73] In addition, when the

[55] These requirements are included in rules 20a–2(a)(6) and (10) (17 CFR 270.20a–2(a)(10)) (incorporated by 20a–2(b)(1)) and would be included in subparagraph (c)(1) of proposed item 22.

[56] Current rule 20a–2(b)(2) (17 CFR 270.20a–2(b)(2)); proposed subparagraph (c)(8) of item 22. If a change in the investment advisory fee is sought, additional disclosure concerning the current and proposed fee is proposed. Subparagraph (c)(9) of proposed item 22 would require disclosure of the aggregate amount of the investment adviser's fee for the last year, the amount the adviser would have received had the proposed fee been in effect, and the percentage amount of the proposed increase.

[57] Rule 20a–2(b)(1) incorporating rule 20a–2(a)(2).

[58] Subparagraph (c)(2) of proposed item 22.

[59] Subparagraph (c)(11) of proposed item 22.

[60] Section 15(c) requires fund directors to request and to assess such information as may be necessary to evaluate the terms of an investment advisory contract.

[61] Rule 20a–2(b)(4) (17 CFR 270.20a–2(b)(4)).

[62] Subparagraph (c)(10) of proposed item 22.

[63] Rule 20a–2(a)(7).

[64] See supra note 39 and accompanying text.

[65] Subparagraph (c)(13) of proposed item 22. A discussion of soft dollar arrangements benefitting the investment adviser would be required in the proposed discussion of material factors considered by the board of directors in approving the investment advisory contract in item 22(c)(11).

[66] Subparagraph (c)(14) of proposed item 22.

[67] Rule 20a–2(b)(1) incorporating rule 20a–2(a)(9). As discussed in section II.C., supra, the balance sheet also would not be required in connection with the election of directors because it is not directly relevant to a shareholder vote on directors.

[68] Moreover, funds have encountered difficulties in coordinating the preparation of the adviser's certified balance sheet with the printing of the proxy statements. See Dreyfus Connecticut Municipal Money Market Fund (pub. avail. Dec. 5, 1990).

[69] Subparagraph (c)(7) of proposed item 22.

[70] Rule 206(4)–4(a)(1) [17 CFR 275.206(4)–4(a)(1)] under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

[71] The Commission adopted rule 12b–1 in 1980. Investment Company Act Rel. No. 11414 (Oct. 28, 1980) (45 FR 73898 (Nov. 7, 1980)).

[72] A number of funds have obtained exemptive orders permitting the issuance of more than one class of securities, with each class subject to a different distribution arrangement, but representing interests in the same portfolio of investments. The Commission recently issued a release proposing rule and form amendments that would permit funds to issue multiple classes of securities, which would obviate the need for funds to apply for exemptions. Investment Company Act Rel. No. 19955 (Dec. 16, 1993). Proposed amendments to rule 12b–1 would, consistent with the exemptive orders for multiple class funds, require Rule 12b–1 Plans to have severable provisions for each class, and for any action on a Rule 12b–1 Plan to be taken separately for each class. An instruction to item 22(d) would require a multiple class fund to furnish information (including the comparative fee table) in proxy statements on a class rather than fund basis in order to provide class shareholders with material information concerning the distribution arrangements applicable to them. The proposed instruction also would require a discussion of the differences among classes and the distribution fee, if any, paid by each class.

[73] Subparagraph (d)(1) of proposed item 22.

effect of the action would be to increase fund expenses, item 22(a) would require inclusion of a comparative fee table showing the level of fees before and after adoption of the recommended Rule 12b–1 Plan.[74]

If the fund has been operating under a Rule 12b–1 Plan, proposed item 22(d) would require disclosure of material differences between the proposed and current Rule 12b–1 Plan. In addition, item 22(d) would require disclosure about distribution expenses under the plan paid by the fund during the last fiscal year to the fund's investment adviser, principal underwriter, administrator, or any of their affiliated persons, and to persons receiving 10% or more of the fund's aggregate distribution fees.[75] Finally, item 22(d) would require disclosure about the factors the board of directors considered in recommending adoption of (or amendment to) the Rule 12b–1 Plan.[76]

G. Additional Fund Disclosure Requirements

The Commission requests comment on whether the proxy rules should contain other specific fund-related disclosure requirements. For example, funds must seek shareholder approval of a new investment advisory contract in the event of a change of control of the investment adviser.[77] The proxy statement seeking approval of the new investment advisory contract must describe material aspects of the transaction and its effect on fund shareholders. The Commission requests comment on whether specific proxy disclosure requirements may be needed for proxy statements relating to change-in-control transactions.

The Commission also requests comment on whether special disclosure requirements should be required for other types of corporate reorganizations, such as fund mergers. For example, should there be greater disclosure concerning the bases on which the merging funds' boards of directors determined that the transaction is in the best interests of the funds? Should there be more specific disclosure on how the expenses of the transaction are allocated among the funds and the investment adviser, particularly where the fund merger follows or relates to the merger of two investment advisers.[78]

H. Other Matters

Rule 14a–3(b) (17 CFR 240.14a–3(b)) under the 1934 Act requires that, when directors are to be elected at an annual or special meeting, funds furnish each person solicited with a proxy statement that is accompanied or preceded by an annual report to shareholders. Rule 30d–1 (17 CFR 270.30d–1) requires an annual report to be transmitted to shareholders 60 days after the end of a fund's fiscal year. For various reasons, fund shareholder meetings may not coincide with the mailing of the annual shareholder report. Where the annual report has been previously transmitted, questions arise concerning whether rule 14a–3(b) requires funds to remail the annual report to shareholders entitled to vote at the meeting or to mail the annual report to new shareholders who may not have received an annual report mailed earlier in the year.[79] A second mailing of the annual report, whether to new shareholders or all shareholders, may result in considerable expense for the fund. In addition, issues may arise concerning whether the annual report is current when several months have passed since transmittal of the annual report or the fund has issued a semi-annual report in the interim between the transmittal of the annual report and the shareholder meeting.

To clarify the annual report delivery requirements for funds, the Commission is proposing to set forth the conditions under which a fund's annual report previously transmitted to shareholders would satisfy the requirements of rule 14a–3. As proposed, any annual report delivered to shareholders two months before the date of the proxy statement would satisfy the delivery requirements of rule 14a–3(b). In the case of an annual report delivered more than two months before the date of a proxy statement, a proposed note to rule 14a–3(b) would state that an annual report previously transmitted to shareholders would satisfy the annual report delivery requirement under certain conditions. The proposed conditions include: (i) The fund mails the proxy statement at least 30 days prior to the meeting; (ii) the proxy statement includes a prominent statement that the most recent annual report and any subsequent semi-annual report will be delivered to shareholders, upon written or oral request, without charge; and (iii) if requested by a shareholder, the annual report and, if available, the semi-annual report is transmitted within two business days of the request.[80] The Commission requests comment on whether the two-month period for the previous delivery of an annual report without a legend is sufficient or should be shorter or longer. In addition, the Commission requests comment on other methods of satisfying the rule 14a–3(b) annual report requirement that could ensure appropriate disclosure to shareholders while avoiding unnecessary expense. Commenters are specifically requested to address whether, and under what conditions, it may be appropriate to eliminate the proxy annual report requirement for funds in light of the reports required to be transmitted to shareholders semi-annually under rule 30d–1.

The Commission also proposes to amend Rule 14a–3(e)(2) (17 CFR 240.14a–3(e)(2)), which relieves registrants of the obligation to deliver proxy and other soliciting materials to shareholders whose dividend payments are returned as undeliverable. Because many fund shareholders choose to have their dividends reinvested in additional

[74] Subparagraph (a)(3)(iii) of proposed item 22.

[75] Subparagraph (d)(2)(iv) of proposed item 22.

[76] Subparagraph (d)(4) of proposed item 22.

[77] A change of control causes an assignment of the investment advisory contract, which results, under section 15(a)(4) of the 1940 Act (15 U.S.C. 80a–15(a)(4)), in an automatic termination of the contract. In such event, the fund will be required to seek shareholder approval of a new investment advisory contract. Rule 15a–4 (17 CFR 270.15a–4) provides a temporary exception from the shareholder approval requirement, but it is only available for unforeseeable assignments of an investment advisory contract. Rule 15a–4 specifically does not apply to an assignment when the investment adviser receives money or other benefit. Section 15(f) of the 1940 Act (15 U.S.C. 80a–15(f)) provides protection against the occurrence of fiduciary liability for the sale of an investment adviser if certain conditions to safeguard fund shareholders are met. Specifically, section 15(f) requires that (i) for at least three years after the acquisition, at least 75% of the board of directors of the acquired fund must consist of persons who are not "interested persons" of the investment adviser, and (ii) no unfair burden is imposed on the fund as a result of the acquisition.

[78] The surviving investment adviser will often combine funds that have similar investment objectives to achieve greater economies of scale or to avoid offering competing funds.

[79] The Division has granted no-action relief concerning the rule 14a–3 annual report requirement under certain "compelling circumstances" when a shareholder meeting is held after the end of a fund's latest fiscal year but before the annual report is available. Dean Witter American Value Fund (pub. avail. Nov. 18, 1992). The no-action relief required compliance with certain conditions to assure adequate disclosure to shareholders including that: (i) the fund's latest annual and semi-annual report accompany or precede the proxy statement; (ii) the fund's proxy statement include a statement from the board of directors that no material adverse change in the financial operations of the fund have occurred since the date of the fund's most recent semi-annual report; and (iii) the fund's proxy statement states that proxies will not be voted for the election of directors unless the fund receives a certificate that there has been no material adverse change in the financial conditions of the fund on the date of the vote or the fund mails an annual report to shareholders and gives them an opportunity to revoke their proxies. See also Dreyfus Connecticut Municipal Money Market Fund and Dreyfus Michigan Municipal Money Market Fund (pub. avail. Dec. 5, 1990).

[80] The same amendments are proposed for rule 14c–3 (17 CFR 240.14c–3), which requires an annual report to accompany an information statement concerning the election of directors.

shares and, thus, receive only dividend reinvestment confirmations, the Commission is proposing to amend this provision to refer also to undeliverable dividend reinvestment confirmations.[81]

Item 3 of Schedule 14A requires a description of appraisal or similar rights under state law applicable to any matter being acted upon (i.e., mergers and other fundamental corporate transactions).[82] These state laws are superseded by the 1940 Act,[83] which requires open-end funds to redeem their securities at net asset value.[84] Therefore, the Commission proposes to amend item 3 to make it expressly inapplicable to open-end funds.[85] Closed-end funds (including closed-end funds that make periodic repurchases of their shares under rule 22c-3 of the 1940 Act (17 CFR 270.22c-3), which do not issue redeemable securities, would continue to be subject to item 3.

I. Form N-14

Form N-14 is used by funds to register securities issued in connection with investment company merger transactions.[86] In addition, Form N-14 may serve as the proxy or information statement for such transactions. The Commission is proposing to amend Form N-14 to require disclosure in a table of the fees of the acquiring and acquired fund and pro forma fees for the combined entity.[87] This information will enable shareholders to assess how the proposed transaction would affect fees. The proposed amendment to Form N-14 is comparable to the fee table proposed to be included in proxy statements when a matter submitted to a shareholder vote would result in an increase in fees.[88]

III. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rule changes that are the subject of this Release, to suggest additional changes (including changes to provisions of the rules that the Commission is not proposing to amend), or to submit comments on other matters that might affect the proposed rules and amendments, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

IV. Cost/Benefit of the Proposals

To assist in the evaluation of the costs and benefits that may result from the proposed amendments to the financial statement requirements for funds, the Commission requests that commenters provide views and data relating to any costs and benefits associated with these proposals. The proposed amendments to the proxy rules applicable to funds are not expected to impose additional burdens on funds because the amendments eliminate disclosure that may not be relevant to shareholders, while adding other requirements that enhance the information provided to shareholders. In addition, the proposed amendments would provide more useful and comprehensive information to fund shareholders.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the rule proposals contained in this release are intended to provide more current, concise, and comprehensible information in fund proxy statements while simplifying the preparation of proxy statements. Other aggregate cost-benefit information reflected in the "Cost/Benefit Analysis" section of this release also is reflected in this analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Kathleen K. Clarke, Office of Disclosure and Adviser Regulation, 450 5th Street NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing to amend the proxy rules under 1934 Act sections 14 (15 U.S.C. 78n) and 23(a) (15 U.S.C. 78(w)) and 1940 Act sections 20(a) and 38(a) (15 U.S.C. 39(a)). The authority citations for the amendments to the rules precede the text of the amendments.

VII. Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 200, 229, 239, 240, 270 and 274

Authority Delegation (Government agencies), Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 is amended by adding the following citation:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78*ll*(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

Section 200.30-5 also is issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-20, 80a-24, 80a-29, 80b-3, 80b-4.

§ 200.30-5 [Amended]

2. The authority citation following § 200.30-5 is removed.

3. By amending § 200.30-5 to remove and to reserve paragraph (a)(5).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

4. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

§ 229.401 [Amended]

5. The authority citation following § 229.401 is removed.

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[81] The Commission also is proposing amendments to clarify those provisions of rule 14a-3 that are applicable to funds. Currently, subparagraph (12) of rule 14a-3(b) relieves investment companies from the obligations of certain of the other provisions that appear earlier in the rule. The amendments would clarify the provisions applicable to funds by providing for the exceptions in the introductory language of paragraph (b).

[82] Most state laws allow minority shareholders that vote against such transactions to demand a judicial appraisal of the fair value of their shares. E.g., 8 Del. Code § 262; N.Y. Bus. Corp. Law § 623.

[83] Investment Company Act Rel. No. 8752 (Apr. 10, 1975) [40 FR 17986 (Apr. 24, 1975)].

[84] Mutual funds issue redeemable securities. Under the provisions of the 1940 Act, shareholders of mutual funds are entitled to receive the net asset value of their securities within seven days of demand. See section 5(a)(1) (15 U.S.C. 80a-5(a)(1) (defining mutual funds as those funds that issue redeemable securities), section 2(a)(32) (15 U.S.C. 80a-2(a)(32)) (defining redeemable securities as securities entitling the holder to receive, upon demand, approximately the proportionate value of the issuer's current net assets or the cash equivalent thereof), section 22(a) (15 U.S.C. 80a-22(e)) (providing that, with certain limited exceptions, no fund shall suspend the right of redemption for more than seven days after the tender of securities for redemption), and rule 22c-1 (17 CFR 270.22c-1) (providing that redeemable securities must be redeemed at a price based on the current net asset value computed immediately after tender of the security for redemption).

[85] Proposed instruction 2 to item 3 of Schedule 14A.

[86] See Investment Company Act Rel. No. 14796 (Nov. 14, 1985) [50 FR 48379 (Nov. 25, 1985)].

[87] Proposed paragraph (a) of item 3 of Form N-14.

[88] See section II.B, supra.

6. By amending § 229.401 to add an instruction following paragraph (e) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(e) * * *

Instruction to Paragraph (e) of Item 401

For the purposes of paragraph (e)(2), where the other directorships of each director or person nominated or chosen to become a director include directorships of two or more registered investment companies that are part of a "fund complex" as that term is defined in Item 22(a)(1)(v) of Schedule 14A under the Exchange Act (§ 240.14a–101 of this chapter), the registrant may, rather than listing each such investment company, identify the fund complex and provide the number of investment company directorships held by the director or nominee in such fund complex.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for part 239 continues to read, in part, as follows:

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

* * * * *

8. By amending Item 3 of Form N–14 (§ 239.23) to revise the title, to redesignate paragraphs (a) and (b) as paragraphs (b) and (c), to add paragraph (a), and to revise the third sentence of newly redesignated paragraph (b) to read as follows:

Note: The text of Form N–14 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–14

Item 3. Fee Table, Synopsis Information, and Risk Factors

(a) Include a table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed in the appropriate registration statement form under the 1940 Act (for open-end management investment companies, Item 2(a)(i) of Form N–1A; for closed-end management investment companies, Item 3.1 of Form N–2; and for separate accounts that offer variable annuity contracts, Item 3(a) of Form N–3).

(b) * * * As to the registrant and company being acquired, compare: (1) investment objectives and policies; (2) distribution and purchase procedures and exchange rights; (3) redemption procedures; and (4) any other significant considerations.* * *

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. By amending § 240.14a–3 to revise the introductory text of paragraph (b), to designate the note after the introductory text of paragraph (b) as Note 2: and revise the title, to add Note 1: after the introductory text of paragraph (b), to remove and reserve paragraph (b)(12), and to revise paragraph (e)(2) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) If the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows (except that paragraphs (b)(5) through (b)(11) of this section shall not apply to investment companies registered under the Investment Company Act of 1940):

Note 1: *Registered Investment Companies.* An annual report transmitted to shareholders by a registered investment company pursuant to Rule 30d–1 of the Investment Company Act of 1940 (§ 270.30d–1 of this chapter) no more than 60 days before the date of the proxy statement will satisfy the requirement that an annual report accompany or precede the proxy statement. Where a proxy statement is transmitted more than 60 days after transmission of the annual report, the annual report delivery requirement of paragraph (b) will be satisfied if the investment company: (1) Mails the proxy statement to shareholders no later than 30 days prior to the shareholder vote; (2) states prominently in the proxy statement that it will furnish, without charge, a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, upon request, providing the name, address, and toll-free telephone number of the person to whom such request shall be directed (or, if no toll-free telephone number is provided, a self-addressed postage paid card for requesting the annual report); and (3) provides a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to the requesting shareholder by first class mail, or other means designed to assure prompt delivery, within two business days of the request.

Note 2: *Small Business Issuers.* * * *.

* * * * *

(12) [Reserved]

* * * * *

(e) * * *

(1) * * *

(2) Unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if:

(i) an annual report and a proxy statement for two consecutive annual meetings; or

(ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period,

have been mailed to such security holder's address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant's obligation to deliver an annual report or a proxy statement under this section is reinstated.

11. By amending § 240.14a–6 to revise the introductory text of paragraph (i) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, which shall refer to Item 22(a)(2) of Schedule 14A, shall pay to the Commission the following applicable fee:

* * * * *

12. By amending § 240.14a–101 to add an "s" at the end of the word "Instruction" in Item 3, to designate the instruction to Item 3 as 1. and to add an instruction 2., to revise paragraphs (c) and (d) of Item 7, to revise the last sentence of Item 8 prior to the instruction, to add an instruction after the introductory text of paragraph (b)(1)(ii) and at the end of item 10, and to revise Item 20 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 3. Dissenters' right of appraisal.

* * * * *

Instructions. 1. * * *

2. Open-end investment companies registered under the Investment Company

Act of 1940 are not required to respond to this item.

* * * * *

Item 7. Directors and executive officers.

* * * * *

(c) Furnish the information required by Item 404(b) of Regulation S–K (§ 229.404 of this chapter).

(d) In lieu of paragraphs (a) through (c) of this Item, investment companies registered under the Investment Company Act of 1940 shall furnish the information required by item 22(b) of this Schedule 14A.

* * * * *

Item 8. Compensation of directors and executive officers.

* * * In the case of investment companies registered under the Investment Company Act of 1940 and registrants that have elected to be regulated as business development companies, furnish the information required by Item 22(b)(6) of this Schedule.

* * * * *

Item 10. Compensation Plans. * * *

Instruction: In the case of investment companies registered under the Investment Company Act of 1940, furnish the information for Compensated Persons as defined in Item 22(b)(6) of the schedule in lieu of the persons specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402(a)(3 of this chapter).

* * * * *

(b) * * *

Instruction. In the case of investment companies registered under the Investment Company Act of 1940, refer to instruction 4 in Item 22(b)(6)(ii) of this schedule in lieu of paragraph (f)(1) of Item 402 of Regulation S–K.

* * * * *

Item 20. Other Proposed Action. If action is to be taken on any matter not specifically referred to in this Schedule 14A, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 19, inclusive, above, and, with respect to investment companies registered under the Investment Company Act of 1940, Item 22, below.

* * * * *

13. By amending § 240.14a–101 to add Item 22 to read as follows:

§ 240.14A–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 22. Information required in investment company proxy statement. (a) *General.*

(1) *Definitions.* Unless the context otherwise requires, terms used in this Item that are defined in § 240.14a–1 (with respect to proxy soliciting material), in § 240.14c–1 (with respect to information statements), and in the Investment Company Act of 1940 shall have the same meanings provided therein and the following terms shall also apply:

(i) *Administrator.* The term "Administrator" shall mean any person or persons who provide significant administrative or business management services to the Fund and shall include any person that has been or would be identified in response to Item 5(c) of Form N–1A (§ 274.11A of this chapter), Item 9.1.d. of Form N–2 (§ 274.11a–1 of this chapter), or Item 6(c) of Form N–3 (§ 274.11b of this chapter).

(ii) *Affiliated Broker.* The term "Affiliated Broker" shall mean any broker:

(A) that is an affiliated person of the Fund;

(B) that is an affiliated person of such person; or

(C) an affiliated person of which is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator.

(iii) *Distribution Plan.* The term "Distribution Plan" shall mean a plan adopted pursuant to Rule 12b–1 under the Investment Company Act of 1940 (§ 270.12b–1 of this chapter).

(iv) *Distributor.* The term "Distributor" shall mean any person or persons who either wholly or in part assist in the distribution of the Fund's shares, including, without limitation, a Fund's principal underwriter, Distributor, investment adviser, manager, sponsor, Administrator, and other entities performing similar functions.

(v) *Fund.* The term "Fund" shall mean a Registrant or, where the Registrant is a series company, a separate portfolio of the Registrant.

(vi) *Fund Complex.* The term "Fund Complex" shall mean two or more Funds provided that:

(A) Such funds have a common investment adviser or, with respect to an open-end management investment company, principal underwriter; or

(B) The investment adviser or, with respect to an open-end management investment company, principal underwriter of one of the Funds is an affiliated person as defined in section 2(a)(3) of the Investment Company Act of 1940 of the investment adviser or principal underwriter of each of the other Funds.

(vii) *Parent.* The term "Parent" shall mean the affiliated person of a specified person who controls the specified person directly or indirectly through one or more intermediaries.

(viii) *Registrant.* The term "Registrant" shall mean an investment company registered under the Investment Company Act of 1940.

(ix) *Subsidiary.* The term "Subsidiary" shall mean an affiliated person of a specified person who is controlled by the specified person, directly or indirectly, through one or more intermediaries.

(2) *Filing Fees.* In lieu of the fees specified in § 240.14a-6, at the time of filing the preliminary proxy solicitation material, or, if no preliminary solicitation material is filed, at the time of filing the definitive proxy solicitation material, the person upon whose behalf the solicitation is made shall pay to the Commission a fee of $125, no part of which shall be refunded.

(3) *General Disclosure.* Furnish the following information in the proxy statement of a Fund or Funds:

(i) State the name and address of the Fund's investment adviser, principal underwriter, and Administrator.

(ii) When a Fund proxy statement solicits a vote on proposals affecting more than one Fund, present a summary of the proposals in tabular form on one of the first three pages of the proxy statement and indicate which Fund shareholders are solicited with respect to each proposal.

(iii) If the action to be taken would establish a new fee or expense or increase any existing fee or expense to be paid by the Fund or its shareholders, provide a table showing the current and pro forma fees (with the required examples) using the format prescribed in the appropriate registration statement form under the Investment Company Act of 1940 (for open-end management investment companies, Item 2(a)(i) of Form N–1A (§ 239.15A); for closed-end management investment companies, Item 3.1 of Form N–2 (§ 239.14); and for separate accounts that offer variable annuity contracts, Item 3(a) of Form N–3 (§ 239.17a)).

Instructions. 1. Where approval is sought only for a change in asset breakpoints for a pre-existing fee that would not have increased the fee for the previous year (or have the effect of increasing fees or expenses, but for any other reason would not be reflected in a pro forma fee table), describe the likely effect of the change in lieu of providing pro forma fee information.

2. An action would indirectly establish or increase a fee or expense where, for example, the approval of a new investment advisory contract would result in higher custodial or transfer agency fees.

3. The tables should be prepared in a manner designed to facilitate understanding of the impact of any change in fees or expenses.

4. A Fund that offers its shares exclusively to one or more separate accounts and thus is not required to include a fee table in its prospectus (see Item 2(a)(ii) of Form N–1A (§ 239.15A)) should nonetheless prepare a table showing current and pro forma expenses and disclose that the table does not reflect separate account expenses, including sales load.

(iv) State whether shareholders will be informed of the voting results for matters submitted to a vote in the proxy statements, and, if so, by what means (e.g., monthly or quarterly report, semi-annual report to shareholders pursuant to Rule 30d-1 (§ 270.30d-1 of this chapter)).

(4) If action is to be taken with respect to the election of directors or the approval of an advisory contract, describe any purchases or sales of securities of the investment adviser or its Parents, or Subsidiaries of either, since the beginning of the most recently completed fiscal year by any director or any nominee for election as a director of the Fund.

Instructions. 1. Identify the parties, state the consideration, the terms of payment and describe any arrangement or understanding with respect to the composition of the board of directors of the Fund or of the investment adviser, or with respect to the selection of appointment of any person to any office with either such company.

2. Transactions involving securities in an amount not exceeding one percent of the outstanding securities of any class of the investment adviser or any of its Parents may be omitted.

(b) *Election of Directors.* If action is to be taken with respect to the election of directors of the Fund and the solicitation is made by or on behalf of the Fund or by or on behalf of an investment adviser, furnish the following information in the proxy statement in addition to the information (and in the format) required by paragraphs (e) through (g) of Item 7 of Schedule 14A.

Instructions. 1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made other than by or on behalf of the Fund or by or on behalf of an investment adviser, provide only information as to nominees of the person making the solicitation.

(1) Identify each director or nominee for election as director who is, or was, an officer, employee, director, general partner, or shareholder of the investment adviser. As to any director or nominee who is not a director or general partner of the investment adviser and owns any securities or has, or had, any other material direct or indirect interest in the investment adviser or any person controlling, controlled by, or under common control with the investment adviser, describe the nature of such interest.

(2) Identify each director or nominee who has or had any material direct or indirect interest in the Fund's principal underwriter or Administrator and describe the nature of such interest.

(3) Describe briefly, and where practicable, state the approximate amount of any material interest, direct or indirect, of any director or nominee for election as a director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any proposed material transactions, to which the investment adviser, the principal underwriter, the Administrator, or the Distributor, any Parent or Subsidiary of such entities (other than another Fund), or any Subsidiary of the Parent of such entities was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, the Administrator or the Distributor, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(4) Provide in tabular form to the extent practicable the information required by Items 401, 404(a) and (c), and 405 of Regulation S-K (§§ 229.401, 229.404, and 229.405 of this chapter).

Instructions. 1. Indicate by an asterisk any nominee or director who is or would be an "interested person" within the meaning of section 2(a)(19) of the Investment Company Act of 1940 and describe the relationships, events, or transactions by reason of which such person is deemed an "interested person."

2. Separate accounts registered as management investment companies need not provide any information concerning the officers of the sponsoring insurance company who are not directly or indirectly engaged in activities related to the separate account in response to Item 401(b) (§ 229.401(b)) or, with regard to executive officers or persons nominated or chosen to become an executive officer, Item 401(e) (§ 229.401(e)) of Regulation S-K.

(5) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(6) For all directors, and for the three highest-paid executive officers that have aggregate compensation from the Fund in the last fiscal year in excess of $60,000 ("Compensated Persons"):

(i) Furnish the information required by the following table for the last fiscal year:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from fund	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from fund and fund complex

Instructions. 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

4. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

5. Aggregate in column (5) all compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or arrangement pursuant to which Compensated Persons are or may be compensated for any services provided. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which give rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(iii) With respect to each Compensated Person, business development companies shall include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S-K (§§ 229.402(b)(2)(iv) and 229.402(c) of this chapter).

(c) *Approval of Investment Advisory Contract.* If action is to be taken with respect to an investment advisory contract, include the following information in the proxy statement.

Instruction. Furnish information with respect to a prospective investment adviser to the extent applicable (including the name

and address of the prospective investment adviser).

(1) With respect to the existing investment advisory contract:

(i) state the date of the contract and the date on which it was last submitted to a vote of security holders of the Fund, including the purpose of such submission;

(ii) briefly describe the terms of the contract, including the rate of compensation of the investment adviser;

(iii) state the aggregate amount of the investment adviser's fee and the amount and purpose of any other material payments by the Fund to the investment adviser, or any affiliated person of the investment adviser, during the last fiscal year of the Fund;

(iv) if any person is acting as an investment adviser of the Fund other than pursuant to a written contract that has been approved by the security holders of the company, identify the person and describe the nature of the services and arrangements;

(v) describe any action taken with respect to the investment advisory contract since the beginning of the Fund's last fiscal year by the board of directors of the Fund (unless described in response to paragraph (c)(1)(vi) of this Item 22); and

(vi) if an investment advisory contract was terminated or not renewed for any reason, state the date of such termination or non-renewal, identify the parties involved, and describe the circumstances of such termination or non-renewal.

(2) State the name, address and principal occupation of the principal executive officer and each director or general partner of the investment adviser.

Instruction. If the investment adviser is a partnership with more than ten general partners, name the general partners with the five largest economic interests in the partnership, and, if different, those general partners comprising the management or executive committee of the partnership or exercising similar authority.

(3) State the names and addresses of all Parents of the investment adviser and show the basis of control of the investment adviser and each Parent by its immediate Parent.

Instructions. 1. If any person named is a corporation, include the percentage of its voting securities owned by its immediate Parent.

2. If any person named is a partnership, name the general partners having the three largest partnership interests (computed by whatever method is appropriate in the particular case).

(4) If the investment adviser is a corporation and if, to the knowledge of the persons making the solicitation or the persons on whose behalf the solicitation is made, any person not named in answer to paragraph (c)(3) of this Item 22 owns, of record or beneficially, ten percent or more of the outstanding voting securities of the investment adviser, indicate that fact and state the name and address of each such person.

(5) Name each officer or director of the Fund who is an officer, employee, director, general partner or shareholder of the investment adviser. As to any officer or director who is not a director or general partner of the investment adviser and who owns securities or has any other material direct or indirect interest in the investment adviser or any other person controlling, controlled by or under common control with the investment adviser, describe the nature of such interest.

(6) Describe briefly, and where practicable, state the approximate amount of any material interest, direct or indirect, of any director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which the investment adviser of the Fund, any Parent or Subsidiary of the investment adviser (other than another Fund), or any Subsidiary of the Parent of such entities was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (c)(6) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(7) Disclose any financial condition of the investment adviser that is reasonably likely to impair the financial ability of the adviser to fulfil its commitment to the fund under the proposed investment advisory contract.

(8) Describe the nature of the action to be taken on the investment advisory contract and the reasons therefor, the terms of the contract to be acted upon, and, if the action is an amendment to, or a replacement of, an investment advisory contract, the material differences between the current and proposed contract.

(9) If a change in the investment advisory fee is sought, state:

(i) The aggregate amount of the investment adviser's fee during the last year;

(ii) The amount that the adviser would have received had the proposed fee been in effect; and

(iii) The percentage amount of the change in the proposed fee.

(10) If the investment adviser acts as such with respect to any other Fund having a similar investment objective, identify and state the size of such other Fund and the rate of the investment adviser's compensation. Also indicate for any Fund identified whether the investment adviser has waived, reduced, or otherwise agreed to reduce its compensation under any applicable contract.

Instruction. Furnish the information in response to this paragraph (c)(10) of Item 22 in tabular form.

(11) Discuss in reasonable detail the material factors and the conclusions with respect thereto which form the basis for the recommendation of the board of directors that the shareholders approve an investment advisory contract. Such factors may include, but are not limited to:

(i) the qualifications of the investment adviser to provide investment advisory services, including the credentials and investment experience of its officers and employees;

(ii) the range of services provided by the investment adviser;

(iii) the qualifications of the investment adviser to provide an appropriate range of management and administrative services;

(iv) the performance record of the investment adviser;

(v) the financial condition of the investment adviser;

(vi) the terms of the agreement; and

(vii) the appropriateness of the advisory fee, which may include, among other things, the benefits derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide services to the Fund or its investment adviser that the investment adviser would otherwise have to pay for.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the fund and the investment advisory contract for which approval is sought.

(12) Describe any arrangement or understanding made in connection with the proposed investment advisory contract with respect to the composition of the board of directors of the Fund or the investment adviser or with respect to the selection or appointment of any person to any office with either such company.

(13) For the most recently completed fiscal year, state:

(i) the aggregate amount of commissions paid to any Affiliated Broker; and

(ii) the percentage of the Fund's aggregate brokerage commissions paid to any such Affiliated Broker.

Instruction. Identify each Affiliated Broker and the relationships that cause the broker to be an Affiliated Broker.

(14) Disclose the amount of any fees received by the investment adviser, its affiliated persons or any affiliated person of such person during the most recent fiscal year for services provided to the Fund (other than under the investment advisory contract or for brokerage commissions). State whether these services will continue to be provided after the investment advisory contract is approved.

(d) *Approval of Distribution Plan.* If action is to be taken with respect to a Distribution Plan, include the following information in the proxy statement.

Instructions. 1. Furnish information with respect to a prospective Distributor to the extent applicable (including the name and address of the prospective Distributor).

2. Where the Fund has multiple classes of securities with different distribution

arrangements, furnish information on a class basis. Discuss differences among classes including the distribution fee paid by each class.

(1) Describe the nature of the action to be taken on the Distribution Plan and the reason therefor, the terms of the Distribution Plan to be acted upon, and, if the action is an amendment to, or a replacement of, a Distribution Plan, the material differences between the current and proposed Distribution Plan.

(2) If the Fund has a Distribution Plan in effect:

(i) provide the date that the Distribution Plan was adopted and the date of the last amendment, if any;

(ii) Disclose the persons to whom payments may be made under the Distribution Plan, the rate of the distribution fee and the purposes for which such fee may be used; (iii) Disclose the amount of distribution fees paid by the Fund pursuant to the plan during its most recent fiscal year, both in the aggregate and as a percentage of the Fund's average net assets during the period;

(iv) Disclose the name of, and the amount of any payments made by the Fund during its most recent fiscal year to, any person who is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator, an affiliated person of such person, or a person that during the most recent fiscal year received 10% or more of the aggregate amount paid under the Distribution Plan by the Fund;

(v) describe any action taken with respect to the Distribution Plan since the beginning of the Fund's most recent fiscal year by the board of directors of the Fund; and

(vi) if a Distribution Plan was or is to be terminated or not renewed for any reason, state the date or prospective date of such termination or non-renewal, identify the parties involved, describe the circumstances of such termination or non-renewal, and identify any director of the Fund who, at the time of the action described, owned any securities of, or had any other material, direct or indirect, interest in the Distributor, or any affiliated person of the Distributor (other than another Fund), and state the nature of such interest.

(3) Describe briefly, and where practicable, state the approximate amount of any material interest, direct or indirect, of any director or nominee for election as a director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which the Distributor of the Fund, any Parent or Subsidiary of the Distributor (other than another Fund), or any Subsidiary of the Parent of the Distributor was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the Distributor, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (d)(3) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(4) Discuss in reasonable detail the material factors and the conclusions with respect thereto which form the basis for the conclusion of the board of directors that there is a reasonable likelihood that the proposed Distribution Plan (or amendment thereto) will benefit the Fund and its shareholders.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure.

14. By amending § 240.14c–3 to add a note after paragraph (a) to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

Note: Registered Investment Companies. An annual report transmitted to shareholders by a registered investment company pursuant to Rule 30d–1 of the Investment Company Act of 1940 (§ 270.30d–1 of this chapter) no more than 60 days before the date of the information statement will satisfy the requirement that an annual report accompany or precede the information statement. Where an information statement is transmitted more than 60 days after transmission of the annual report, the annual report delivery requirement of paragraph (b) will be satisfied if the investment company: (1) Mails the information statement to shareholders no later than 30 days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; (2) states prominently in the information statement that it will furnish, without charge, a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, upon request, providing the name, address, and toll-free telephone number of the person to whom such request shall be directed (or, if no toll-free telephone number is provided, a self-addressed postage paid card for requesting the annual report); and (3) provides a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to the requesting shareholder by first class mail, or other means designed to assure prompt delivery, within two business days of the request.

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

15. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

16. By amending § 270.20a–1 to revise the first sentence of paragraph (a) and to remove paragraph (c) to read as follows:

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

(a) No person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered Fund, except upon compliance with Regulation 14A (§ 240.14a–1 of this chapter), Schedule 14A (§ 240.14a–101 of this chapter), and all other rules and regulations adopted pursuant to Section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to Section 12 of the Securities Exchange Act of 1934. * *, *

* * * * *

17. By removing and reserving § 270.20a–2 and § 270.20a–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

18. The authority citations following §§ 239.14 and 239.15A are removed.

19. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

20. The authority citations following §§ 274.11, 274.11A, 274.11a–1, 274.51, and 274.101 are removed.

21. By amending Form N–1A (§§ 239.15A and 274.11A) to revise Item 5(a) to read as follows:

Note: The text of Form N–1A does not appear in the Code of Federal Regulations.

Form N–1A

Item 5. Management of the Fund

* * * * *

(a) a brief description of the responsibilities of the board of directors with respect to the management of the Registrant, and a statement that additional information about the compensation paid by the Registrant to directors and officers and the background of directors and officers of the Registrant is included in the Statement of Additional Information and is available upon written or oral request without charge. (In responding to this item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's

jurisdiction of organization with respect to management of the Fund.);

* * * * *

22. By amending Item 14 of Form N-1A to revise the caption for Column (1) in the table in paragraph (a) to read "Name, Address, and Age", to add an instruction following paragraph (b), and to revise paragraph (c) to read as follows:

Note: The text of Form N-1A does not appear in the Code of Federal Regulations.

Item 14. Management of the Fund

* * * * *

(b) * * *

Instruction: Where the position held is the same positions with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a)(1)(v) of Schedule 14A under the Exchange Act, the Registrant may, rather than listing each Registrant, identify the Fund Complex and provide the number of such positions held by the identified persons.

(c) Provide the following information for all directors of the Registrant, all members of the advisory board of the Registrant, and for three highest paid executive officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons").

(1) Furnish the information required by the following table:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from registrant	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from registrant and fund complex

Instructions. 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other investment companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

4. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

5. Aggregate in Column (5) all compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or arrangement pursuant to which the Compensated Persons are or may be compensated for any services provided. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which give rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

* * * * *

24. By amending Form N-2 (§§ 239.14 and 274.11a-1) to revise Item 9.1.a. to read as follows:

Note: The text of Form N-2 does not appear in the Code of Federal Regulations.

Form N-2

Item 9. Management

* * * * *

1. * * *

a. Board of Directors: a description of the responsibilities of the board of directors with respect to the management of the Registrant and a statement that additional information about compensation paid by the Registrant to directors and officers and the background of directors and officers of the Registrant is included in the Statement of Additional Information and is available upon written or oral request without charge;

* * * * *

24. By amending Item 18 of Form N-2 (§§ 239.14 and 274.11a-1) to revise the caption for Column (1) in the table in paragraph 1 to read "Name, Address, and Age", to add an instruction following paragraph 2, and to revise paragraph 4 to read as follows:

Note: The text of Form N-2 does not appear in the Code of Federal Regulations.

Item 18. Management

* * * * *

2. * * *

Instruction: Where the positions held are the same positions with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a)(1)(v) of Schedule 14A under the Exchange Act, the Registrant may, rather than listing each fund, identify the Fund Complex and provide the number of positions held by the identified persons.

3. * * *

4. Provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for the three highest paid executive officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated persons").

(a) Furnish the information required by the following table:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from fund	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from fund and fund complex

Instructions. 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

4. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

5. Aggregate in Column (5) all compensation paid to a director for service on the board and all other boards of related companies in a Fund Complex specifying the number of such other investment companies.

(b) Describe briefly the material provisions of any pension, retirement, or other plan or arrangement pursuant to which Compensated Persons are or may be compensated for any services provided. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which give rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

(c) With respect to each Compensated Person, business development companies shall include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S-K (§§ 229.402(b)(2)(iv) and 229.402(c)).

* * * * *

26. By amending Form N-3 (§§ 239.17a and 274.11b) to revise Item 6.(a) to read as follows:

Note: The text of Form N-3 does not appear in the Code of Federal Regulations.

Form N-3

Item 6. Management

* * * * *

(a) the responsibilities of the board of managers with a statement that additional information about the compensation paid by the Registrant to directors and officers and the background of directors and officers of the Registrant is included in the Statement of Additional Information and is available upon written or oral request without charge;

* * * * *

27. By amending Item 20 of Form N-3 (§§ 239.17a and 274.11b) to revise the caption for Column (1) in the table in paragraph (a) to read "Name, Address, and Age", to add an instruction following paragraph (b), and to revise paragraph (c) to read as follows:

Note: The text of Form N-3 does not appear in the Code of Federal Regulations.

Item 20. Management

* * * * *

(b) * * *

Instruction: Where the positions held are the same positions with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a)(1)(v) of Schedule 14A under the Exchange Act, the Registrant may, rather than listing each investment company, identify the Fund Complex and provide the number of positions held by the identified persons.

(c) Provide the following information for all directors of the Registrant, all members of the advisory board of the Registrant, and for the three highest paid executive officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons").

(1) Furnish the information required by the following table:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from registrant	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from registrant and fund complex

Instructions. 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or any other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

4. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

5. Aggregate in column (5) all compensation paid to a director for service on the board and all other boards of related companies in a Fund Complex specifying the number of such other investment companies.

6. No information is required to be provided concerning the officers of the sponsoring insurance company who are not directly or indirectly engaged in activities related to the separate account.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or arrangement pursuant to which Compensated Persons are or may be compensated for any services provided. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which give rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

* * * * *

By the Commission.

December 16, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31160 Filed 12-21-93; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-56-93]

RIN 1545-AS00

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the IRS is issuing temporary regulations relating to (1) the remedial allocation method with respect to property contributed by a partner to a partnership and (2) allocations with respect to securities and similar investments owned by a partnership under section 704 of the Internal Revenue Code. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 14, 1994. In addition, requests to appear and outlines to be presented at the public hearing scheduled for April 4, 1994, at 10 a.m. must be received by March 14, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS-56-93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS-56-93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224.

The public hearing will be held in the Internal Revenue Auditorium, Seventh Floor, 7400 corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit at (202) 622-8452 (not a toll-free number); concerning the regulations, David Edquist at (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the Federal Register add § 1.704-3T (d) and (e)(3) to 26 CFR part 1 under section 704 of the Internal Revenue Code.

The temporary regulations contain rules relating to (1) the remedial allocation method with respect to property contributed by a partner to a partnership and (2) allocations with respect to securities and similar investments owned by a partnership under section 704. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

A public hearing has been scheduled for April 4, 1994, at 10 a.m. in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that have submitted written comments by March 14, 1994, and want to present oral comments at the hearing must submit by March 14, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

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

Drafting Information

The principal author of these proposed regulations is David Edquist of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAXES

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

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

Section 1.704-3 also issued under 26 U.S.C. 704(c). * * *

Par. 2. In § 1.704-3, paragraphs (d) and (e)(3) are added to read as follows:

§ 1.704-3 Contributed property.

(The text of proposed paragraphs (d) and (e)(3) is the same as the text in § 1.704-3T published elsewhere in this issue of the Federal Register)

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93-31006 Filed 12-21-93; 8:45 am]

BILLING CODE 4830-01-U

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26 CFR Part 1

[FI-47-92]

RIN 1545-AR76

Reissuance of Mortgage Credit Certificates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations that implement a provision of the Tax Reform Act of 1984 permitting the reissuance of mortgage credit certificates. It will affect current and future holders of mortgage credit certificates. The text of those temporary regulations set forth in that document also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 22, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–47–92), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to CC:DOM:CORP:T:R (FI–47–92), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: L. Michael Wachtel, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add new temporary regulations §§ 1.25–3T (g)(1)(iii) and (p) to the Income Tax Regulations (26 CFR part 1) under section 25(e)(4) of the Internal Revenue Code (Code). Section 25(e)(4) was added to the Code by section 612 of the Tax Reform Act of 1984, 98 Stat. 494, 905. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing may be scheduled and held upon written request to the Commissioner of Internal Revenue by any person who also submits timely written comments. If a public hearing is held, notice of the date, time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is L. Michael Wachtel, Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.25–3 is added as follows:

§ 1.25–3 Qualified mortgage credit certificate.

(The text of this proposed section is the same as the text of § 1.25–3T as amended by the temporary rule published elsewhere in this issue of the **Federal Register**.)

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31010 Filed 12–21–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–93–036]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: At the request of the City of Chicago, Illinois, the Coast Guard is considering a change to the operating regulations governing bridges over the Chicago River System which are owned and operated by the City of Chicago. This proposal expands the periods of time when Chicago's highway bridges need not open for the passage of recreational vessels, establishes a specific number of recreational vessels that will be required to gather in order for the bridges to open, and requires recreational vessel owner/operators or their representatives to give 24 hours notice in advance of a vessel's time of intended passage through the draws. Additionally, the period of time during the winter months when the bridges need open only after receiving an advance notice will be expanded. This action should accommodate the needs of vehicle traffic and still provide for the reasonable needs of navigation.

DATES: (1) Comments must be received on or before February 7, 1994.

(2) The public hearing will be held on Thursday, January 20, 1994, at 7 p.m. CST.

ADDRESSES: (1) Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993. The Commander, Ninth Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

(2) The public hearing will be held at the Ralph H. Metcalfe Federal Building, room 311, 77 West Jackson Boulevard, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD09–93–036) and specific section of this proposal to which each comment applies, and give reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will hold a public hearing.

Public Hearing

The Commander, Ninth Coast Guard District, has authorized a public hearing to be held to receive additional comments on the proposed regulations governing the operation of bridges owned by the City of Chicago, over the Chicago River System in Chicago, Illinois.

The hearing is being held to gather information and data necessary to formulate a final regulations change that will accommodate the reasonable needs of vessels that transit the Chicago River System and the needs of the City of Chicago.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the person listed in the section "FOR FURTHER INFORMATION CONTACT" in this notice. Such notification should include the approximate time required to make the presentation.

A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulations change by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulations, and include the name and address of the person or organization submitting the comment. Comments should be sent to the address under "ADDRESSES".

Drafting Information

The principal person involved in drafting this document is Mr. Robert W. Bloom, Jr., Project Manager, Ninth Coast Guard District.

Background and Purpose

Presently, the bridges owned and operated by the City of Chicago are governed in accordance with 33 CFR 117.391 which allows the City to not open the draws during peak vehicle traffic periods during the morning and afternoon rush hours. In addition, certain bridges need not open for the passage of vessels unless notice is given in advance of a vessel's intended time of passage through draws.

The City of Chicago has requested that, from April 1 through November 30, the bridges which cross the Chicago River and the Chicago River Branches be limited to openings for the passage of recreational vessels only between the hours of 6:30 p.m. and 12 midnight on Tuesdays and Thursdays, and between the hours of 7 a.m. and 7 p.m. on Saturdays and Sundays. During these periods of times, the bridges would not be required to open unless there are no less than five recreational vessels and not more than twenty-five vessels available to transmit during the scheduled open periods, and need not open for vessels unless arrangements are made at least twenty-four hours in advance of their requested time of passage through the draws. In addition, for all vessels, from December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, North Branch Canal, and the South Branch of the Chicago River shall open on signal if notice if given at least 12 hours in advance of a vessel's time of intended passage through the draws.

Discussion of Proposed Amendment

During the past nine months, the Coast Guard granted the City of Chicago four different temporary deviations to the regulations governing the operation of the City's highway bridges. Each deviation was adjusted to test various days and times when the bridges would open for the passage of recreational vessels and when the bridges would be permitted to remain closed.

The proposed change to the operating regulations for bridges owned and operated by the City of Chicago, as specified in this "Notice of proposed rulemaking", is a result of those days and times that the Coast Guard has preliminarily determined to be in the best interest of waterway users and provide for the transportation and safety needs of the City of Chicago. In addition to information received from the temporary deviations, and information which will be received as a result of this public notice, the Coast Guard will hold a public hearing to gather additional information to assist the Commander, Ninth Coast Guard District in determining a course of final action on this proposal.

Regulatory Assessment

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. This change to the operating regulations for bridges over the Chicago River System allows recreational vessels to navigate the Chicago River System during the times specified by these regulations, after having given an advance notice to the City of Chicago.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since recreational vessels could navigate the Chicago River System and the impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.391 is revised to read as follows:

§ 117.391 Chicago River.

The draws of bridges operated by the City of Chicago shall operate as follows:

(a) For commercial vessels:

(1) From April 1 through November 30–

(i) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South

Branches, across the South Branch from the junction to and including the West Roosevelt Road, and across the North Branch to and including North Kinzie Street and the Ohio Street bridge shall open on signal; except that, from Monday through Friday from 7:30 a.m. to 10 a.m., and 4 p.m. to 6:30 p.m., the draws need not be opened for the passage of vessels.

(ii) The draws of the bridges across the North Branch of the Chicago River at Grand Avenue, the bridges across the North Branch of the Chicago River north of the Ohio Street bridge to and including North Halsted Street, and bridges across the South Branch of the Chicago River above South Halsted Street to and including West Roosevelt Road, shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not open for the passage of vessels.

(iii) The draws of the bridges across the North Branch of the Chicago River north of North Halsted Street and the South Branch of the Chicago River south of South Halsted Street shall open on signal; except that, from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m. the draws need not be opened for the passage of vessels.

(iv) The draws of the Randolph Street, Cermak road, Throop Street, and Loomis Street bridges across the South Branch of the Chicago River, the North Halsted Street bridge across the North Branch Canal, and the West Kinzie Street bridge across the North Branch of the Chicago River shall open on signal.

(v) The draws of the following bridges in Chicago shall open on signal if tended or within 30 minutes after notice is given to the City of Chicago Bridge Desk:

South Branch

Washington Street
Madison Street
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Congress Street (Eisenhower Expressway)
Harrison Street
Roosevelt Road
Eighteenth Street
Canal Street
South Halsted Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Grand Avenue
Chicago Avenue
North Halsted Street
Ogden Avenue
Davision Street

North Branch Canal

Ogden Avenue
Division Street

(vi) The draws of bridges across the North Branch Canal that have a vertical Clearance of less than 17 feet above Low Water Datum for Lake Michigan shall open at any time to permit the passage of tugs and tugboats.

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, North Branch Canal, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1)(i), (ii) and (iii) of this section.

(b) For recreational vessels, the draws of the City of Chicago owned bridges shall operate as follows:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
LaSalle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Asland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(1) From April 1 through November 30–

(i) The draws need to open only between the hours of 6:30 p.m. and 12 midnight on Tuesdays and Thursdays.

(ii) The draws need to open only between the hours of 7 a.m. and 7 p.m. on Saturdays and Sundays.

(iii) The draws need to open for the passage of recreational vessels only after notice has been given at least 24 hours in advance of their requested time of passage and only during the periods of times specified in paragraph (b)(1)(i) and (ii) of this section when no less than five vessels and not more than 25 vessels are available to transit through the draws during one scheduled opening. However, when circumstances preclude being able to assemble the minimum number of vessels, requests shall be made to the Chicago Bridge Desk to establish a scheduled time for bridge openings.

(iv) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, North Branch Canal, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given.

(c) The draws of the Lake Shore Drive bridge across Ogden Slip need not be opened for the passage of vessels.

(d) The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River need not open for the passage of vessels.

(e) The draw of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge across the North Branch Canal need not open for the passage of vessels.

(f) The opening signal for all Chicago River bridges is three short blasts or by shouting; except that, four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near West Kinzie Street and the Milwaukee Road bridge near West North Avenue and five short blasts is the opening signal for the Lake Shore Bridge when approaching from the north.

Dated: December 8, 1993.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–31214 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Mailing Prescription Medicines Containing Narcotic Drugs And Other Controlled Substances

AGENCY: Postal Service

ACTION: Proposed rule.

SUMMARY: The proposed rule would remove a provision in the current postal regulations which restrict use of the mail to carry prescription medicine containing narcotic drugs. It also would fully harmonize those regulations—viz., Domestic Mail Manual CO42.6.8 and CO42.6.9—with the Controlled

Substances Act and its implementing regulations. As a consequence, such use of the mail by dispensers of such medicine would be allowed to the same extent that distribution via any carrier is permitted under the Controlled Substances Act and implementing regulations.

DATES: Comments must be received by January 21, 1994.

ADDRESSES: Address all comments to Anita Bizzotto, Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza, SW., room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Adams (202) 268–5168.

SUPPLEMENTARY INFORMATION: Domestic Mail Manual (DMM) CO42.6.9 currently states that "[p]rescription medicines containing narcotic drugs may be mailed only by Veterans Administration medical facilities to certain veterans." Some commercial suppliers have reported that they routinely ship such medicines via carriers which compete with the Postal Service, the shipments not being prohibited by the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and its implementing regulations, 21 CFR Parts 1300–1316. These suppliers claim that they would prefer to make these shipments via the Postal Service, and would do so, but for the foregoing restriction in our regulations.

Upon review, the Postal Service has found no need for provisions in its regulations on mailing controlled substances which would be stricter than those applicable to shipments via competing carriers. Whatever the means of carriage, such shipments must comply with the Controlled Substances Act and the regulations implementing it which provide a comprehensive system for protecting the public. Our proposed revisions will make postal regulations fully consistent with that protective system. While adopting this proposal may lead to substantial increases in the amount of mailed medicines containing narcotics, compliance with our regulations' preparation and packaging prerequisites should yield secure transit for those shipments.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b) and (c) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Domestic Mail Manual CO42.6.8 is hereby revised to read as follows:

Controlled Substances 6.8

A "controlled substance" is any anabolic steroid, narcotic, hallucinogenic, stimulant, or depressant drug in Schedules I through V of the Controlled Substances Act (Pub. L. 91–513), 21 U.S.C. 801 *et seq.*, and 21 CFR Parts 1300–1316. Because controlled substances are potentially addictive and abusable, if distribution of a controlled substance is unlawful under 21 U.S.C. 801 *et seq.*, and any relevant implementing regulations in 21 CFR Parts 1300–1316, such distribution by mail is also unlawful under 18 U.S.C. 1716. Section 1716(a) prohibits matter capable of killing or injuring a person from being conveyed in the mail.

3. Domestic Mail Manual CO42.6.9 is hereby revised to read as follows:

Mailing Requirements 6.9

Under 18, U.S.C. 1716(b), the Postal Service may permit the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health. Such mailability is conditioned upon compliance with any preparation and packaging requirements imposed by the Postal Service. Accordingly, if distribution of a controlled substance is lawful under 21 U.S.C. 801 *et seq.*, and any relevant implementing regulations in 21 CFR Parts 1300–1316, the Postal Service considers such distribution by mail to constitute the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health, provided that it satisfies the following preparation and packaging requirements.

a. The inner container of any parcel containing controlled substances must be marked and sealed under the applicable provisions of the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and the regulations implementing it, 21 CFR Parts 1300–1316.

b. If the controlled substances consist of prescription medicines, the inner container must also be labeled to show the prescription number and the name and address of the pharmacy, practitioner, or other person dispensing for prescription.

c. The inner container of every parcel containing controlled substances must be placed in a plain outer container or securely overwrapped in plain paper.

d. The outside wrapper or container must be free of markings that would indicate the nature of the contents.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93–30955 Filed 12–21–93; 8:45 am]

BILLING CODE 7710–22–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4816–5]

State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Addendum to General Preamble for future proposed rulemakings.

SUMMARY: Areas of the country which violate national ambient air quality standards for any of the six criteria pollutants (lead, sulfur dioxide (SO_2), particulate matter, ozone, carbon monoxide, and nitrogen dioxide) may be designated nonattainment as provided by the Clean Air Act (Act), as modified by the 1990 Amendments. States containing these areas are required by title I of the statute to develop plans to timely attain the standards.

The General Preamble for the Implementation of title I of the 1990 Amendments was published on April 16, 1992. It provides preliminary guidance to the States and other interested parties regarding what EPA generally considers acceptable plan submittals for implementing certain requirements of title I of the Act.

This document adds the lead addendum to the General Preamble which provides more detailed guidance on meeting the statutory requirements for reasonably available control measures (RACM) (including reasonably available control technology (RACT)), reasonable further progress (RFP) for lead, and contingency measures. In general, the guidance contained in the addendum parallels existing guidance previously provided for other

pollutants, such as PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and SO_2.

ADDRESSES: References cited herein are available from the Public Docket No. A-92-25. 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.

FOR FURTHER INFORMATION CONTACT: Laura D. McKelvey, Air Quality Management Division, Mail Drop 15, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-5497.

SUPPLEMENTARY INFORMATION:

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In accordance with 1 CFR 5.9(c), this document is published in the proposed rules category.

I. Background

The draft addendum was made available to the public on July 16, 1992 with a 6-week public comment period. The EPA also held a public meeting on July 30, 1992. No comments were received from industry or the general public on the addendum. Copies of the draft addendum were also provided to the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO); the Lead Issue Group endorsed the draft guidance and provided a few comments. Responses to those comments have been placed in the docket.

A. Statutory Background

Any State containing an area designated as nonattainment with respect to the lead national ambient air quality standards (NAAQS) must develop and submit a State implementation plan (SIP) meeting the requirements of part D, title I, of the Act providing for attainment (see sections 191(a) and 192(a) of the Act). As indicated in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (see 57 FR 13498, 13550; April 16, 1992), all components of the lead part D SIP must be submitted within 18 months of an area's nonattainment designation. The general part D nonattainment plan provisions are set forth in section 172 of the Act. Section 172(c) specifies that SIP's submitted to meet the part D requirements must, among other things, include RACM (which includes RACT), provide for RFP, include an emissions inventory, require permits for the construction and operation of major new and modified stationary sources (see also section 173), contain contingency measures, and meet the applicable provisions of section 110(a)(2). The EPA has provided guidance for implementing some of the above provisions in the April 16, 1992 "General Preamble." It is important to note that nonattainment lead SIP's must meet all of the part D requirements including those specified in section 172(c) even if EPA does not issue guidance for each and every provision, e.g., applicable provisions of section 110(a)(2).

B. Guidance Development

On May 31, 1991 EPA issued preliminary SIP development guidance for lead nonattainment areas, "Lead Nonattainment Area State Implementation Plan (SIP) Guidance: Final Staff Work Product." This guidance was largely incorporated into the General Preamble referenced above (57 FR 13549-13551). The EPA indicated that in developing RACM for lead nonattainment areas, States should rely on the RACM guidance issued for particulate matter that was set out in detail in the General Preamble (57 FR 13550). In fact, the portion of this guidance addressing RACM for lead nonattainment areas parallels EPA's interpretation of RACM for particulate matter.

A notice announcing this addendum to the General Preamble, available in draft form, was published on July 16, 1992 (see 57 FR 31477). The EPA entertained written and oral comments on the draft. The EPA received no public or industry comments, and only limited comments from STAPPA/ALAPCO. Therefore, EPA is issuing this guidance in final form largely unchanged. Responses to comments can be found in the docket referenced above.

C. Guidance Legal Effect

This document describes EPA's nonbinding views on how EPA should interpret certain lead nonattainment area SIP requirements. These interpretations will be given binding effect only after final rulemaking action on a specific SIP submittal for a particular area. During the course of such rulemaking action, the public will be afforded an opportunity to comment on the application of any interpretations advanced in this guidance to the particular area in question. Thus, EPA will consider the factual circumstances associated with a particular lead nonattainment area and the submissions made by any persons before giving the preliminary interpretations set out in this guidance binding legal effect.

II. Reasonably Available Control Measures (Including Reasonably Available Control Technology)

A. Introduction

As a general rule, most, if not all, of the lead nonattainment areas are attributed to specific stationary sources. That is, violations of the lead NAAQS are caused by current and in some cases historical emissions (see discussion below) from specific stationary sources. Therefore, to meet the part D requirements, lead SIP's must contain RACM (including RACT) which addresses both historical emissions as well as current direct emissions.

As a general rule, the stationary sources in these lead nonattainment areas tend to emit a relatively large amount of particulate matter containing lead. At primary lead smelters, for example, the process of reducing concentrate ore to lead involves a series of steps, some of which are completed outside buildings or inside buildings which are not totally enclosed. Over a period of time, emissions from these sources have been deposited in the neighboring community (e.g., on roadways, parking lots, yards, and off-plant property). This historically-deposited lead, when disturbed, is reentrained in the ambient air. When reentrained, the fugitive lead-bearing dust may contribute to violations of the lead NAAQS.

B. Reasonably Available Control Measures

The suggested starting point for specifying RACM in each SIP is shown in the listing of available control measures for fugitive lead-bearing dust contained in appendix 1. If a State receives substantive public comment demonstrating through appropriate documentation that additional control measures may well be reasonably available in a particular circumstance, those measures should be added to the list of available measures for consideration for that area. The RACM is then determined for the affected area's SIP. While EPA does not presume that these control measures are reasonably available in all areas, a reasoned justification for rejection of any available control measure should be prepared. If it can be shown that one or more measures are unreasonable because emissions from the sources affected are insignificant, those measures may be excluded from further consideration as they would not represent RACM for the area.[1] The resulting available control measures should then be evaluated for reasonableness, considering their technological feasibility and the cost of control in the area to which the SIP applies. In the case of public sector sources and control measures, this evaluation should consider the impact of the reasonableness of the measures on the municipal or other governmental entity that must bear the responsibility for their implementation (e.g., paving of unpaved public roads). The EPA anticipates that in some cases, States will consider whether the sources responsible for depositing lead emissions in the affected community should bear some of the responsibility for implementation of what are generally viewed as public sector control measures. It is important to note that a State should consider the feasibility of implementing measures in part when full implementation would be infeasible. A reasoned justification for partial or full rejection of any available control measures, including those considered or presented during the State's public hearing process should be prepared. The justification should contain an explanation, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable.

When the process of determining RACM for an area is completed, the individual measures should then be converted into a legally-enforceable vehicle (e.g., a regulation or permit program) (see sections 172(c)(6) and 110(a)(2)(A) of the Act). The regulations or other measures submitted should meet EPA's criteria regarding the enforceability of SIP's and SIP revisions. These criteria were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation; Thomas L. Adams, Jr., Assistant Administrator for Enforcement and Compliance Monitoring; and Francis S. Blake, General Counsel, Office of the General Counsel; entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." As stated in this memorandum, SIP's and SIP revisions which fail to satisfy the enforceability criteria should not be forwarded for approval. If they are submitted, they will be disapproved if, in EPA's judgment, they fail to satisfy applicable statutory and regulatory requirements.

The technical guidance that discusses in detail the suggested initial measures identified in appendix 1 and that a State should consider in determining which of the measures in appendix 1 are reasonable, considering technical feasibility and the cost of control in a particular area, is contained in "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures"[2] (EPA-450/2-92-004), September 1992. This document reflects EPA's most recent assessment of available control measures for sources of fugitive dust and may serve as an example in analyzing control costs for a given area. Copies of this document may be obtained by contacting the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

C. Reasonably Available Control Technology

This guidance follows EPA's historic definition of RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[3] The RACT applies to the "existing sources" of lead stack, process fugitive, and fugitive dust emissions (e.g., haul roads, unpaved staging areas) (see section 172(c)(1)). The EPA recommends that stationary sources which actually emit a total of 5 tons per year of lead or lead compounds measured as elemental lead be the minimum starting point for RACT analysis.[4] Generally, EPA recommends that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the attainment needs of the area and the feasibility of such controls. Thus, a State's control technology analyses may need to include sources which actually emit less than 5 tons per year of lead or lead compounds in the area, or other sources in the area that are reasonable to control, in light of the area's attainment needs and the feasibility of control.[5]

[1] Where the sources affected by potentially available control measures contribute only negligibly to ambient concentrations that exceed the NAAQS, EPA's policy is that it would be unreasonable and therefore would not constitute RACM to require controls on the sources. Not only would RACM not require the imposition of controls in such a circumstance but the inherent authority of administrative agencies to exclude de minimis situations from regulation has been recognized in contexts such as this where an agency is invoking a de minimis exclusion as "a tool to be used in implementing the legislative design" (see *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979)).

[2] Much of the guidance in this document was previously found in the "Control of Open Fugitive Dust Sources" document (EPA-450/3-88-008). This latter document was developed with substantial input from State and local agencies, trade groups and associations, and control experts.

This information has been updated and replaced in the "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures." Further, the more recent document is designed to be updated as new information becomes available. Therefore, the latter should be referred to as the starting point for identifying available control measures for lead-bearing fugitive dust.

[3] See, for example, 44 FR 53762 (September 17, 1979) and footnote 3 of that notice. Note that EPA's emissions trading policy statement has clarified that the RACT requirement may be satisfied by achieving "RACT equivalent" emission reductions in the aggregate from the full set of existing stationary sources. See also EPA's economic incentives proposal which reflects the Agency's more recent policy guidance with respect to emissions trading, 58 FR 11110, February 23, 1993.

[4] The EPA's regulations adopted prior to the 1990 Amendments define a point source for lead or lead compounds measured as elemental lead, as any stationary source that actually emits a total of 5 tons per year or more (see 40 CFR 51.100(k)).

The EPA simply notes that past usage in 40 CFR 51.100(k) as evidence that the 5 tons per year has been a historically important threshold level for lead and, as such, has been selected here to be the minimum starting point for RACT analysis. The Act Amendments of 1990 included a general savings clause which provides that regulations (or guidance, etc.) in effect before enactment of the Amendments shall remain in effect after enactment (see section 193 of the amended Act). However, the savings clause also provides that such regulations (or guidance, etc.) shall remain in effect "except to the extent otherwise provided under this Act, inconsistent with the provision of this Act, or revised by the Administrator." Id.

[5] Note that Congress has not used the word "all" in conjunction with RACT in either the earlier law or as now amended. Thus, it is possible that a State could demonstrate that an existing source in an area should not be subject to a control technology, especially where such control is unreasonable in light of the area's attainment needs or infeasible. Even if EPA was required to impose control

Specific guidance on the evaluation of the technological and economic feasibility of control technology for existing stationary sources is contained in appendix 2.

D. Previously Approved Lead SIP's

Prior to the 1990 Amendments, EPA believed that the implementation and maintenance of the lead NAAQS should be in accordance with the SIP requirements set forth in section 110 and not part D (see 57 FR 13549). Since 1979, EPA has taken action to approve a number of lead area SIP's. These SIP's were required to demonstrate attainment. Although there is no statutory requirement for RACT in section 110, generally the available technology-based measures for controlling lead emissions have not changed substantially. Therefore, it is possible that some previously-approved lead SIP's require RACT equivalent technology. For example, for areas that requested attainment date extensions, EPA may have approved SIP's that required controls that would now be considered RACT for existing stationary sources of lead. However, because prior approval of any such control technology did not involve a RACT determination under part D, because there may have been new developments in available control technology, and because the area is not in attainment with the lead NAAQS (and therefore the previous plan did not in fact provide for attainment), it is not appropriate to presume that existing control technology satisfies the RACT requirement now applicable to lead nonattainment areas under part D (see section 172(c)(1)). Therefore, with respect to controls on stack and process fugitive emission points in previously-approved lead SIP's, EPA specifically recommends that the emission limits be reviewed under the guidance for nonattainment area RACT provided in this notice in light of any newly identified attainment needs of the area and improvements in control technology and reductions in control costs that may now make lower emission limits reasonable (see appendix 2). Thus, in those lead nonattainment areas that have previously-approved lead SIP's, the lead regulations for existing sources should be reviewed to determine whether additional controls are necessary to meet part D RACT requirements, and whether the regulations meet EPA's enforceability criteria.

Section 110(n)(1) of the amended Act specifies that any provision of any lead SIP, including any revisions, approved or promulgated by EPA before enactment of the 1990 Amendments, shall remain in effect until EPA approves or promulgates a revision to the SIP under the new law. Section 110(l) of the Act prohibits EPA from approving any SIP revision that interferes with any applicable requirement of the Act including, for example, reasonable further progress and attainment. Further, the General Savings Clause, section 193 of the Act, states that any control requirement in effect or required to be adopted by a SIP in effect before enactment of the 1990 Amendments for any area which is a nonattainment area for any air pollutant may not be modified unless the modification ensures equivalent or greater emission reductions of such air pollutant. Thus, under section 110(n)(1), existing provisions of lead SIP's remain in effect in areas designated nonattainment for lead until such provisions are revised under the new law. Further, under section 110(l) EPA is barred from approving a SIP revision which interferes with any applicable Act requirement. Finally, under section 193, no revision of a control requirement can occur unless it ensures at least equivalent emission reductions.

E. SIP's That Demonstrate Attainment

The SIP's for lead nonattainment areas should provide for the implementation of control measures for area sources and control technology for stationary sources of lead emissions which demonstrate attainment of the lead NAAQS as expeditiously as practicable but no later than the applicable statutory attainment dates. Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that reasonable further progress (discussed later) and attainment of the lead NAAQS are assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all technologically and economically available measures may be approved (see 44 FR 20375 (April 4, 1979) and 56 FR 5460 (February 11, 1991)). The EPA believes it would be unreasonable to require that a plan which demonstrates attainment include all technologically and economically available control measures even though such measures would not expedite attainment. Thus, for some sources in areas which demonstrate attainment, it is possible that some available control measures may not be "reasonably" available because their implementation would not expedite attainment.

III. Reasonable Further Progress

Part D SIP's must provide for RFP (see section 172(c)(2) of the Act). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient generally to maintain linear progress toward attainment by the specified deadline. Requiring linear emission reduction progress to maintain RFP may be appropriate where:

1. Pollutants are emitted by numerous and diverse sources.
2. The relationship between any individual source and the overall air quality is not explicitly quantified.
3. There is a chemical transformation involved.
4. The emission reductions necessary to attain the standard are inventory wide.

Requiring linear progress to maintain RFP is less appropriate where:

1. There are a limited number of sources.
2. The relationships between individual sources and air quality are relatively well defined.
3. There is not a chemical transformation.
4. Emission controls system utilized (e.g., at major point sources) will result in swift and dramatic emission reductions.

The EPA believes it may not be reasonable to require linear reductions in emissions in SIP's for lead nonattainment areas because the air quality problem is not usually due to a vast inventory of sources. However, this is not to suggest that generally it would

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technology on every existing stationary source, where a State demonstrates that available control technology for a source is infeasible or otherwise unreasonable, EPA would conclude that "reasonably" available control technology for that source constitutes no control or, stated differently, that no control technology for the source is "reasonably" available.

As referenced above, section 172(c) of the amended Act provides that RACT should apply to "existing sources in the area." This is the same language that appeared in the RACT requirements under the Act prior to the 1990 Amendments (see section 172(b)(3) of the pre-amended law). Under the pre-amended law, EPA, in effect, interpreted the phrase "existing sources in the area" as it is interpreted here. The EPA believes that Congress has placed its imprimatur on, if not adopted, EPA's prior interpretation of RACT (see, e.g., section 182(a)(2)(A) of the amended Act, see also section 193 of the amended Act (savings clause preserving prior EPA guidance except where inconsistent with the amended Act)).

be unreasonable for EPA to require annual incremental reductions in emissions in lead nonattainment areas. The RFP for lead nonattainment areas should be met, at least in part, by "adherence to an ambitious compliance schedule"[6] which is expected to periodically yield significant emission reductions, and as necessary, linear progress. The EPA recommends that SIP's for lead nonattainment areas provide a detailed schedule for compliance with RACM (including RACT) in the areas and accurately indicate the corresponding annual emissions reductions to be achieved. In reviewing the SIP, EPA will determine whether, in light of the statutory objective to ensure timely attainment of the lead NAAQS, the annual incremental emission reductions to be achieved are reasonable. Additionally, EPA believes that it is appropriate to expect early implementation of less technology-intensive control measures (e.g., controlling fugitive dust emissions at the stationary source) while phasing in the more technology-intensive control measures, such as those involving the installation of new hardware. Finally, note that failure to implement the SIP provisions required to meet annual incremental reductions in emissions (i.e., RFP) in a particular area could result in the application of sanctions as described in sections 110(m) and 179(b) of the Act (pursuant to a finding under section 179(a)(4)), and the implementation of contingency measures required by section 172(c)(9) of the Act.

IV. Contingency Measures

Section 172(c)(9) of the Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to maintain RFP or fails to attain the NAAQS by the applicable attainment date. Contingency measures become effective without further action by the State or the Administrator, upon determination by the Administrator that the area has failed to maintain reasonable further progress or attain the lead NAAQS by the applicable statutory deadline. Contingency measures should consist of available control measures that are not included in the primary control strategy.

Contingency measures are important for lead, which is generally a stationary source problem (as discussed earlier), for several reasons. First, the current process and area fugitive emissions from these stationary sources and the reentrainment of historically-deposited emissions are difficult to quantify. Therefore, the analytical tools for determining the relationship between reductions in emissions and resulting air quality improvements can be subject to uncertainties. Second, emission estimates and attainment analyses can be influenced by overly-optimistic assumptions about control efficiency with respect to fugitive emissions.

Examples of contingency measures for controlling area fugitives include paving more roads, stabilizing more storage piles, increasing the frequency of street cleaning, etc. Examples of contingency measures for process fugitive emissions include increasing enclosure of buildings, increasing air flow in hoods, increasing operation and maintenance procedures, etc. Examples of contingency measures for stack sources include reducing hours of operations, changing the feed material to lower lead content, and reducing the occurrence of malfunctions by increasing operation and maintenance procedures, etc.

Section 172(c)(9) provides that contingency measures should be included in the SIP for a lead nonattainment area and shall "take effect * * * without further action by the State or the Administrator." The EPA interprets this requirement to be that no further rulemaking actions by the State or EPA would be needed to implement the contingency measures (see generally 57 FR 13512 and 13543–13544). The EPA recognizes that certain actions, such as the notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented. However, States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. After EPA determines that a lead nonattainment area has failed to maintain RFP or to timely attain the lead NAAQS, EPA generally expects all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of such failure. The State should ensure that the measures are fully implemented as expeditiously as practicable after they take effect.

V. Other Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether an action is "major" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this action is exempt from classification as "major" because it is a compilation of interpretive rule and general statements of policy as defined in the Administrative Procedure Act (APA). Nevertheless, this notice was submitted to the Office of Management and Budget (OMB) for review.

A copy of the draft notice as submitted to OMB, any documents accompanying the draft, any written comments received from other agencies (including OMB), and any written responses to these comments have been included in the docket.

B. Regulatory Flexibility Act

Whenever the Agency is required by section 553 of the APA or any other law to publish general notice and proposed rulemaking for any proposed rule, the Agency shall propose and make available for public comment an initial regulatory flexibility analysis. The regulatory flexibility requirements do not apply for the lead addendum to the General Preamble because it is not a regulatory action in the context of the APA or the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Reasonably available control measures, Reasonably available control technology, Contingency measures, Reasonable further progress.

Dated: December 13, 1993.

Carol M. Browner,

Administrator.

Appendix 1—Available Fugitive Lead-Bearing Dust Control

A. Background

The available control measures listed below apply to all fugitive lead-bearing dust sources except those to which RACT is applicable (i.e., fugitive lead-bearing dust associated with traditional stationary sources). Fugitive lead-bearing dust is particulate matter suspended in the air either by mechanical disturbance of the surface material or by wind action blowing across the surface. Mechanical disturbance includes resuspension of particles from vehicles traveling over roadways, parking lots, and other open areas. Wind action includes dust blown off inadequately stabilized open areas. The quantity of fugitive lead-bearing dust emissions is dependent upon several factors such as the size of the source, emission rate, and control efficiency. The EPA's policy is to reduce fugitive lead-bearing dust emissions, with an emphasis on preventing, rather than mitigating, them. For example, past

[6] As previously stated most of the lead nonattainment problems are caused by point sources. For this reason EPA believes that the RFP for lead should parallel the RFP policy for SO_2 (see the General Preamble, 57 FR 13545, April 16, 1992).

efforts to control emissions from paved roads have usually relied on street cleaning to reduce silt loading. The new approach would put a higher priority on measures to prevent silt from getting on the road surface. Mitigative measures should be reserved for those areas/situations where prevention is not feasible or the only way to reduce the impact is to remove historically-deposited emissions. Technical guidance on fugitive dust control measures is found in "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures" (EPA–450/2–92–004, September, 1992).

B. List of Available Control Measures

1. Pave, vegetate, or chemically stabilize access points where unpaved traffic surfaces adjoin paved roads.
2. Require dust control plans for construction or land-clearing projects.
3. Require haul trucks to be covered.
4. Provide for traffic rerouting or rapid clean up of temporary (and not readily preventable) sources of dust on paved roads (water erosion runoff, mud/dirt carryout areas, material spills, skid control sand). Delineate who is responsible for cleanup.
5. Require paving, chemically stabilizing, or otherwise stabilizing permanent unpaved haul roads, and parking or staging areas at commercial, municipal, or industrial facilities.
6. Develop traffic reduction plans for unpaved roads. Use of speed bumps, low speed limits, etc., to encourage use of other (paved) roads.
7. Limit use of recreational vehicles on open land (e.g., confine operations to specific areas, require use permits, outright ban).
8. Require curbing and pave or stabilize (chemically or with vegetation) shoulders of paved roads.
9. Pave or chemically stabilize unpaved roads.
10. Pave, vegetate, or chemically stabilize unpaved parking areas.
11. Require dust control measures for material storage piles.
12. Provide for storm water drainage to prevent water erosion onto paved roads.
13. Require revegetation, chemical stabilization, or other abatement of wind erodible soil, including lands subjected to water mining, abandoned farms, and abandoned construction sites.
14. Rely upon the soil conservation requirements (e.g., conservation plans, conservation reserve) of the Food Security Act to reduce emissions from agricultural operations.
15. Require washing of undercarriages and wheels of vehicles immediately prior to leaving the plant area.
16. Require that water used for dust suppression and vehicle washing contain a limited amount of lead (e.g., less than or equal to 0.1 ppm).

Appendix 2—RACT Determinations for Stationary Sources

A. Background

Congress has for the second time in amending the Act specifically required that RACT be applied to existing stationary sources in areas designated nonattainment. In section 172(b)(3) of the Act, as amended in 1977, Congress specified that nonattainment area plans were to "require * * * reasonable further progress * * * including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology." Thus, RACT was required in SIP's developed for areas that were designated nonattainment. Although, under the 1977 Amendments, the lead NAAQS were not implemented through the nonattainment area planning provisions; in the 1990 Amendments, Congress reaffirmed the application of the RACT requirement in any area designated nonattainment by largely incorporating the 1977 section 172(b)(3) RACT requirement into section 172(c)(1) which is applicable to lead nonattainment areas. Specifically, section 172(c)(1) of the Act, as amended in 1990 (Nonattainment Plan Provisions—In General), requires that nonattainment area plans provide for "* * * such reductions in emissions from existing sources in the (nonattainment) area as may be obtained through the adoption, at a minimum, of reasonably available control technology." Thus, RACT is now required for lead nonattainment area SIP's.

The EPA recommends that the nonattainment area RACT for a particular source continues to be determined on a case-by-case basis considering the technological and economic feasibility of reducing emissions from that source (through process changes or add-on control technology). The following technological and economic parameters should be considered in determining part D RACT for a particular source.

B. Technological Feasibility

The technological feasibility of applying an emission reduction method to a particular source should consider the sources process and operating procedures, raw materials, physical plant layout, and any other environmental impacts such as water pollution, waste disposal, and energy requirements. The process, operating procedures, and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and the selection of add-on emission control equipment. The operation and longevity of control equipment can be significantly influenced by the raw materials used and the process to which it is applied. The feasibility of modifying processes or applying control equipment is also influenced by the physical layout of the particular plant. The space available in which to implement such changes may limit the choices and will also affect the costs of control.

Reducing air emissions may not justify adversely affecting other resources by increasing pollution of bodies of water, creating additional solid waste disposal problems, or creating excessive energy demands. In other words, an otherwise available lead control technology may not be reasonable if these other environmental impacts cannot reasonably be mitigated. For analytic purposes, a State may consider a lead control measure technologically infeasible if, considering the availability (and cost) of mitigative adverse impacts of that control on other pollution media, the control would not, in the State's reasoned judgment, provide a net environmental benefit. In many instances, however, lead control technologies have known energy penalties and adverse effects on other media, but such effects and the cost of their mitigation are also known and have been borne by owners of existing sources in numerous cases. Such well-established adverse effects and their costs are normal and assumed to be reasonable and should not, in most cases, justify nonuse of the lead control technology. The costs of preventing adverse water, solid waste, and energy impacts will also influence the economic feasibility of the lead control technology.

Approaches to reducing emissions of lead are discussed in "Control Techniques for Lead Air Emissions,"[7] Volume I—Chapters 1–3, and Volume II—Chapter 4—Appendix B, (EPA–450/2–77–012), December 1977. The many processes that generate lead air pollutants are described individually in this report. Information on the selection and performance of alternative control techniques applicable to lead emitting facilities within specific source categories is presented. Information on capital and annualized costs of

[7] Note that this document is currently being revised by EPA.

installing lead emission controls is also presented. Since it is not possible, in most cases, to distinguish between costs of particulate control and costs of lead control, control costs are presented for particulate control equipment which coincidentally reduce potential lead emissions. Also presented, for most source categories, are estimates of the environmental and energy impacts associated with the control of lead emissions.

Alternative approaches to reducing emissions of particulate matter (which would include lead) are discussed in "Control Techniques for Particulate Emissions from Stationary Sources"—Volume I (EPA-450/3-81-005a) and Volume II (EPA-450/3-81-005b), September 1982. The design, operation and maintenance of general particulate matter control systems such as mechanical collectors, electrostatic precipitators, fabric filters, and wet scrubbers are discussed in Volume I. The collection efficiency of each system is discussed as a function of particle size. Information is also presented regarding energy and environmental considerations and procedures for estimating costs of particulate matter control equipment. The emission characteristics and control technologies applicable to specific source categories are discussed in Volume II. Secondary environmental impacts are also discussed.

Additional sources of information on control technology are background information documents for new source performance standards and "Identification, Assessment, and Control of Fugitive Particulate Emissions," EPA-600/8-86-023, August 1986.

In some instances, control technologies more modern or more advanced than those described in the documents referenced may exist. In such cases, the State's nonattainment RACT analysis for a source should consider such available technology.

C. Economic Feasibility

Economic feasibility considers the cost of reducing emissions and the difference in costs between the particular source and other similar sources that have implemented emission reductions. As discussed above, EPA presumes that it is reasonable for similar sources to bear similar costs of emission reductions. Economic feasibility rests very little on the ability of a particular source to "afford" to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if affordability were given high consideration. Rather, economic feasibility for RACT purposes is largely determined by evidence that other sources in a source category have in fact applied the control technology in question.

The capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility. The "OAQPS Control Cost Manual, Fourth Edition," EPA-450/3-90-006, January 1990, describes procedures for determining these costs. The above costs should be determined for all technologically-feasible emission reduction options.

States may give substantial weight to cost effectiveness in evaluating the economic feasibility of an emission reduction technology. The cost effectiveness of a technology is its annualized cost ($/year) divided by the amount of lead emission reductions (i.e., tons/year) which yields a cost per amount of emission reductions ($/ton). Cost effectiveness provides a value for each emission reduction option that is comparable with other options and other facilities.

If a company contends that it cannot afford the technology that appears to be nonattainment area RACT for that source or group of sources, the claim should be supported with such information as the impact on:

1. Fixed and variable production costs ($/unit).
2. Product supply and demand elasticity.
3. Product prices (cost absorption versus cost pass-through).
4. Expected costs incurred by competitors.
5. Company profits.
6. Employment.

If a company contends that available control technology is not affordable and would lead to closing the facility, the costs of closure should be considered. Closure may incur costs for demolition, relocation, severance pay, etc.

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40 CFR Part 52

[AK-4-1-6027; FRL-4817-6]

Approval and Promulgation of Implementation Plan; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State Implementation Plan (SIP) revision submitted by the state of Alaska for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the state to satisfy certain federal Clean Air Act (CAA) requirements for an approvable moderate nonattainment area PM-10 SIP for Mendenhall Valley, Alaska due on November 15, 1991. EPA is also proposing approval of the contingency measures submitted by the state of Alaska for the Mendenhall Valley and Eagle River moderate PM-10 nonattainment areas.

DATES: Comments on this proposed action must be postmarked by January 21, 1994.

ADDRESSES: Written comments should be addressed to: Christi Lee, United States Environmental Protection Agency, Air and Radiation Branch (AT-082), 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (AK-4-1-6027), United States Environmental Protection Agency, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and the Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT-082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1814.

SUPPLEMENTAL INFORMATION:

I. Background

The Mendenhall Valley, Alaska, area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (Nov. 6, 1991) (40 CFR 81.302 specifying PM-10 air quality designation for the Mendenhall Valley area). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[1] The EPA has issued a "General Preamble," describing EPA's preliminary views on how EPA intends

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. *See* Pub. L. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

to review SIP's and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM-10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in the proposal and the supporting rationale. EPA is proposing to apply its interpretations to Alaska's moderate PM-10 SIP submittal for Mendenhall Valley taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the addresses indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area.See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993 which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-44).

II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-66). In this action, EPA is proposing to approve the Mendenhall Valley plan revision which was signed by the Lieutenant Governor on June 8, 1993 and received by EPA on June 22, 1993 because it meets all of the applicable requirements of the Act.

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing the implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and 110(l) of the Act provides that each implementation plan and plan revision submitted by a state must be adopted after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

After providing adequate public notice and holding a public hearing, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision which was developed under the CAA prior to the amendments of 1990 and certified by the Lieutenant Governor on June 21, 1991. A revised submittal addressing additional 1990 CAAA requirements was signed by the Lieutenant Governor on June 8, 1993 and became effective on July 8, 1993. Prior to the Lieutenant Governor's signature, the state provided adequate public notice and a public hearing (May 12, 1993) on the Mendenhall Valley SIP revision. EPA received an official SIP submitted by the Governor on June 22, 1993. The June 22, 1993 submittal wholly superseded the June 21, 1991 SIP revision and therefore is the subject of this proposal.

The June 22, 1993, SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V. The submittal was found to be complete and a letter dated July 15, 1993 was forwarded to the Commissioner of ADEC indicating the completeness of the submittal and the next steps to be taken in the review process.

2. PM-10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of the emissions inventory (EI) is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the EI must be received with the demonstration (see 57 FR 13539).

A comprehensive EI (base year 1987) was developed for Mendenhall Valley by Engineering Science, Inc. in 1988. There have been no major industrial developments nor major increases in residential development in the Valley since the inventory was developed.

The principal focus of the study was to adequately quantify spring and fall emissions. The contractor developed an annual inventory of emissions and an inventory of maximum seasonal 24-hour emissions. The EI showed the largest contributor of spring and fall seasonal PM-10 emissions to be from vehicular traffic along paved and unpaved roads in the Mendenhall Valley. On an annual basis 46 percent of the PM-10 is attributed to paved streets, 40 percent is attributed to unpaved streets, 9 percent attributed to residential wood combustion (RWC), 1 percent attributed to point sources and 4 percent other.

EPA is proposing to approve the EI because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the CAA.

3. Control Strategy—RACM

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-45 and 13560-61).

The Mendenhall Valley attainment plan targets fugitive dust from unpaved streets for PM-10 emission reductions. Emission reduction credits are not being claimed for the residential wood combustion control measures currently implemented. However, recently, the City and Borough of Juneau (CBJ) Ordinance No. 91-52 changed the air quality alert level to 75 μg/m³ and several of the fines were increased for offenses of the woodsmoke code through the CBJ Ordinance No. 91-53. In addition the CBJ Building Code has now been amended to require minimum insulation standards of R-30 ceilings and R-19 walls and floors. Formulas were also adopted for the percentage of window coverage allowed. Regulations were adopted which disallow wood stoves as a sole source of heat and require a backup system capable of heating the living areas of a house to 70 degrees Fahrenheit. Even though emission reduction credits are not being claimed for the residential wood combustion control measures all program components, including the ordinances referred to above, will improve air quality in both the short and long term and therefore, are part of the federally enforceable Alaska SIP.

ADEC's attainment strategy is proposing to build on the current PM-10 control strategy, by developing a comprehensive and reasonable program to control soil dust entrainment from unpaved roads, commonly referred to as "fugitive dust." Fugitive dust impacts have historically been a component of the Juneau particulate matter problem from both a TSP and PM-10 perspective. But, on the basis of 24-hour exposures as well as chemical apportionment, the PM-10M control program has, in the past, focused upon wood smoke sources. However, as indicated in part II.2 above, the EI and recent assessments of microscale PM-10 filters indicates a significant portion of the particulate emissions is a result of fugitive dust.

Fugitive dust impacts can be significant during the late fall and early spring at the two ends of the heating season, when the ground is not snow covered and wintertime high pressure systems exist limiting precipitation. Fugitive dust impacts can also occur during the summer under extended periods of dry weather.

The Mendenhall Valley's attainment strategy to control fugitive dust emissions from unpaved roads is based on a Valley-wide street paving project. The success of this strategy is based on two funding sources: (1) The Federal Department of Transportation's Congestion Mitigation and Air Quality (CMAQ) funding and (2) the City and Borough of Juneau's ordinances (Serial No. 93-01, 93-06 and 93-39) which created Local Improvement Districts 75, 76 and 77.

As of 1992, approximately 15 miles in the Mendenhall Valley nonattainment area were unpaved. The proposed schedule for the 1993 construction year calls for roughly 13,000 feet (2.5 miles) of "Local Improvement District" (LID) funded paving in the Valley. (The extreme weather conditions in Alaska determine the length of the construction season which dictates how much of the paving program is completed in one season.) The LID paving is accomplished through a joint funding arrangement between adjacent property owners and the city government. Completion of the 1993 construction projects will meet the requirement for RACM by providing for the implementation of control measures that are economically and technologically feasible. However, it will not reduce the unpaved portion of Valley roadways to a level that will allow for compliance with the PM-10 standard. The SIP provides for additional paving initiatives that are feasible for the state to implement after 1993. The remaining paving activity is scheduled for the 1994 construction year.

LID funding and a portion of the $2 million in CMAQ funds is expected to enable the paving of approximately 43,000 feet (7.6 miles) of unpaved roads in the Mendenhall Valley in 1994. Portions of these unimproved roads will need significant "road-base" improvements as well as major drainage or road utility easement work. Juneau's limited construction season of about 40 to 80 workdays per year, depending on the weather, will be the major factor in this work schedule. Based on the state program and in light of the potential extreme weather conditions, EPA views this control measure as adequately implemented.

Once the control strategy has been implemented, approximately 5 miles of roadway will be left unpaved. Of that 5 miles, ADEC is proposing as a contingency measure to pave approximately 1.5 miles if the Valley does not reach attainment of the NAAQS by December 1994.

4. Demonstration Of Attainment

Initial moderate PM-10 nonattainment areas are required to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by such date is impractical (see sections 188(c)(1) and 189(a)(1)(B) of the Act). Generally, attainment is to be demonstrated, "by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes" (40 CFR 51.112).The preferred method, according to the PM_{10} SIP Development Guideline (June 1987), is the use of dispersion and receptor modeling in combination. The guideline also identifies other acceptable techniques. EPA has developed a supplemental attainment demonstration policy, memo issued by John Calcagni, Director, Air Quality Management Division, dated March 4, 1991, that provides additional flexibility in meeting the PM-10 attainment demonstration requirements. This memo is "Attachment 5" to the April 2, 1991 "PM-10 Moderate Area SIP Guidance: Final Staff Work Product." Attachment 5 provides that in certain circumstances "modified demonstrations" may be accepted on a case-by-case basis.

Where Attachment 5 is applied, the "modified demonstration" should:

- Explain why the alternative modeling techniques set forth in the Guideline were not used;
- Document the procedures or analyses used;
- Show that the modified procedure demonstrates, adequately and appropriately, area-wide attainment; and
- When the design value is based on monitoring data, show that the SIP is based on adequate data from an approved network, and review the monitoring network and data. If the analysis reveals a need for additional monitoring, the demonstration must provide for conducting the appropriate follow-up monitoring to ensure that the monitoring network in place as of January 1, 1994 will be adequate to evaluate attainment. The Mendenhall Valley Plan demonstrated area-wide attainment using the most recent (1988) receptor modeling study (EPA Version 6.0 CMB and QSAS III CMB programs, EPA guidance, May 1987) and rollback. Dispersion modeling was not performed for the Mendenhall Valley SIP because of uncertainties associated with source emission rates and a lack of representative meteorological data. Given the foregoing limitations and the limitations and the character of the monitoring network, receptor modeling offered an adequate level of confidence with which to evaluate the relative contribution of the various sources.

The results of the 1988 receptor modeling study determined the largest

source impact in Juneau was crustal dust which accounted for 69.6% (102.2 μg/m³) of the mass. Wood smoke was the second largest source of PM–10 in Juneau accounting for 13.8% (20.3 μg/m³) of the PM–10.

To achieve the ambient PM–10 24-hour standard attainment goal of 150 μg/m³ or less by December 1994, ADEC in concert with ADOT and the CBJ are implementing emission reduction strategies as discussed in the previous section (Control Strategy—RACM). Two simple rollback approaches were undertaken by ADEC and a proportional rollback based on the 1988 receptor modeling study was conducted by EPA Region 10 all of which demonstrated attainment of the PM–10 air quality standard by December 1994. Thus, three different modeling methods were employed in assessing whether the control strategy is adequate to demonstrate timely attainment.

The two simple rollback approaches used a background of 35μg/m³, a design concentration of 277μg/m³, a control efficiency of 90 percent for the paving of unpaved roads, and an emissions inventory prepared by Engineering Science (1988). EPA has estimated the background concentration to be 25 μg/m³ when exceptional events data are not reflected in the calculation. This change in background concentration does not change the overall conclusions derived from the attainment demonstration calculations. An overall emission reduction of 64 percent (52 percent calculated by EPA) is necessary to demonstrate attainment for Mendenhall Valley.

ADEC's first approach at simple rollback relied on best professional judgement to proportion the percent emissions resulting from three main sources: Paved roads, RWC and cleared areas. After implementation of the control strategies, this approach yielded an ambient emission level of about 77μg/m³ which is significantly below the PM–10 standard.

A second approach was included in the SIP to assess the ADEC attainment strategy. This method proportions the percent emissions of unpaved road sources, wood burning, windblown dust and residential fuel, based on annual emissions levels (see SIP table III.D.3–7). ADEC did not take into consideration additional emissions in the nonattainment area which were reflected in the 1988 EI. ADEC believed these emission sources (e.g. airport-jet exhaust, airport sanding, power plants, commercial gravel operations and mobile sources) which total 3 percent of the EI were insignificant contributors to the current PM–10 problem in the Mendenhall Valley. This approach yielded an ambient value of about 101 μg/m³. This is about 24 percent greater than ADEC's initial analysis, not 12 percent as claimed in the SIP.

A proportional rollback using the 1988 receptor modeling study, which takes into account all the emission sources in the nonattainment area, was conducted by EPA to further evaluate the adequacy of the control strategy. EPA used a design value of 277 μg/m³, a road dust emission percentage of 69.6, a residential wood combustion component of 13.7 percent and 16.7 percent was attributed to other sources. This approach yielded an ambient concentration of 103 μg/m³ after the control measures are in place.

The PM–10 EI and receptor modeling both conclude that fugitive dust constitutes a majority of PM–10 in Mendenhall Valley. The rollback analysis predicts annual emissions to be below the attainment threshold by 1994. EPA considers receptor modeling in conjunction with rollback analysis to be adequate for assessing whether the control strategy will provide for area-wide, timely attainment in Mendenhall Valley.

EPA has reviewed the Mendenhall Valley PM–10 ambient air monitoring network and has found that it meets the requirements for sampling frequency, precision and accuracy. Mendenhall Valley also has at least one full year of monitoring data which meets the requirement of 75 percent data capture for each quarter. *See, e.g.* section 2.3, 40 CFR part 50, app. K.

Saturation sampling or expansion of the existing monitoring network might provide additional data for assessing the current plan's adequacy. However, based on EPA's assessment of the network and data, these analyses do not appear to be necessary to adequately predict attainment by 1994 in the Mendenhall Valley. The increment of information to be gained from such analyses does not justify either their expense or the delay in taking action on the Mendenhall Valley submittal. However, a saturation study is recommended to assess whether, in fact, the Mendenhall Valley has achieved timely PM–10 NAAQS attainment.

Finally, ambient data shows that the area has never approached an exceedance of the annual PM–10 standard. Since no violations of the annual NAAQS have been monitored with the current EI and since the inventory was "rolled back" to show attainment of the 24-hour NAAQS, no violations of the annual NAAQS are likely. Therefore, EPA believes it is reasonable that the attainment demonstration for the area was based on the 24- hour NAAQS.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

The EI for the Mendenhall Valley nonattainment area did not reveal any significant stationary sources of PM–10 precursors, and stationary sources as a whole provide an insignificant contribution (1 percent based on the 1988 emission inventory) to Mendenhall Valley's ambient PM–10 concentrations. Thus, ambient PM–10 precursor concentrations in the Mendenhall Valley nonattainment area are considered to be de minimis and EPA is proposing to grant the area the exclusion from PM–10 precursor control requirements authorized under section 189(e) of the Act.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For initial moderate PM–10 nonattainment areas (i.e. those designated nonattainment under section 107(d)(4)(B) of the Act) that demonstrate timely attainment, the emissions reduction progress made between the SIP submittal date of November 15, 1991 and the attainment date of December 31, 1994 (only 46 days beyond and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement (57 FR 13539). The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

The SIP submittal for Mendenhall Valley demonstrates attainment by 1994 and continued maintenance. The emission reduction progress to be

provided by the road paving initiative adequately satisfies RFP for the area. Therefore, EPA proposes to find that the SIP satisfies the initial quantitative milestone requirement (see 57 FR 13539) and RFP for the area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The CBJ, State Department of Transportation and ADEC are solving the resuspended road dust problem through road paving. To achieve the emission reduction goals, the CBJ has developed ordinances (Serial No. 93–01, 93–06 and 93–39) which authorize funding for the paving or bituminous surface treatment of unpaved roadways within the Mendenhall Valley nonattainment area through 1994. In addition, federal Congestion Mitigation and Air Quality funding, allocated to the Alaska Department of Transportation, has been authorized to help enable paving of roads in the Valley. The state has authority to enforce CBJs ordinance under AS 46.03.220. EPA proposes to determine that the SIP measures to address PM–10 emissions are enforceable.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–44). These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

Mendenhall Valley:

The contingency measures for the Mendenhall Valley nonattainment area consist of additional road paving. The control strategy to reach attainment by 1994, consisting of paving roads to decrease fugitive dust emissions, is anticipated to provide adequate reductions in emissions to bring the Valley into compliance with the PM–10 standard by December 31, 1994. However, if the paving initiatives described in Part II.3 do not, in fact, provide for timely attainment of the PM–10 NAAQS, the state will surface approximately 7,250 feet of additional roads during the 1994/95 construction season. Implementation of this measure would result in a net reduction of 12.1 tons/yr, as calculated by EPA. This measure would be implemented upon a determination by EPA that the area has failed to attain the standard.

Eagle River:

EPA has previously announced its approval of Alaska's October 15, 1991 SIP submittal for Eagle River as meeting those moderate PM–10 plan requirements due on November 15, 1991. See 58 FR 43084 (August 13, 1993). In that notice EPA also indicated that additional provisions such as contingency measures were due at a later date. EPA is now announcing its proposed approval of the moderate area PM–10 contingency measures submitted by Alaska for Eagle River.

The contingency measures for the Eagle River nonattainment area consist of additional road surfacing. The principle control strategy to reach attainment by 1994, (see EPA's March 12, 1993 proposal for a discussion of the Eagle River control strategy, 58 FR 13572) consisting of paving roads to decrease fugitive dust emissions, is anticipated to provide adequate reductions in emissions to bring the area into compliance with the PM–10 standard by December 31, 1994. However, if the surfacing does not, in fact, provide for timely attainment of the PM–10 NAAQS, the Municipality will employ two contingency measures. Public works agrees to implement these measures in the event EPA determines that Eagle River has failed to timely achieve the PM–10 air quality standards. The Eagle River Rural Road Service Area, through a grant of 1.5 million dollars which was appropriated in HB 13, has allocated funds as a contingency reserve for the following projects.

The first measure entails surfacing two additional miles of roadway within the nonattainment area with recycled asphalt (RAP). The second contingency measure involves applying an asphalt emulsion to two miles of existing RAP surfaced roads to seal the wearing surface, thus providing a greater degree of dust control. The selected roads would be the most heavily traveled roads in the problem zone. The asphalt emulsion would be reapplied on an as-needed basis. The implementation of these contingency measures, in combination with the primary measures already employed, will provide an estimated total Fall season PM–10 emission reduction of over 60 percent. A reduction of only 40 percent is projected to be necessary to achieve attainment.

III. Implications of This Action

EPA is proposing to approve the plan revision submitted to EPA on June 24, 1993, for the Mendenhall Valley nonattainment area as meeting those moderate PM–10 SIP requirements due on November 15, 1991. Among other things, ADEC has demonstrated that the Mendenhall Valley Moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. EPA is also proposing to approve the moderate area PM–10 contingency measures Alaska has submitted for Mendenhall Valley as well as those submitted for Eagle River.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates (e.g., permit programs for the construction and operation of new and modified stationary sources of PM–10). EPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments postmarked by January 20, 1994.

V. Administrative Review

This action has been classified as a Table 2 action by the Acting 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 waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12991 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The 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 the Regulatory Flexibility Act, 5 U.S.C. section 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 sections 603 and 604. Alternatively,

EPA may certify that the rule will not have a significant economic 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 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. section 7410(a)(2).

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 the 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.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 13, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–31270 Filed 12–21–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 3E4192/P571; FRL–4743–6]

RIN No. 2070–AC18

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodity sugarcane. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 3E4192/P571], must be received on or before January 21, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E4192 to EPA on behalf of the Agricultural Experiment Stations of Florida and Hawaii. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of chlorpyrifos in or on the raw agricultural commodity sugarcane at 0.01 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A voluntary human study with a no-observed-effect level (NOEL) for cholinesterase (ChE) inhibition of 0.03 milligram (mg)/kilogram (kg)/day (based on 20 days of exposure at this level).

2. A 2-year feeding study in dogs fed diets containing 0, 0.01, 0.03, 0.1, 1.0, or 3 mg/kg/day with a NOEL for systemic effects of 1.0 mg/kg/day based on increased liver weight at the 3.0 mg/kg/day dose level. The NOEL's for ChE inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day brain cells.

3. A 2-year carcinogenicity study in mice fed diets containing 0, 5, 50, or 250 ppm (equivalent to 0, 0.89, 8.84, or 45.2 mg/kg/day for males and 0, 0.938, 9.79, or 48.1 mg/kg/day for females) with a systemic NOEL of 50 ppm based on decreased body weight and feed consumption in males, increased mean water consumption in females, and increased incidence of gross clinical findings (ocular opacity and hair loss) and nonneoplastic lesions (keratitis and hepatocytic fatty vacuolation) in high-dose males and females. Plasma ChE activity was significantly reduced at all treatment levels; brain ChE activity was significantly decreased in mice in the high-dose group. No carcinogenic effects were observed under the conditions of the study.

4. A 2-year carcinogenicity study in rats fed diets containing 0, 0.2, 5, or 100 ppm (equivalent to 0, 0.0132, 0.33, or 6.99 mg/kg/day for males, and 0, 0.146, 0.365, or 7.78 for females). The systemic NOEL for this study was established at 5 ppm based on decreased body weight in males and females, and increased incidence of nonneoplastic lesions (cataracts and diffuse retinal atrophy) in females at the 100-ppm dose level. No carcinogenic effects were observed under the conditions of the study.

5. A second 2-year chronic toxicity/carcinogenicity study in rats fed diets containing 0, 0.05, 0.1, 1, or 10 mg/kg/day with a systemic NOEL of 1 mg/kg/day based on decreased erythrocyte and hemoglobin levels, and increased platelet count during the first year. The ChE NOEL for this study was established at 0.1 mg/kg/day based on decreased plasma and brain ChE activity. No carcinogenic effects were observed under the conditions of the study.

6. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

7. A developmental toxicity study in rats given gavage doses of 0.1, 3.0, and

15 mg/kg/day with no developmental toxicity observed under the conditions of the study. A maternal NOEL was established at 0.1 mg/kg/day based on cholinesesterase inhibition at the 3.0 mg/kg/day dose level.

8. A second developmental toxicity study in rats given gavage doses of 0.5, 2.5, and 15 mg/kg/day with NOEL's for developmental and maternal effects of 2.5 mg/kg/day. Maternal systemic toxicity consisted of decreases in food consumption and body weight gain. Developmental toxicity consisted of post implantation embryo loss at the 15 mg/kg/day dose level.

9. A developmental toxicity study in mice given gavage doses of 0, 1, 10, or 25 mg/kg/day with a NOEL for fetotoxicity of 10 mg/kg/day based on decreased fetal length and increased skeletal variants. No developmental toxicity was observed under the conditions of the study.

10. An acute delayed neurotoxicity study in hens that was negative at 50 and 100 mg/kg/day.

11. Chlorpyrifos did not induce gene mutation in bacteria or mammalian cells with or without metabolic activation. The insecticide tested negative for chromosomal aberrations using in vivo and in vitro assays. Chlorpyrifos tested positive for genotoxic effects in a DNA repair test and a gene conversion/mitotic recombination assay using bacterial cells, but was negative for unscheduled DNA synthesis.

12. A metabolism study in rats demonstrates that chlorpyrifos is primarily excreted in urine (84 percent recovered within 72 hours) and that the major animal metabolite is 3,5,6-trichloro-2-pyridinol (a metabolite that is not considered to be of toxicological concern).

A reference dose (RfD) of 0.003 mg/kg/day is established for chlorpyrifos based on the NOEL of 0.03 mg/kg/day from the human voluntary ChE study and a 10-fold uncertainty factor. The anticipated residue contribution (ARC) from published uses of chlorpyrifos utilizes 27 percent of the RfD for the general U.S. population. The theoretical maximum residue contribution (TMRC) from the proposed tolerance for sugarcane would utilize an additional 0.3 percent of the RfD. Dietary exposure from existing uses and the proposed use on sugarcane will not exceed the reference dose for any subpopulation (including infants and children), based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. Established tolerances are adequate to cover secondary residues resulting from the use of sugarcane and sugarcane byproducts as livestock feed commodities. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E4192/P571]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.342(c) by adding and alphabetically inserting the raw agricultural commodity sugarcane and by revising paragraph (d) introductory text to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Sugarcane	0.01
* * * * *	

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the following commodities:

* * * * *

[FR Doc. 93-30864 Filed 12-21-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, and 678

[I.D. 121093A]

Atlantic Highly Migratory Species; Receipt of Petition for Rulemaking

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

ACTION: Notice of receipt of petition for rulemaking and request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for rulemaking on issues relating to Atlantic highly migratory species. The National Fishing Association (NFA) has petitioned NMFS to restrict commercial net fishing in certain months in five special management zones defined in the petition for the offshore waters of the northwest Atlantic Ocean. The petition also requests mandatory logbooks for recreational vessels fishing for certain highly migratory species and a revised definition of a commercial fishing vessel. The purpose of this notice is to solicit public input on the petition.

DATES: Comments on the petition are requested through February 22, 1994.

ADDRESSES: Comments on the petition should be directed to: Richard Stone, Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Please indicate in the letter that your comment is in response to the "NFA Petition for Rulemaking."

FOR FURTHER INFORMATION CONTACT: Rebecca Lent, 301–713–2347. Copies of the NFA petition for rulemaking are available upon request.

SUPPLEMENTARY INFORMATION: The three major commercial species groups affected by this petition for rulemaking would be Atlantic tunas, sharks and swordfish. The Secretary of Commerce has management authority for these species groups under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA). Regulations promulgated under the authority of the ATCA (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed according to the Fishery Management Plan for Atlantic Sharks under authority of the Magnuson Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the Shark Fishery Management Plan at 50 CFR part 678. The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Act and the ATCA.

The petition proposes to provide five Special Management Zones for the offshore waters from Cape Hatteras along the continental shelf to the West Atlantis Canyon (see summary table below). Fishing in these zones for yellowfin, bigeye, and skipjack tuna, as well as longfin albacore, by pair trawlers, trawlers and purse seine vessels, would be subject to seasonal restrictions. In addition, swordfish fishing by pair trawler, trawler and driftnet vessels would also be restricted in these zones during the recreational fishing season. The rationale provided for this petition is that the recreational fishery is hampered by the presence of commercial netters. The petition argues that restricting commercial net fishing in the Special Management Zones during the recreational fishing period will lead to a greater economic benefit from the resource. The five zones and the months in which commercial net fisheries would be prohibited are summarized in the table below.

The petition also proposes mandatory logbooks for recreational fishermen, and that certain conditions be met before a vessel is considered commercial; namely, that vessels not be considered commercial operations unless the income (from fishing) exceeds 50 percent of their total income. NMFS policy (established through consultation and recommendation of the Marine Fisheries Advisory Committee [MAFAC]) is that any fishing vessel that sells any of its catch is "commercial." This NMFS policy on the definition of a commercial vessel is used by the Coast Guard to enforce safety regulations, which are required by law to set different safety standards for commercial and recreational vessels.

Therefore, NMFS seeks public comment on the petition for rulemaking submitted by NFA.

Zone	Area	Restricted period	Coordinates
1	W. Atlantis to Block Canyon.	7/1 to 10/15	40.00 degrees N. by 70.30 degrees W. to 41.00 degrees N. by 70.30 degrees W. to 41.00 degrees N. by 71.50 degrees W. to 40.30 degrees N. by 72.30 degrees W. to 40.00 degrees N. by 72.30 degrees W.
2	Hudson to Toms Canyon.	7/1 to 10/15	39.00 degrees N. by 72.00 degrees W. to 40.00 degrees N. by 72.00 degrees W. to 40.10 degrees N. by 73.40 degrees W. to 39.00 degrees N. by 73.40 degrees W.
3	Carteret to Baltimore Canyon.	7/1 to 10/15	38.00 degrees N. by 72.00 degrees W. to 39.00 N. by 72.00 degrees W. to 39.00 degrees N. by 73.40 degrees W. to 38.00 degrees N. by 73.40 degrees W.
4	Poormans to Norfolk Canyon.	5/1 to 10/15	37.00 degrees N. by 74.00 degrees W. to 38.00 degrees N. by 75.00 degrees W. to 38.00 degrees N. by 75.00 degrees W. to 37.00 degrees N. by 75.00 degrees W.
5	Norfolk to the Point	5/1 to 10/15	35.00 degrees N. by 74.00 degrees W. to 37.00 degrees N. by 74.00 degrees W. to 37.00 degrees N. by 75.30 degrees W. to 35.00 degrees N. by 75.30 degrees W.

List of Subjects

50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 17, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–31277 Filed 12–21–93; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 301

[Docket No. 931235–3335; I.D. 120993A]

Pacific Halibut Fisheries

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

ACTION: Proposed rule and notice of proposed catch sharing plan.

SUMMARY: NOAA proposed to approve and implement a 1994 Catch Sharing Plan (Plan) in accordance with the Northern Pacific Halibut Act of 1982 to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries off the coasts of Washington, Oregon, and California (International Pacific Halibut Commission (IPHC) statistical Area 2A). The proposed Plan is a revision of the Pacific Fishery Management Council's (Council's) recommendation insofar as it allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 rather than 25 percent as recommended by the Council. The Council's recommended Plan was partially disapproved by the Secretary of Commerce (Secretary) because a 25 percent allocation to treaty Indian tribes is not consistent with a recent U.S. Magistrate Judge's Report and Recommendation, and proposed Order. The remainder of the Council's recommended 1994 Plan, adjusted proportionately as necessary to accommodate the increased tribal share, is proposed for approval and implementation by the Secretary. The proposed rule specifies the seasons, quotas, and bag limits in each of the sport fishery areas necessary to achieve the allocations in the Plan.

DATES: Comments on the catch sharing plan must be received on or before January 20, 1994; comments on the proposed rule must be received on or before February 20, 1994.

ADDRESSES: Send comments to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773c provides that the Secretary shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Halibut Act at 16 U.S.C. 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the Under Secretary for Oceans and Atmosphere, NOAA, directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocation be necessary. In compliance with this directive, the Pacific Council has developed Catch Sharing Plans since 1988 to allocate the TAC of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. Since 1990, these Catch Sharing Plans have allocated 25 percent of the Area 2A TAC to treaty Indian tribes. The Federal government has been in litigation with the Makah Indian tribe with respect to its treaty Indian fishing rights to Pacific halibut since 1985. During the course of the litigation, the Secretary has recognized that 12 treaty Indian tribes located in the State of Washington have halibut rights, and has acknowledged that they are entitled to 50 percent of the harvestable surplus within Subarea 2A–1. Subarea 2A–1 is defined as the portion of Area 2A that encompasses the usual and accustomed fishing areas of the 12 tribes. Subarea 2A–1 is all U.S. waters east of 125°44′00″ W. longitude (about 40 miles offshore) from Point Chehalis, Washington, north to the U.S.-Canada border, including inside marine waters in Washington (northern Puget Sound and the Strait of Juan de Fuca). The tribes and the Secretary have disagreed as to how the 50 percent should be calculated. The tribes want 35 percent of the Area 2A TAC. Their rationale is that, historically, 70 percent of the Area 2A TAC has been taken in Subarea 2A–1. The Secretary has argued to the court that the tribes are entitled to half of the harvestable surplus from the halibut biomass in Subarea 2A–1, a figure estimated at 20 percent of the Area 2A TAC based on the best available information currently available (IPHC Scientific Report Number 74 published in 1991).

On September 30, 1993, U.S. Magistrate Judge Weinberg issued a Report and Recommendation, and a proposed Order. This is the first ruling on the allocation issue since the litigation began, and all parties have filed comments and/or exceptions. A final ruling will be made by Chief District Court Judge Barbara Rothstein after she considers Magistrate Weinberg's findings and recommendations, and the various filings by the parties. There is no indication when Judge Rothstein will rule. In summary, Magistrate Weinberg's proposed Order provides the following with respect to allocation:

1. The Secretary's regulation of the halibut fishery must provide for equal treaty Indian and non-Indian harvests in the tribes' usual and accustomed fishing grounds.

2. Past allocations by the Secretary have violated the tribes' treaty rights by allowing non-Indian fishermen to take more halibut than treaty Indians in the tribes' usual and accustomed fishing grounds.

3. The court declined to prescribe what percentage of halibut in Area 2A should be allocated to treaty Indians. Instead, the Secretary is directed to revise the regulatory scheme to protect treaty Indian fishing rights in Area 2A such that treaty Indian and non-Indian fishermen are afforded the opportunity to take equal quantities of halibut within the usual and accustomed halibut fishing grounds of these tribes.

Based on Magistrate Weinberg's finding that past allocations have violated treaty Indian fishing rights, the Council and its advisory bodies have been advised that a continuation of the 1993 Plan into 1994 is unacceptable. Before the ruling, the Council, at its September 1993 public meeting, had adopted proposed halibut allocations for 1994 that distributed for public comment with final action in November. The Council's proposed 1994 Plan maintained the allocations in the 1993 Plan except that the allocation to the treaty Indian tribes was set at a range between 25 to 35 percent of the Area 2A TAC as a contingency should a court decision be issued. Prior to the Council's November meeting, the States and the tribes met to discuss development of a consensus position on treaty Indian/non-Indian allocations to be presented to the Council in light of Magistrate Weinberg's ruling. However, because of the uncertainties engendered by the ruling, the allocation process for 1994 did not achieve consensus. At its public meeting on November 15–19, 1993, the Council was presented with two competing proposals.

One proposal considered by the Council would allocate 35 percent of the TAC in Area 2A to Washington treaty Indian tribes and 65 percent to non-Indian fisheries. The non-Indian fisheries would share the 65 percent of the TAC in the same proportion as in the 1993 Plan. It was acknowledged by

the tribes that this proposal may not result in an equal sharing of harvest in Subarea 2A–1 because the non-Indian commercial fishery, which is not geographically restricted to any area within Area 2A, could harvest a disproportionate amount of its allocation in Subarea 2A–1, thereby resulting in an unequal sharing between treaty Indian and non-Indian fishermen, even if the treaty share were increased to 35 percent. However, the tribes indicated that they would not object to a resulting unequal sharing if this proposal was adopted by the Council.

The other proposal would maintain the status quo 1993 allocation of 25 percent to the treaty Indian tribes and 75 percent to non-Indian fisheries. This proposal retained all of the allocations in the 1993 Plan, except that the non-Indian commercial fishery would be shifted south of Subarea 2A–1. The intent was to shift the non-Indian commercial fishery south of Subarea 2A–1 (the tribes usual and accustomed fishing area) so that a roughly equal sharing of harvests would occur in Subarea 2A–1 between the treaty Indian fishery and non-Indian sport fishery.

The Council also heard a presentation by the IPHC staff at the November 1993 meeting. IPHC staff advised that they intended to propose that the IPHC, at its annual meeting in January 1994, act to divide Area 2A into two management areas with sub-quotas based on the estimated proportion of halibut biomass in each area.

The only consensus presented to the Council was that 1994 should be treated as a transition year, with a 1-year only allocation, while the parties await the final District Court decision and attempt to reach agreement on a long-term solution. Toward this end, the Halibut Managers' Group and Halibut Advisory Subpanel developed a comprehensive list of issues to be addressed by the Council for 1995 and beyond, including acknowledgement that any allocation plan must meet treaty Indian allocation requirements as prescribed by law.

At its November 1993 meeting, the Council finally adopted a two-pronged, contingent recommendation which incorporates elements of the IPHC staff's presentation (to divide Area 2A) and the original Oregon proposal. As described in the Council's November newsletter:

> The IPHC would calculate 50 percent of the harvestable surplus in Subarea 2A–1 and manipulate the non-Indian commercial fishery so that the non-Indian share does not exceed 50 percent in Subarea 2A–1. The non-Indian allocation should be divided among sport and commercial fisheries in the same proportion as the 1993 catch shares.
>
> If IPHC is unable to determine the harvestable surplus in Subarea 2A–1, then the Council recommends that the non-Indian commercial fishery be moved south of Subarea 2A–1. The allocations among treaty Indian and non-Indian sport and commercial fisheries would be the same as in 1993 (i.e., treaty Indian (25 percent), non-Indian commercial (37.5 percent), Washington sport (22.9 percent), and Oregon/California sport (14.6 percent)).

The Council's rationale was that its recommendation is defensible based on the portions of the Report and Recommendation and proposed Order which state that the Secretary must afford treaty Indian and non-Indian fishermen the opportunity to take equal quantities of halibut within the usual and accustomed fishing grounds of the tribes (Subarea 2A–1). It reasoned that if the non-Indian commercial fishery was moved out of Subarea 2A–1, this would comply with the proposed Order by equalizing harvest in the area.

The Secretary has found, after reviewing the record and the proposed court order, that the Council's recommendation for the treaty Indian allocation is not consistent with Magistrate Weinberg's findings and recommendations. The Secretary finds that the council's recommendation—status quo treaty Indian allocation, or a treaty Indian allocation based on the IPHC's calculation of half of the harvestable surplus in Subarea 2A–1—will either have the tribal share at its present 25 percent of the Area 2A TAC, or reduce it to 20 percent if the IPHC uses its past report (IPHC Scientific Report Number 74) to estimate the distribution of halibut biomass to derive "harvestable surplus" in Subarea 2A–1. However, the Secretary finds there is currently no biological basis for reducing the "traditional" removals from Subarea 2A–1, which have amounted to 70 percent of the TAC over the past 20 years. Although the IPHC has indicated that there may be conservation reasons for limiting the harvests in Subarea 2A–1, it has not presented any new biological information that would indicate that the past disproportionate removals from Subarea 2A–1 are now a conservation concern (whereas past disproportionate harvests were not viewed as a conservation or management problem by the IPHC in 1990 when the IPHC review the issue of splitting Area 2A and reviewed the possibility of local depletion in Subarea 2A–1). Given that there is currently no clearly demonstrated basis in the record for reducing the removals (70 percent of TAC) from this area at this time; and, given a treaty right to 50 percent, the Secretary has determined that the treaty Indian allocation should be 35 percent of the Area 2A TAC for 1994. This view is supported in Magistrate Weinberg's Report and Recommendation where he stated:

> Nor can the Secretary rely upon conservation of the halibut resource as a basis for the limit he has placed upon the allocation to treaty fishers. The evidence affirmatively shows that there has been no adverse effect on the resource, despite the fact that approximately 70 percent of the Area 2A harvest has been taken in [Sub]area 2A–1 each year for several years.

Therefore, the Secretary has partially disapproved the Council's recommendation insofar as it pertains to the treaty Indian allocation. However, the Secretary is proposing approval of the Council's recommendations for the allocations between non-Indian fisheries (adjusted proportionately as necessary to accommodate the increased tribal share) and the Council's recommended fishery structuring measures for 1994.

The Council adopted revised objectives for the Washington sport fishery portion of the 1993 Plan and recommended four additional changes to the Washington sport fisheries structuring, described below, which have been incorporated into the proposed 1994 Plan.

First, the Council recommends changing the coordinates of the Bonilla-Tatoosh line that separates inside and ocean sport fishing areas to make it more easily detected by sport fishermen. The Council recommends that the Bonilla-Tatoosh line in the halibut sport regulations be modified to intersect the buoy off Duntze Rock and then proceed to Tatoosh Island. Sport fishermen have complained that they cannot see the landmarks identifying the line when fishing and have requested that the line be better defined. The State of Washington is planning to change the Bonilla-Tatoosh line for all of its other fisheries, and the Council agreed to also recommend changing it for halibut fishing so that the line would be more easily detected and consistent with State managed sport fisheries to eliminate enforcement complications. The revised line would be from Bonilla Point (latitude 48°34′44″ N., longitude 124°43′00″ W.) to the buoy adjacent to Duntze Rock (latitude 48°24′55″ N., longitude 124°44′50″ W.) to Tatoosh Island lighthouse (latitude 48°23′30″ N., longitude 124°44′00″ W.) to Cape Flattery (latitude 48°22′55″ N., longitude 124°43′42″ W.).

Second, the Council recommends that the sub-quota for the Washington north coast sport fishery be allocated to one season rather than two (as in 1993).

With reduced quotas and high catches in the first season, the Council determined that there were not sufficient fish to justify two seasons. Therefore, the Council recommends that the north coast season open in early May and continue until the sub-quota is attained.

Third, the Council was advised that sport fishermen in the north coast fishery had found a fishing area occupied primarily by larger than normal halibut. Because the allocations and sub-quotas are based on pounds caught, rather than numbers of halibut, a number of the sport users expressed concern that fishing in this area of large halibut in 1994 would result in achievement of the sub-quota early in the season thereby limiting fishing opportunity in the overall area. The State of Washington agreed with the concerns of these sport users and requested that the Council close this area (of larger halibut) to sport fishing for halibut to maximize fishing opportunity in this area consistent with the sport fishery structuring objectives in the Plan. The Council agreed with the need to maximize fishing opportunity and recommends that this area, which is about 19.5 miles southwest of Cape Flattery, be closed to sport fishing for halibut. Closure of this area would not restrict overall fishing opportunity since approximately 95 percent of the north coast area would remain open. The closed area is defined as the area within a rectangle defined by these four corners: 48°17′00″ N. latitude and 125°10′00″ W. longitude; 48°17′00″ N. latitude and 125°00′00″ W. longitude; 48°05′00″ N. latitude and 125°10′00″ W. longitude; and 48°05′00″ N. latitude and 125°00′00″ W. longitude.

Fourth, in the Puget Sound sport fisheries, the Council recommended that the daily bag limit be one fish per person per day. This will provide for consistency in bag limits between areas and extend the season providing more fishing opportunity consistent with the Council's objectives for structuring the sport fisheries in this area.

The Council also adopted revised objectives for the Oregon sport fishery portion of the 1993 Plan and recommended one additional change to the Oregon sport fisheries structuring, described below, which has been incorporated into the proposed 1994 Plan. In the 1993 Plan, the early May season was split into two areas with a dividing line at the Nestucca River. The purpose of the line was to allow the developing sport fisheries in the north the opportunity to fish without being closed due to quota achievement in fishing areas to the south. However, the sport fishery north of the Nestucca River has now developed to where it can utilize its quota quickly. The State of Oregon recommended to the Council that the Nestucca River line be deleted in the early season as it is no longer necessary. The Council agreed with this and recommends that the 1994 Plan have only one sport fishing area from Cape Falcon, Oregon, to the California border.

Lastly, the Council recommended opening dates, days open per week, and season lengths for each sport fishing area in 1994. These sport fishery measures are necessary to achieve the allocations in the Plan. The proposed rule is based on the assumption that the Pacific halibut TAC for Area 2A in 1994 will be 600,000 pounds (272.2 mt), the same as it was in 1993. If the IPHC approves a 1994 TAC for Area 2A that is different than 600,000 pounds, the final rule with reflect the modified measures needed to implement the new TAC, as described in the Plan.

The Secretary requests public comments on the proposed 1994 Plan which includes the revised 35 percent to the Area 2A TAC to treaty Indian tribes, the resulting adjusted allocations to non-Indian fisheries, and the fishery structuring necessary to achieve the allocations as described below.

Proposed 1994 Catch Sharing Plan

The proposed 1994 Catch Sharing Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries would be divided 50 percent to commercial users and 50 percent to sport users. The sport allocation would be further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. The sport fisheries are divided into geographic areas, each having separate seasons, quotas, bag limits, and other restrictions. The Washington sport allocation applies to the coastal and inland waters off Washington, as well as waters off the coast of Oregon north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The allocations are distributed as sub-quotas to ensure that any overage or underage by any one user group would not affect achievement of the allocation of TAC for other user groups. The final TAC will be determined by the IPHC at its January 1994; for planning purposes, this proposed Plan assumes the TAC will be 600,000 pounds (272.2 mt) (the same as 1993). The proposed Plan distributes the assumed TAC in Area 2A as sub-quotas between users as follows:

Treaty Indian sub-quota	210,000 pounds	(95.3 mt)
Non-Indian Commercial sub-quota	195,000 pounds	(88.5 mt)
Washington Sport sub-quota	118,950 pounds	(53.9 mt)
Oregon Sport sub-quota	76,050 pounds	(34.5 mt)
Total	600,000 pounds	(272.2 mt)

The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described below.

Treaty Indian Fisheries

Thirty-five percent of the Area 2A TAC would be allocated to 12 treaty Indian tribes in Subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, Washington, and east of 125°44′ W. longitude (defined in 50 CFR 301.20(c)). The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are to be managed separately; any overages in the commercial fishery would not affect the ceremonial and subsistence fishery. The commercial fishery would be managed to achieve an established sub-quota, while the ceremonial and subsistence fishery would be managed for a year-round season. The tribal ceremonial and subsistence fishery will commence on January 1 and continue year-round through December 31. No size or bag limits would apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. The tribal estimate of ceremonial and subsistence catch for the year-round fishery in 1993 was 14,000 pounds (6.4 mt), and it is expected that 1994 would be the same. Based on this

expectation, the tribal commercial fishery would have a sub-quota of 196,000 pounds (88.9 mt), which is equal to the tribal allocation of 210,000 pounds (95.3 mt) (based on the 1993 TAC level of 600,000 pounds) less the tribal estimate of ceremonial and subsistence catch for a year-round season. The tribal commercial fishery would commence on March 1 and continue through October 31 or until the tribal commercial sub-quota is taken, whichever occurs first. Any halibut sold by treaty Indians during the commercial fishing season must comply with the IPHC regulations on size limits for the non-Indian fishery. Halibut taken for ceremonial and subsistence purposes may not be offered for sale or sold. Regulations necessary for the treaty Indian allocative measures will be implemented in the 1994 IPHC regulations.

Commercial Fisheries (Non-Indian)

The non-Indian commercial fishery would be allocated 32.5 percent of the Area 2A TAC. This proposed Plan does not address the structuring of the commercial season(s). The 1994 commercial fishery opening date(s), duration, and vessel trip limits for Area 2A, as necessary to ensure that the sub-quota for this fishery is not exceeded, will be determined by the IPHC at its annual meeting in January 1994.

Sport Fisheries (Non-Indian)

The non-Indian sport fisheries would be allocated 32.5 percent of the Area 2A TAC. The sport fishery allocation would be further divided, with 19.8 percent of the Area 2A TAC to areas off Washington/northern Oregon and 12.7 percent to areas off Oregon/California. The sport fisheries are divided into five geographic areas, each having separate seasons, sub-quotas, bag limits, and other restrictions as necessary to achieve allocation objectives. The Washington sport allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

The Washington sport fisheries structuring is based on the following allocation objectives adopted by the Council:

1. In Puget Sound, provide a stable recreational opportunity for anglers and maximize the season length.
2. On the north coast, maximize the season length.
3. On the south coast, maximize the season length while providing for a limited halibut fishery.

The Oregon sport fisheries structuring is based on the following allocation objectives adopted by the Council:

1. Provide early season fishing opportunity to anglers from Cape Falcon to the California border.
2. Provide sport fishing opportunity for all Oregon ports south of Cape Falcon, especially small boat anglers.
3. Provide a short period of opportunity for all ports south of Cape Falcon that allows both charter boats and larger private boats to fish productive areas in deeper water.
4. Provide anglers in California the opportunity to fish in a fixed season.

The details of the sport fisheries structuring for the five sport fishery areas are as follows:

1. *Washington inside waters (Puget Sound and Straits).*

This area would be allocated 32.4 percent of the Washington sport sub-quota, which would be 38,540 pounds (17.5 mt) at the 1993 TAC level of 600,000 pounds (272.2 mt). The season would be open 6 days per week (closed Wednesdays) from May 1 until a closing date based on when the sub-quota is projected preseason to be achieved. Due to inability to monitor the catch in this area inseason, a fixed season would be established preseason based on projected catch per day and number of days to achievement of the sub-quota; no inseason adjustments would be made, and estimates of actual catch would be made post-season. The daily bag limit would be one halibut per person per day with no size limit.

The dividing line between this area and the Washington north coast area is the Bonilla-Tatoosh line defined as follows: from Bonilla Point (latitude 48°35′44″ N., longitude 124°43′00″ W.) to the buoy adjacent to Duntze Rock (latitude 48°24′55″ N., longitude 124°44′50″ W.) to Tatoosh Island lighthouse (latitude 48°23′30″ N., longitude 124°44′00″ W.) to Cape Flattery (latitude 48°22′55″ N., longitude 124°43′42″ W.).

2. *Washington north coast between the Straits and Queets River.*

This area would be allocated 62.4 percent of the Washington sport sub-quota, which would be 74,225 pounds (33.7 mt) at the 1993 TAC level of 600,000 pounds (272.2 mt). The fishery would open on May 3 and continue 5 days per week (Tuesday through Saturday) until the sub-quota is taken or until September 30, whichever occurs first. The daily bag limit would be one halibut per person per day with no size limit.

A closure to sport fishing for halibut would be established in an area that is 19.5 miles southwest of Cape Flattery. The closed area would be defined as the area within a rectangle defined by these four corners: 48°17′00″ N. latitude and 125°10′00″ W. longitude; 48°17′00″ N. latitude and 125°00′00″ W. longitude; 48°05′00″ N. latitude and 125°10′00″ W. longitude; and, 48°05′00″ N. latitude and 125°00′00″ W. longitude.

3. *Southern Washington/northern Oregon (between Queets River and Cape Falcon, OR).*

This area would be allocated 5.2 percent of the Washington sport sub-quota, which would be 6,185 pounds (2.8 mt) at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The season would open one day per week (Thursday only) from June 2 until when the sub-quota is projected to be harvested. Due to inability to monitor the catch in this area inseason, a fixed season would be established preseason based on projected catch per day and number of days to achievement of the sub-quota; no inseason adjustments would be made, and estimates of actual catch would be made post-season. The daily bag limit would be one halibut per person per day with no size limit.

4. *South of Cape Falcon to the California border.*

This area would be allocated 97.4 percent of the Oregon sport sub-quota, which would be 74,073 pounds (33.6 mt) at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The daily bag limit for all seasons in this area would be two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit.

This area would have three seasons: The first season would be allocated 79 percent of this area sub-quota; the second season would be allocated 4 percent; and the third season would be allocated 17 percent. The structuring of the three seasons would be as follows:

1. The first season would open on May 4 and continue 5 days per week (Wednesday through Sunday) until 79 percent of the area sub-quota is taken (which would be 58,517 pounds (26.5 mt) at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt)). If the 1994 TAC is more than 15 percent less than the 1993 TAC, the season opening date would be delayed to May 18.
2. The second season would open the day following the closure of the first season, but only in waters inside the 30-fathom curve and continue every day until August 5 or until 4 percent of the sub-quota is estimated to have been taken, whichever occurs first. At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt), the sub-quota for this season would be 2,963 pounds (1.3 mt).

3. The third and last season would open on August 5, with no depth restrictions. The fishery would be open 5 days per week (Wednesday through Sunday) until September 30 or until the area sub-quota is estimated to have been taken, whichever occurs first.

Any poundage remaining after the earlier seasons would be added to the next season. If poundage added to the last season is sufficient to allow for additional fishing opportunity, an inseason action should be taken to add additional open days to each week.

5. *California—South of the California border.*

This area would be allocated 2.6 percent of the Oregon sport sub-quota. The season would commence on May 1 and continue every day until September 30. The daily bag limit would be one halibut per person per day with a minimum 32-inch size limit. At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt), the sub-quota for this area would be 1,977 pounds (0.9 mt). Due to inability to monitor the catch in this area inseason, a fixed season would be established preseason based on projected catch per day and number of days to achievement of the sub-quota; no inseason adjustments would be made, and estimates of actual catch would be made post-season. If the 1994 TAC is more than 15 percent less than the 1993 TAC, the season opening date would be delayed to May 14.

Specific regulations to implement the proposed 1994 Plan will be promulgated by NMFS and IPHC and published in the **Federal Register**. The IPHC, consistent with its responsibilities under the international convention, will implement the sub-quotas based on their final determination of the Area 2A TAC to be made at their annual meeting on January 24–27, 1994 in Bellevue, Washington. The actual amounts of halibut allocated to each group in 1994 may change if the IPHC establishes a TAC that is different than the 1993 TAC of 600,000 pounds (272.2 mt); however, the percentages specified in the Plan will not change. The proposed sport regulations also are based on the 1993 TAC of 600,000 pounds (272.2 mt) and will be modified dependent on the final TAC in accordance with the Plan.

Classification

The proposed 1994 Plan is consistent with the Catch Sharing Plans which have been in place since 1990. A regulatory impact review prepared by the Council for the 1992 Plan indicating that actions taken under the plan will not have a significant economic impact on a substantial number of small entities The allocation proposed within this Plan is within the scope of the 1992 Plan and thereby does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Plan in accordance with the National Environmental Policy Act (NEPA), and the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from the regulations and that preparation of an environmental impact statement was not required by Section 102(2)(C) of NEPA or its implementing regulations. The environmental impacts of the proposed 1994 Plan are no different from those evaluated in the 1990 EA and, therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with NOAA Administrative Order 216–6, Section 6.02a.3. This proposed Plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Copies of the 1990 EA and the 1992 regulatory impact review are available (see **ADDRESSES**). This action has been determined to be consistent to the maximum extent practicable with applicable state coastal zone management programs and has been submitted for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: December 17, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is proposed to be amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In § 301.21, paragraph (d)(2) is revised to read as follows:

§ 301.21 Sport fishing for halibut.

* * * * *

(d) * * *

(2) The sport fishing areas, area sub-quotas, fishing dates, and daily bag limits promulgated by NMFS are as follows except as modified under the inseason actions in paragraph (d)(3) of this section.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (latitude 48°35'44" N., longitude 124°43'00" W.) to the buoy adjacent to Duntze Rock (latitude 48°24'55" N., longitude 124°44'50" W.) to Tatoosh Island lighthouse (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.), there is no sub-quota. This area is managed on a season that is projected to take 38,540 pounds (17.5 mt).

(A) The fishing season is May 1 through July 19, 6 days a week (closed Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (latitude 47°31'42" N.), the sub-quota is 74,225 pounds (33.7 mt).

(A) The fishing season commences on May 3 and continues 5 days a week (Tuesday through Saturday) through September 30 or until the 74,225 pound (33.7 mt) sub-quota is estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A closure to sport fishing for halibut is established in a portion of this area southwest of Cape Flattery (about 19.5 miles southwest). The closed area is defined as the area within a rectangle defined by these four corners: 48°17'00" N. latitude and 125°10'00" W. longitude; 48°17'00" N. latitude and 125°00'00" W. longitude; 48°05'00" N. latitude and 125°10'00" W. longitude; and, 48°05'00" N. latitude and 125°00'00" W. longitude.

(iii) In the area between the Queets River, Washington, and Cape Falcon, Oregon (latitude 45°46'00" N.), there is no sub-quota. This area is managed on a season that is projected to take 6,185 pounds (2.8 mt).

(A) The fishing season is open 1 day per week, on Thursday, on June 2, June 9, and June 16.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) In the area off Oregon between Cape Falcon and the California border (latitude 42°00'00" N), the sub-quota is 74,073 pounds (33.6 mt).

(A) The fishing seasons are:

(*1*) Commencing May 4 and continuing 5 days a week (Wednesday through Sunday) until 58,517 pounds (26.5 mt) are estimated to have been

taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(iv)(A)(*1*) of this section, and continuing 7 days a week until August 5, in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,963 pounds (1.3 mt) are estimated to have been taken (except that any poundage remaining unharvested after the earlier seasons will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) August 6 through September 30, 5 days a week (Wednesday through Sunday), or until a total of 74,073 pounds (33.6 mt) for this area are estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 centimeters) and the second with a minimum overall size limit of 50 inches (127.0 centimeters).

(v) In the area off the California coast, there is no sub-quota. This area is managed on a season that is projected to take 1,977 pounds (0.9 mt).

(A) The fishing season in this area is May 1 through September 30, 7 days a week.

(B) The daily bag limit is one halibut with minimum overall size limit of 32 inches (81.3 centimeters).

* * * * *

[FR Doc. 93–31273 Filed 12–17–93; 2:52 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 244
Wednesday, December 22, 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

Rural Electrification Administration

Cape Hatteras Electric Membership Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impacts resulting from a proposal by Cape Hatteras Electric Membership Corporation to upgrade an existing 34.5 kV transmission line and related facilities along Bodie, Pea and Hatteras Islands in eastern Dare County, North Carolina. The FONSI is based on a borrower's environmental report submitted to REA by Cape Hatteras Electric Membership Corporation. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the borrower's environmental report as its environmental assessment for the transmission line upgrade and related facilities.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed project involves upgrading 46 miles of 34.5 kV transmission line to 115 kV from the existing Nags Head Substation to a proposed 115/34.5 kV substation to be constructed in Buxton. The project includes a new 115/12 kV substation to be located in Waves, a 115/12 kV substation to be located in Avon and possibly the construction of a temporary 115/34.5 kV substation to be located on the northern end of Pea Island.

Alternatives considered to the project as proposed were no action, conservation, lower voltage facilities, alternative transmission source, additional 34.5 kV facilities, underground transmission lines, above ground distribution lines, utilization of existing electric generators, alternate substation sites and transmission line adjustments.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or Mr. Myron D. Rummel, General Manager, Cape Hatteras Electric Membership Corporation, P.O. Box 9, Light Plant Road, Buxton, North Carolina 27920–0009, telephone (919) 995–5616.

Dated: December 16, 1993.

Wally Beyer,
Administrator.

[FR Doc. 93–31155 Filed 12–21–93; 8:45 am]

BILLING CODE 3410–55–M

Soil Conservation Service

Belfield Watershed, Billings and Stark Counties, ND

AGENCY: Department of Agriculture, Soil Conservation Service.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Ronnie L. Clark, State Conservationist, responsible federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of North Dakota, is hereby providing notification that a record of decision to proceed with the installation of the Belfield Watershed project is available. Single copies of this record of decision may be obtained from the address shown below.

DATES: December 17, 1993.

ADDRESSES: Ronnie L. Clark, State Conservationist, Soil Conservation Service, 220 East Rosser Avenue, Bismarck, North Dakota 58501.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, at (701) 250–4421.

Dated: December 16, 1993.

Ronnie L. Clark,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

[FR Doc. 93–31175 Filed 12–21–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 930943–3243; I.D. 081893B]

Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States (MARFIN)

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

ACTION: Notice of availability of financial assistance.

SUMMARY: Funding of $1.25 million is available in fiscal year (FY) 1994 to assist persons in carrying out research and development projects that optimize the use of U.S. Gulf of Mexico and South Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be selected for funding. Areas of this Marine Fisheries Initiative (MARFIN) emphasis for FY 1994 were formulated from recommendations received from scientific and technical experts, NMFS research and operations officials, and from input received in response to a **Federal Register** notice (June 15, 1993, 58 FR 33082) that solicited public

comments and recommendations on proposed FY 1994 MARFIN Areas of Emphasis.

DATES: Applications for funding under this program will be accepted between December 22, 1993 and 5 p.m. Eastern Standard Time on February 22, 1994. Applications received after that time will not be considered for funding.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSSES**) from February 25, 1994 through February 28, 1994.

Successful applicants generally will be selected within 180 days from the date of publication of this notice, and awards made no later than 90 days after selection is determined and negotiations are completed. The earliest start dates of successful applicant project awards will normally be about 240 days after the date of publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

ADDRESSES: Send applications to: David Pritchard, Assistant Regional Director, Cooperative Programs Division, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Send comments on the collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David L. Pritchard, 813–893–3720.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to enter into cooperative agreements for the research and development addressed to all aspects of U.S. fisheries. The Departments of Justice, State, the Judiciary, and Related Agencies Appropriation Act of 1994 makes funds available to the Secretary for FY 1994. This solicitation announces that funding of approximately $1.25 million (including approximately $0.5 million for continuing projects) is available in FY 1994. MARFIN financial assistance started in FY 1986, and for FY 1986 through FY 1993, awards totaled about $14.3 million for financial assistance to conduct research for fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects. This program is described in the Catalog of Federal Domestic Assistance under program unnumbered 11.433 Marine Fisheries Initiative.

II. Areas of Special Emphasis

A. Proposals for FY 1994 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. The areas of special emphasis are listed below, but proposals in other areas will be considered on a funds-available basis.

In addition to reference to the areas of special interest listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or a combination of both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS, and to participate with NMFS in various cooperative activities and protocols that will be determined by consultations between NMFS and successful applicants before project grants are awarded. Recipients of financial assistance for multiple budget periods under this program shall include funding in their applications for travel expenses for the principal investigator to participate in one annual project review and evaluation meeting in St. Petersburg, Florida. All recipients of financial assistance under this program shall include funding in their applications for the principal investigator to participate in an annual MARFIN Conference at the end of the project.

Research needs identified in fishery management plans (FMPs) and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included by reference. Areas of special emphasis for FY 1994 include:

1. *Shrimp Trawler Bycatch.* Studies are needed to contribute to the regional shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, the Councils, and the Commissions. Specific guidance and research requirements are contained in the Regional Bycatch Plan prepared by the Gulf and South Atlantic Fisheries Development Foundation. In particular, the studies should address:

a. Data collections and analyses to expand and update current bycatch estimates temporally and spatially, including offshore, nearshore, and inshore waters. Emphasis should be on offshore and nearshore waters. Estimated numbers and weights should be included, plus samples of hard parts to allow analysis of year-class impact.

b. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils.

c. Identification, development, and evaluation of gear, non-gear and tactical fishing options to reduce bycatch.

d. Economic studies of the dynamic effects of bycatch on the bycatch fisheries; e.g., mackerel, reef fish, demersal species, and estuarine species.

e. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

f. Measure the biological impacts of various management options to reduce shrimp fishery bycatch. Information is needed on trophic level interactions of changes due to bycatch reduction.

2. *Highly Migratory Pelagic Fisheries*—a. *Longline Fishery, Including Bycatch.* A number of pelagic longline fisheries exist in the Gulf and South Atlantic. Most target highly migratory species such as tunas, billfish, some sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High-priority areas include:

(1) Characterization of specific longline fisheries, including targeted species, stock identification, catch per unit effort of bycatch, and biological parameters (e.g., sex and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fisheries.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

b. *Sharks.* Little is known about shark resources in the Gulf and South Atlantic. A Secretarial Fishery Management Plan (FMP) for sharks has been developed that identifies a number of research needs. In general, these needs can be grouped as:

(1) Characterization of the directed and bycatch commercial and recreational fisheries from existing and new data. Emphasis should be on

species, stock identification, size, and sex composition and catch per unit effort by season, area, and gear type.

(2) Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age composition, and reproduction. Especially needed are collection and analysis of data on the extent of geographic range, migration characteristics, and other movements of blacktip and sandbar sharks. Of particular interest for the sandbar shark are determination of its relationship to water depth and determination of the southern boundary of its range.

(3) Determination of baseline cost and returns for commercial fisheries that take and retain sharks, and estimations of demand curves for shark products and recreational shark fisheries.

(4) Development of species profiles and stock assessments for sharks taken in significant quantities by commercial and recreational directed and bycatch fisheries. Assessments can be species-specific or for species groups, so long as the latter does not differ substantially from the groups identified in the Atlantic Sharks FMP.

(5) Identification of coastal sharks using laboratory (tissue analysis) methods.

(6) Characterization of the recreational shark fishery; research to improve the precision and accuracy of recreational catch estimates; increase the size and species sampling of the recreational catch.

(7) Development of fishery-independent abundance indices.

3. *Reef Fish.* Many species within the reef fish complex are showing signs of being overfished, either by directed or bycatch fisheries. The ecology of reef fish makes them especially vulnerable to overfishing because they tend to concentrate over specific types of habitats that are patchily distributed. The patchy distribution of the resource can make traditional fishery statistics misleading, because catch per unit effort can remain relatively high as fishermen move from one area to another, yet overall abundance of the resource can be declining sharply. Priority research areas include:

a. Collection of basic biological data for species in commercially and recreationally important fisheries, with emphasis on stock and species identification, age and growth, early life history, the source of recruits (especially amberjack and vermilion snapper in the Gulf of Mexico, and the possible Caribbean source for Florida Keys snapper and grouper), reproductive biology, and movement and migration patterns. The behavior of age-0 and age-1 red snapper is another important research need. Also important is the effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

b. Identification and quantification of natural and human-induced mortality.

c. Determination of the habitat and limiting factors for important reef fish resources (such as snappers in the Gulf of Mexico).

d. Identification and characterization of spawning aggregations by species, areas, and seasons.

e. Assessment of tag performance on primary reef fish species (snappers and groupers). Characteristics examined should include shedding rate, holding power, effects on growth and survival, and ultimately the effects of these characteristics on estimation of vital population parameters.

f. Stock assessments to establish the status of major recreational and commercial species. Especially needed are innovative methods of stock assessments of aggregate species, including the impact of fishing on genetic structure.

g. Research in direct support of management techniques, including catch-and-release mortality, gear and fishing tactic modifications to minimize bycatch, balancing traditional fisheries use with alternate uses (e.g., ecotourism and sport diving), and economic and social profiles and studies to evaluate impacts of management options. Also needed are studies to determine effects of fishing closures and quotas on alternative commercial and recreational fisheries.

h. Research to evaluate the use of reef fish marine reserves (sanctuaries) as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic. Also needed is an examination of the effects of these sanctuaries on nontarget species.

i. Use of available data to describe the social and economic behavior of recreational fishermen (e.g., effects of bag limits and switching species on recreational trips).

j. Characterization and quantification of the biological, economic, and social impacts of the 1994 experimental longline fishery for reef fish in the 15–20 fathoms (27–37 meters) zone along Florida's west coast. This should include the following features:

(1) Characterization of the longline fishery, including the target species, catch per unit effort of bycatch, and biological parameters (including size, sex, and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fishery.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social and economic factors and effects.

k. A study designed to outline approaches to the development of multispecies individual transferable quotas (ITQs) and the economic performance resulting from ITQ management. The study should address the unique problems associated with the catch of multiple species with given units of effort. The implications for the costs of development and monitoring such ITQs should be included in the analysis. A suggested example species complex is Gulf of Mexico reef fish (snappers and groupers). Additional explanation of research needs for Gulf reef fish is available from a MARFIN-supported plan for cooperative reef fish research in the Gulf of Mexico.

l. Characterization of the Gulf of Mexico fish trap fishery with emphasis given to onboard observer data, including information on bycatch and undersized target species, condition of the catch, catch handling techniques, fishing techniques, area and seasonal fishing practices, and fate of released fish.

4. *Coastal Herrings.* Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data come from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

a. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, and environmental relationships. Emphasis should be given to controversial species, such as Spanish sardines.

b. Description and quantification of predator-prey relationships between coastal herring species and those such as the mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in

high demand by commercial and recreational fisheries.

5. *Coastal Migratory Pelagic Fisheries.* The demand for many of the species in this complex by commercial and recreational fisheries has led to overfishing for some, such as Gulf king and Spanish mackerel, and Atlantic Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities include:

a. Development of recruitment indices for king and Spanish mackerel, cobia, dolphin, bluefish, primarily from fishery-independent data sources, though indices of year-class success using occurrence in bycatch are also important.

b. Development of assessment and management models for coastal pelagic resources for which dynamics are dominated by single year classes (such as Spanish mackerel, dolphin, and bluefish).

c. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length-frequency and life history information.

d. Information on populations of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia, especially population size, age, food, and movements.

e. Collection of basic biostatistics for coastal pelagic species (e.g., cobia and dolphin) to develop age-length keys and maturation schedules for stock assessments, where significant gaps in the database exist.

f. Demand and supply functions for recreational and commercial fisheries for king mackerel in the South Atlantic and Gulf of Mexico. Emphasis can be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required. Potential applicants must ensure that they are familiar with the status of research in this area.

6. *Groundfish and Estuarine Fishes (Weakfish, Menhaden, Spot, Croaker, and Red Drum).* Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs are:

a. Measurements of the effects of sport fishing on red drum populations in the Gulf of Mexico and the South Atlantic. Specific needs in the South Atlantic area are increased sampling of nighttime fishing for red drum on the Outer Banks of North Carolina.

b. Definitions of the stocks of groundfish and estuarine fishes in the South Atlantic.

c. Information on the immigration and escapement of red drum from state waters into the Exclusive Economic Zone (EEZ) in the Gulf of Mexico.

d. Determination of life history and stock identification parameters for weakfish, menhaden, spot, croaker, and red drum in the Gulf of Mexico and the South Atlantic area. Research should include determination of migratory patters through tagging, monitoring long-term changes in abundance, measurement of growth rates and age structure, and comparisons of the inshore and offshore components of the recreational and/or commercial fisheries.

e. Monitoring of juvenile populations and population indices to determine year-class strength, including recruitment indices and fishery-independent indices of spawning stock.

f. Catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

g. Biological and economic analyses of the optimum utilization of long-term fluctuating populations.

h. Quantification of the bycatch in the commercial menhaden purse seine fishery, and the coastal herring purse seine and beach seine fisheries. (Note: Preliminary coastwide studies on menhaden have been conducted.)

i. Quantification of the bycatch in finfish trawl fisheries (such as the flounder fishery and the fly-net fishery for sciaenids in the South Atlantic area).

j. Turtle excluder device (TED) development and testing for finfish trawl fisheries.

k. Determination of catch-and-release mortality rates for spotted seatrout and red drum in inshore and nearshore waters.

l. Cooperative red drum tag-recapture studies to estimate the standing stock biomass in the EEZ and to determine red drum escapement rates from state waters.

7. *Crabs and Lobsters.* a. Monitoring of fecundity and sex/size frequency for examination of spawning potential in relation to overfishing criteria for stone crabs and spiny lobster.

b. Development of indices of recruitment and/or migration rates for stone crabs and spiny lobster.

c. Development of assessment and management models for single year-class fisheries for stone crabs and spiny lobsters.

8. *Sea Turtle Conservation.* The conservation of endangered and threatened sea turtles in the Southeast Region continues to be of relatively high priority. Specific needs include:

a. Information on the distribution, abundance, species, and size composition of sea turtles in inshore waters, especially where these turtles may be affected by inshore fisheries (e.g., shrimp trawls and gill nets).

b. TED modifications or designs to exclude adult leatherback sea turtles effectively. The area of special concern is off South Carolina, Georgia, and Florida.

c. TED designs and modifications of existing designs for use in small inshore shrimp trawls. Research on shrimp retention and on the effectiveness of the TEDs to operate in areas with debris is especially needed.

d. Sea turtle incidental catch in fisheries other than the shrimp fishery.

e. Definition, spatially and seasonally, of critical habitat areas for Kemp's ridley sea turtles in coastal and inshore areas.

9. *General.* There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and for better conservation. Examples of high priority research topics include:

a. Basic design and critical analysis of a data collection system that may involve permits, logbooks, trip interviews, dealer reporting, or other innovative methods. The system design should be applicable across the entire range of species that may be pursued throughout the Gulf and South Atlantic region and should address established economic and biological data needs.

b. Assessment of the changes in recreational and commercial values that have resulted from past management actions for red drum, shrimp, mackerels, and reef fish.

c. Development of improved methods and procedures for technology transfer and education of constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introductions of conservation gear and fishing practice modifications.

d. Development of new modeling and analytical approaches to understanding basic processes in fishery productivity and energy transfer that can be applied to specific fishery resources problems.

e. Development of baseline socio-demographic information on Federally managed South Atlantic and Gulf of Mexico fisheries.

B. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research efforts, with consideration of the magnitude of the eventual economic benefit that may be realized. Both short-term projects that may yield more immediate benefits and projects yielding longer term benefits will receive equal consideration.

c. Further information on current Federal programs that address the above-listed priorities may be obtained from the NMFS Southeast Regional Office (see **ADDRESSES**).

III. How to Apply

A. Application Package: Applicants should request an Application Package from the NMFS Southeast Regional Office (see **ADDRESSES**).

B. Eligible Applicants. 1. The cooperative agreement has been determined as the appropriate funding instrument because of the substantial involvement of NMFS in developing program research priorities and evaluating the performance of recipients for effectiveness in meeting National and regional goals for fishery research in the Southeast United States. Applications for cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

a. Any individual who is a citizen or national of the United States;

b. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802).[2]

c. Colleges and universities, with game and fish departments of the several States, and with nonprofit organizations relating to cooperative research units.

2. NOAA reserves the right to withhold the awarding of a cooperative agreement to any individual or organization delinquent on a debt to the Federal Government. No award of Federal funds shall be made to an applicant who has any outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or (3) other arrangements satisfactory to the Department of Commerce (DOC) are made. Any first-time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact NOAA organizations engaged in fisheries research in the Gulf of Mexico and off the U.S. South Atlantic, or David Pritchard at the NMFS Southeast Regional Office (see **ADDRESSES**) for information on NOAA programs. Documents available from that office that may be useful to the applicant include:

a. A Cooperative Reef Fish Research Program for the Gulf of Mexico.

b. A Cooperative Bycatch Research Plan for the Southeast Region.

c. Strategic Plan of the National Marine Fisheries Service.

d. National Status of Stocks Report.

e. Various fishery management plans and plan amendments produced by the Councils and the Commissions.

C. Amount and Duration of Funds. Project proposals submitted and selected for funding for project periods of more than 1 year will not compete for funding in subsequent budget periods within the approved project period. However, funding for subsequent budget periods of the project period is continent on the availability of funds from Congress and satisfactory performance, and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any parts of the available funds.

D. Cost-Sharing Requirements. Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles issued by OMB. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

E. Format. Before submitting an application under this program, applicants should contact the NMFS Southeast Regional Office for an application package (see **ADDRESSES**).

1. Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown by category of expenditures with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant.

2. Applications must be submitted in the following format:

a. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project. Copies of the forms are included in the application package that is available from the NMFS Southeast Regional Office (see **ADDRESSES**).

b. *Project Summary:* Each project must contain a summary of about one page that provides the following information:

(1) Project title.

(2) Project status (new or continuing). If continuing, show previous financial assistance award number and beginning and ending dates.

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(11) Specific priority(ies) in the solicitation to which the project responds.

c. *Project Description:* Each project must be completely and accurately described. The major sections of each project description are a Project Statement, and a Project Statement of Work for each proposed budget period. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot quarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

(1) *The Project Statement:* The MARFIN Project Statement is an overview of the major scientific and technical features of a project proposal. Each project proposal must be described as follows:

(a) *Project Goals and Objectives:* This is one of the most important parts of the proposal. Use the following guidelines for stating the goal or objective.

(i) Keep it simple and easily understandable.

(ii) Be as specific and quantitative as possible.

(iii) Specify the "what and when"; avoid the "how and why."

(iv) Keep the project goals and objectives attainable within the time, money and manpower available.

(v) Use action verbs that are accomplishment-oriented.

(b) *Identification of Problem(s) and Need For Government Assistance:* Describe how existing conditions prevent the full use of Gulf of Mexico and/or South Atlantic fishery resources. Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the Project Proposal should be included. Explain why other funding sources cannot fund all of the proposed work. List all other sources of funding that are or have been sought for the project. In this description, identify:

(i) The fisheries involved;

(ii) The specific problem(s) that the fishing industry, management agencies or environmental organizations have encountered;

(iii) The sectors of the fisheries that are affected; and

(iv) How the problem(s) prevent the fishing industry or management agencies from using or managing the fishery resources.

(c) *Project Impacts/Results and Benefits Expected:* Identify and document the results and benefits to be derived from the proposed activities. Describe the impact of the project in terms of anticipated increased production, sales, exports, product quality and safety, improved management, social values or any other value that will be produced by this project. Describe how these products or services will be made available to the fishery and management communities.

(d) *Participation by Persons or Groups Other Than the Applicant, Including Federal, State, and Local Government Activities and Related Federal Assistance:* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities (Specific NOAA employees should not be named in the initial application). List any programs (Federal, state, or local government activities, including state Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment, Interjurisdictional Fisheries Act, and Cooperative Fishery Statistics) this project proposal would affect and describe the relationship between the project and those plans or activities. Identify and describe any related Federally sponsored projects and activities that are affiliated with the proposal, and discuss the impacts of the loss of such funding on attaining the goals and objectives of this project proposal.

(e) *Project Management:* Describe how the performance of the project will be organized and managed. Include resumes of Principal Investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(f) *Monitoring of Project Performance:* Identify applicant and other officials who will participate in supervising and monitoring the project.

(2) *Project Statement of Work:* The Statement of Work is a scientific or technical action plan of activities that are to be accomplished during each budget period of the project. A separate Statement of Work is to be submitted for each budget period of the project proposal. Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities. Cooperative agreement procedures should identify applicant activities and deliverables, NMFS activities and deliverables, and applicant/NMFS joint activities and deliverables.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item (d)) that are to be attained in each month covered by the statement of work.

d. *Project Budget and Budget Justification:* Project costs are the amount of funds required to accomplish the activities in each proposed Statement of Work performance period, and include contributions and donations. All costs must be shown in a detailed budget. Cost-sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A separate budget must be submitted for each project. An

applicant submitting a proposal for a project period of more than one year must submit a budget covering total project costs and budgets covering each budget period. NMFS will not consider fees or profits as allowable costs for grantees.

e. *Budget Explanation and Justification:* To support each budget, the applicant must describe and justify each cost element. This justification and explanation should include the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Applicant and Federal costs for the following categories must be detailed in the budget as follows:

(i) *Personnel*—(a) *Salaries:* Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(b) *Fringe Benefits:* Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his or her time on the project, 20 percent of his or her fringe benefits should be charged to the project.

(ii) *Consultants and Contract Services:* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliverables expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" or 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable.

(iii) *Travel and Transportation:* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. All applicants submitting proposals for a project period of more than 1 year must include an estimated budget for the principal investigator to attend an annual meeting in the NMFS Southeast Region to review the progress being made on attaining the objectives of each budget period. A budget estimate must be included by all applicants for the principal investigator to participate in a MARFIN conference at the end of the project. Normally, travel to attend scientific conferences to present the results of MARFIN-funded projects will not be approved. Foreign travel is not allowable unless it has been previously approved by the NOAA/NMFS grants and program offices and unless it is necessary to attain the goals and objectives of the MARFIN award.

(iv) *Equipment, Space or Rental Costs:* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(v) *Other Costs*—(a) *Supplies:* Identify specific supplies necessary for the accomplishment of the project.

(b) *Postage and Shipping:* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(c) *Printing Costs:* Include costs associated with producing materials in connection with the project.

(d) *Long Distance Telephone and Telegraph:* Identify estimated monthly bills.

(e) *Utilities:* These costs are usually included under Indirect Costs. If they are included as a direct cost item, utility costs should be separately identified and budgeted.

(f) *Indirect Costs:* All applicants should realize that this program limits the indirect cost rate that may be charged to grants to 25 percent of the Federal share of total direct costs or the institution's negotiated indirect cost rate, whichever is less. Institutions with indirect cost rates above 25 percent may use the amount above the 25-percent level as part of the non-Federal share. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal Government must be included.

(g) *Additional Costs:* Indicate any additional costs associated with the project that are allowable under OMB Circulars A–21, A–87, A–122 or 48 CFR part 31, as applicable.

f. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects.

1. Unless otherwise specified by statute, in reviewing applications for cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from applicant's participation?

d. Is the project proposal substantial in character and design?

2. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project. These reviews normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for managing or enhancing Southeast marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing or managing the use of Southeast marine fishery resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

3. Applications will be ranked by NMFS into three groups: (a) Highly recommended, (b) recommended, and (c) not recommended. These rankings will be presented to a panel of fishery experts. The panel members will individually consider the significance of the problem addressed in the project proposal, along with the technical evaluation and the need for funding, and provide individual recommendations to NMFS on proposals. The panel members' individual recommendations will be considered by NMFS in selecting projects for funding.

B. Consultation With Others. NMFS will make project descriptions available for review as follows:

1. *Public Review and Comment:* Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES** and **DATES**).

2. *Consultation With Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions:* NMshall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government Agencies:* Applications will be reviewed by the NMFS Southeast Region Program Office in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, the NOAA Grants Officer and, as appropriate, DOC bureaus and other Federal agencies.

C. Funding Decision. After projects have been evaluated, the Southeast Regional Director, in consultation with the NOAA Assistant Administrator for Fisheries, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded and specific NMFS cooperative involvement with the activities of each project will be determined in preaward negotiations between the applicant, and NMFS program staff. The NOAA Grants Officer and other officials of DOC will review all projects recommended for funding before a signed award is received from the Grants Officer. Projects must not be initiated by a recipient until a signed award is received from the Grants Officer. For project periods of more than 1 year, funds for subsequent budget periods may be provided if project tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent budget periods.

VI. Other Requirements

Recipients and subrecipients are subject to all applicable Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards, and to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs." All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, subpart F) are subject to 15 CFR part 26, Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

3. Anti-Lobbying: Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure: Any applicant that has paid or will pay for lobbying using any funds must submit a Form SF–LLL, "Disclosure of Lobbying Activities form," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Potential recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application for an award is selected for funding, the DOC has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC. If an applicant incurs any costs prior to an award being made, he or she does so solely at his or her own risk of not being reimbursed by the Government. Applicants are also hereby notified that, notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover preaward costs.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Federal participation under the MARFIN Program may include the assignment of Department of Commerce scientific personnel and equipment, and reasonable financial compensation for the work of researchers on fish and wildlife ecology and resource management projects.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information-collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Clearance No. 0648-0175) under the provisions of the Paperwork Reduction Act. Public reporting burden for agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see **ADDRESSES**).

(Authority: 15 U.S.C. 713c-3(d))

Dated: December 16, 1993.

Rolland A. Schitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93-31172 Filed 12-21-93; 8:45 am]

BILLING CODE 3510-22-M

[I.D. 121593A]

Gulf of Mexico Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on January 17-20, 1994. The meetings will be held at the Clearwater Beach Hilton Resort, 715 South Gulfview Boulevard, Clearwater Beach, FL; telephone: (813) 447-9566. The agenda is as follows:

Council

The Council will convene on January 19 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 12 noon: Receive public testimony on the 1994 Texas Shrimp Closure, on Draft Amendment #7 to the Coastal Migratory Pelagics (Mackerel) Fishery Management Plan, and on Draft Amendment #2 to the Coral Fishery Management Plan;

(**Note:** Testimony cards must be turned in to staff before the start of public testimony).

From 1:30 p.m. to 3:30 p.m.: Take final action on Draft Coral Amendment #2; and

From 3:30 p.m. to 5 p.m.: Take final action on Draft Mackerel Amendment #7.

The Council will reconvene at 8:30 a.m. on January 20 and adjourn at 12:00 noon after receiving reports from the following Committees:

(1) 8:30 a.m. to 9 a.m.—The Shrimp Management Committee;

(2) 9 a.m. to 11 a.m.—The Reef Fish Management Committee;

(3) 11 a.m. to 11:15 a.m.—The Scientific and Statistical (SSC) Selection Committee, followed by Enforcement reports and the Director's reports.

Committees

On January 17 at 1 p.m., the SSC Selection Committee and the Coral Management Committee will meet. Adjournment is scheduled at 5 p.m.

On January 18 at 8:30 p.m. the Mackerel Management Committee, the Shrimp Management Committee, and the Fish Management Committee will meet. Adjournment is scheduled at 5:30 p.m.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laura Mataluni at the address below by January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: December 16, 1993.

David S. Crestin,

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

[FR Doc. 93-31173 Filed 12-21-93; 8:45 am]

BILLING CODE 3510-22-P

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a permit to enhance the survival of a species (P772#64).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of enhancing the survival of the species.

DATES: Written comments must be received on or before January 21, 1993.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980-4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822 (808/955-8831).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant proposes to capture up to 50 adult male Hawaiian monk seals (*Monachus schauinslandi*) on Laysan Island. These animals may be restrained, marked, blood-sampled, injected with a gonadoptrophin-releasing-hormone agonist and released, up to 2 times annually over a 3-year period. Of these 50 animals, up to 30 may be permanently removed from Laysan Island and either relocated to sites distant from the Northwest Hawaiian Islands, but within the Hawaiian Island chain (e.g., Johnston Atoll), or permanently held in captive facilities. These facilities will be only those which have NMFS permits to hold marine mammals in captivity, and may be located both in the U.S. and abroad. The objectives of the proposed activities are to return the Laysan Island Hawaiian monk seal population to a normal 1:1 sex ratio, and to prevent death and injury to female and juvenile Hawaiian monk seals due to male mobbing behavior.

Dated: December 14, 1993.

William W. Fox, Jr.,

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

[FR Doc. 93-31179 Filed 12-21-93; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc. Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Commodity Exchange, Inc. ("Comex" or "Exchange") has submitted a petition for exemption from the prohibition against dual trading in four contract markets. Copies of the petition are available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the petition are available from the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the Comex dual trading exemption petition.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull, Special Counsel, or Carol Bates, Futures Trading Specialist, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder,[1] a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

Comex has submitted a dual trading exemption petition for its contracts markets in gold, silver, and copper futures contract and options on gold futures contracts. Copies of the Comex's exemption petition, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 254–6314.

Petition materials subject to the Comex's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Because Comex submitted the petition before October 26, 1993, the effective date of the dual trading prohibition, application of the prohibition against the contract markets covered by the petition is suspended in accordance with Commission Regulation 155.5(d)(5) unless and until the petition is denied.

Issued in Washington, DC, on December 17, 1993.

Andrea M. Corcoran,

Director.

[FR Doc. 93–31285 Filed 12–21–93; 8:45 am]

BILLING CODE 6351–01–P

[1] 58 FR 40335 (July 28, 1993) (to be codified at 17 CFR 155.5).

New York Mercantile Exchange Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a petition for exemption from the prohibition against dual trading in five contract markets. Copies of the petition are available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the petition are available from the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYMEX dual trading exemption petition.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, or Duane Andresen, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder,[1] a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

NYMEX has submitted a dual trading exemption petition for its contract markets in light, sweet crude oil, natural gas, New York Harbor No. 2 heating oil, and New York Harbor unleaded gasoline futures contracts and its options on light, sweet crude oil futures contracts. Copies of the NYMEX's exemption petition, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 254–6314.

Petition materials subject to the NYMEX's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Because NYMEX submitted the petition before October 26, 1993, the effective date of the dual trading prohibition, application of the prohibition against the contract markets covered by the petition is suspended in accordance with Commission Regulation 155.5(d)(5) unless and until the petition is denied.

Issued in Washington, DC, on December 17, 1993.

Andrea M. Corcoran,

Director.

[FR Doc. 93–31284 Filed 12–21–93; 8:45 am]

BILLING CODE 6351–01–P

[1] 58 FR 40335 (July 28, 1993) (to be codified at 17 CFR 155.5).

Coffee, Sugar & Cocoa Exchange, Inc.; Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Coffee, Sugar & Cocoa Exchange, Inc. ("CSC" or "Exchange") has submitted a petition for exemption from the prohibition against dual trading in two contract markets. Copies of the petition are available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the petition are available from the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CSC dual trading exemption petition.

FOR FURTHER INFORMATION CONTACT: De'Ana Dow, Special Counsel, or Kimberly Browning, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder,[1] a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CSC has submitted a dual trading exemption petition for its contract markets in Sugar No. 11 and Coffee "C" futures contracts. Copies of the CSC's exemption petition, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 254–6314.

Petition materials subject to the CSC's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Because CSC submitted the petition before October 26, 1993, the effective date of the dual trading prohibition, application of the prohibition against the contract markets covered by the petition is suspended in accordance with Commission Regulation 155.5(d)(5) unless and until the petition is denied.

Issued in Washington, DC, on December 17, 1993.

Andrea M. Corcoran,

Director.

[FR Doc. 93–31286 Filed 12–21–93; 8:45 am]

BILLING CODE 6351–01–P

[1] 58 FR 40335 (July 28, 1993) (to be codified at 17 CFR 155.5).

Chicago Mercantile Exchange Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a petition for exemption from the prohibition against dual trading in 10 contract markets. Copies of the petition are available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the petition are available from the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME dual trading exemption petition.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull, Special Counsel, or Lloyd Bernard, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder,[1] a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CME has submitted a dual trading exemption petition for its contract markets in British Pound, Deutsche Mark, Eurodollar, Japanese Yen, Live Cattle, Standard & Poor's 500, and Swiss Franc futures contracts, and options on Deutsche Mark, Eurodollar and Standard & Poor's 500 futures contracts. Copies of the CME's exemption petition, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 254–6314.

Petition materials subject to the CME's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Because CME submitted the petition before October 26, 1993, the effective date of the dual trading prohibition, application of the prohibition against the contract markets covered by the petition is suspended in accordance with Commission Regulation 155.5(d)(5) unless and until the petition is denied.

Issued in Washington, DC, on December 17, 1993.

Andrea M. Corcoran,

Director.

[FR Doc. 93–31287 Filed 12–21–93; 8:45 am]

BILLING CODE 6351–01–P

[1] 58 FR 40335 (July 28, 1993) (to be codified at 17 CFR 155.5).

Chicago Board of Trade Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Board of Trade ("CBT" or "Exchange") has submitted a petition for exemption from the prohibition against dual trading in 10 contract markets. Copies of the petition are available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the petition are available from the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT dual trading exemption petition.

FOR FURTHER INFORMATION CONTACT: De'Ana Dow, Special Counsel, or Brian Regan, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder,[1] a board of trade may submit a petition to the Commodity Futures Trading Commission ("Commission") to exempt any of its affected contract markets from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CBT has submitted a dual trading exemption petition for its contract markets in wheat, corn, soybeans, soybean meal, soybean oil, U.S. Treasury Bonds, 10-Year Treasury Notes, and 5-Year Treasury Notes futures contracts and its options on U.S. Treasury Bond futures and 10-Year Treasury Note futures contracts. Copies of the CBT's exemption petition, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 254–6314.

Petition materials subject to the CBT's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Because CBT submitted the petition before October 26, 1993, the effective date of the dual trading prohibition, application of the prohibition against the contract markets covered by the petition is suspended in accordance with Commission Regulation 155.5(d)(5) unless and until the petition is denied.

Issued in Washington, DC, on December 17, 1993.

Andrea M. Corcoran,

Director.

[FR Doc. 93–31288 Filed 12–21–93; 8:45 am]

BILLING CODE 6351–01–P

[1] 58 FR 40335 (July 28, 1993) (to be codified at 17 CFR 155.5).

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Northwest Racing Associates Thoroughbred Horse Racing Facility at Auburn, WA

AGENCY: Seattle District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: Northwest Racing Associates of Auburn, Washington is proposing construction and operation of a thoroughbred horse racing facility in wetlands adjacent to Mill Creek at Auburn, Washington, about one-fourth of a mile east of State route 167. Work in wetlands will include deposition of 80,000 cubic yards of fill material in 17.4 acres of palustrine emergent and scrub-scrub wetlands to construct a thoroughbred racetrack, grandstand, parking lots, barns, and related facilities. Work in wetlands will require a Department of the Army permit under section 404 of the Clean Water Act.

ADDRESSES: Environmental Resources Section, Seattle District, U.S. Army Corps of Engineers, P.O. Box C–3755, Seattle, Washington 98124–2255.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Martin, (206) 764–3625.

SUPPLEMENTARY INFORMATION: Proposed Action: The applicant has proposed the facility because of the sale and closure of Longacres Horse Racing Park in Renton, Washington. The site of the proposed new facility is in Auburn, Washington, about eight miles south of the former Longacres Park. Fill in wetlands is necessary to construct a thoroughbred racetrack, grandstand, parking lots, barns, and related facilities. The site is bounded on the north by 37th Avenue Northwest, and on the south by a sewer line paralleling 15th Avenue Northwest, about one-fourth mile east of State route (SR) 167.

The horse racing park would be constructed on approximately 166 acres and would include a six-level, partially enclosed grandstand designed to seat approximately 6,500 people. The facility would accommodate an average daily attendance of 7,500, with a peak capacity of over 17,000. The grandstand would include restaurants, bars, pari-mutuel betting windows, food concession booths, and administrative space. Parking for approximately 5,100 vehicles would be available. The project would include a 1-mile oval dirt racetrack with provision for a future seven-eighths mile training course inside the main oval. Also included would be barns with 1,400 horse stalls, about 150 seasonal dormitory rooms for 300 g rooms and backstretch personnel, laundry facilities, tack rooms, and administrative offices

The applicant's project purpose is to construct and operate a thoroughbred racetrack in western Washington to meet the long term needs of Washington's thoroughbred horse racing industry.

Alternatives

a. *The Corps of Engineers has three alternative courses of action available:*

(1) The section 404 permit could be issued for the proposed action as described above.

(2) The permit could be issued with special conditions that would mitigate impacts resulting from the proposed action.

(3) The section 404 permit could be denied. This option would prohibit all proposed work on the project site as well as prevent environmental impacts associated with the proposed action. The economic and social benefits of the project to the statewide horse racing industry would also be foregone.

b. *Alternatives to be examined in the EIS include:*

(1) No action.

(2) Off-site alternatives.

(3) On-site alternatives.

Regarding the need for off-site alternatives, the Corps directed the applicant to provide information on alternative sites. The applicant identified and analyzed a total of 14 off-site locations, and looked at several on-site configurations what would reduce the amount of fill material proposed for

discharge in wetlands. The applicant's alternative analysis documents concluded that none of the off-site alternatives were found to be practicable. According to the applicant, many alternative sites were not suitable because they were too far removed from an existing fan base around the former Longacres Park thoroughbred horse racing track in Renton to generate enough revenue to achieve the project purpose. The Corps will perform an independent analysis of alternative sites which will include a study of the applicant's basis for eliminating off-site alternatives.

Relative to on-site alternatives, alternative layouts of proposed facilities at the project location will be evaluated. In this regard, the applicant has proposed reducing fill in wetlands from the original 53 acres to 17.4 acres by eliminating the training track, a proposed recreational vehicle park for track workers, by moving parking spaces off-site and reducing on-site parking approximately 1,000 spaces. The revised proposal now avoids most of the relatively higher value wetlands that are located just to the south of the present racetrack site.

Scoping and Public Involvement

Public involvement will be sought during scooping and conduct of the study in accordance with NEPA procedures. A public scoping process has been ongoing to clarify issues of major concern, identify any additional studies that might be needed in order to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. Following Washington State Environmental Policy Act (SEPA) procedures, a final SEPA EIS regarding this proposal was published in September 1993. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required.

The following key areas have been identified to be analyzed in depth in the draft EIS:

1. Surface Water Drainage and Flood Storage.
2. Water Quality.
3. Wetlands.
4. Waterfowl and Fisheries.
5. Threatened and Endangered Species.
6. Transportation/Traffic.
7. Economics.
8. Cumulative Impacts.
9. Alternatives Sites.

Other Environmental Review and Coordination Requirements

Other environmental review and consultation requirements include preparation of section 404(b)(1) report by the Corps of Engineers; consultation among the Corps, the U.S. Fish and Wildlife Service, and the State of Washington on threatened and endangered species per section 7 of the Endangered Species Act; acquisition by the applicant of a Washington State Water Quality Certification, state concurrence with consistency pursuant to the Washington State Coastal Zone Management Program, National Pollution Discharge Elimination System (NPDES) permit, air quality approvals from the Environmental Protection Agency and the State of Washington, Department of Ecology.

Scoping Meeting

On September 21, 1993, the Corps held a public hearing to receive comments on the present proposal.

In addition, public scoping meetings and a public hearing have been held during development of the SEPA EIS. Consequently, a formal scoping meeting pursuant to NEPA is not planned at this time. To assist the Corps in developing the scope of the EIS and in identifying important issues, comments are invited to be submitted in writing and should be forwarded to Seattle District, Corps of Engineers, before January 7, 1994.

Availability of Draft EIS

The draft EIS is scheduled for release on April 1, 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-31149 Filed 12-21-93; 8:45 am]

BILLING CODE 3710-ER-M

Military Traffic Management Command; Revision to the Total Quality Assurance Program (TQAP)

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command has made a final revision to the Total Quality Assurance Program (TQAP) provision. This notice of policy applies to moving the cut-off date for scoring personnel property shipments in the TQAP back 30 days. This item was published for comment in the **Federal Register**, 58 FR 52951, October 13, 1993, paragraph k. No negative comments were received on this item. MTMC's analysis to comments on other items is ongoing.

ADDRESSES: Copies of the revision to the TQAP pamphlet are available from the Commander, Military Traffic Management Command, ATTN: ADCOPS-QEC/Ms. Betty Wells, 5611 Columbia Pike, Falls Church, VA 22041-5050.

EFFECTIVE DATE: Effective January 1994 for the International Program, and February 1994 for the Domestic Program.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells at (703) 756-1585 or Headquarters, Military Traffic Management Command, ATTN: ADCOPS-QEC, 5611 Columbia Pike, Falls Church, VA 22041-5050.

SUPPLEMENTARY INFORMATION: The revision will supersede procedures published in DOD 4500.34R, Personal Property Traffic Management Regulation, and the Total Quality Assurance Program pamphlet dated Feb. 1992. This will allow more time, if necessary, to coordinate appeal actions between PPSOs and industry before the new rate cycle begins.

This is not a major rule for the purpose of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

A summary of the revision follows:

Evaluation and Traffic Denial.

(1) A carrier's score is calculated semiannually based on DD Forms 1780 mailed to the carrier during the evaluation period. The evaluation periods and effective date for the award of traffic are:

Evaluation period	Effective date	Rate/performance cycle
ITGBL:		
16 Jan.-15 Jul.	1 Oct ...	1 Oct.-31 Mar.
16 Jul.-15 Jan.	1 Apr ...	1 Apr.-30 Sep.
TGBL:		
16 Feb.-15 Aug.	1 Nov ..	1 Nov.-30 Apr.
16 Aug.-15 Feb.	1 May ..	1 May-31 Oct.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-31150 Filed 12-21-93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 21, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: December 16, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Vocational and Adult Education

Type of Review: NEW
Title: Applications for Cooperative Demonstration School-To-Work Opportunities State Implementation Grants
Frequency: Every five years
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 50
Burden Hours: 4,500
Recordkeeping Burden: Recordkeepers: 0
Burden Hours: 0
Abstract: This application form will be used for a single direct grant competition to implement an absolute priority on School-to-Work Opportunities State Implementation Grants under the Cooperative Demonstration Program authorized under Title IV, Part 420A of the Carl D. Perkins Vocational and Applied Technology Education Act (Pub. L. 101-392). The data will be collected from non-profit institutions and used by ED to evaluate the eligibility of the applicant.

Office of Postsecondary Education

Type of Review: NEW
Title: Application for Institute for International Public Policy Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 20
Burden Hours: 1,000
Recordkeeping Burden: Recordkeepers: 1
Burden Hours: 0
Abstract: Collection of information is necessary in order for the Secretary of Education to make a grant to a consortium of higher education institutions to establish an Institute for International Public Policy. This will significantly increase the number of African Americans and other under represented minorities in the international service in both governmental and the private sectors. The form requests programmatic and budgetary information needed to evaluate applications and make funding decisions based on the authorizing statute and the published funding criteria in EDGAR. The form will also be used to collect the information necessary to determine if it is in the best interest of the government to continue the project through the second, third, fourth, and fifth years of the project.

[FR Doc. 93-31170 Filed 12-21-93; 8:45 am]
BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 31, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401-3200.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title ; (3)

Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden.

Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: December 17, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedite

Title: Schools and Staffing Survey, 1993–1994

Abstract: The Schools and Staffing Survey is an integrated set of surveys consisting of the Teacher Demand and Shortage Survey, the School Survey, the School Administration Survey, and the Teacher Survey. The purpose of these surveys is to measure critical aspects of teacher supply and demand, the composition of the administrator and teacher work force, and the general status of teaching and schooling.

Additional Information: An expedited review is requested in order to have sufficient time to prepare the survey for mailout in January. This collection contains three new questions:

63a. Have you received any training for teaching limited English proficient (LEP) students?

Limited English proficient students are those whose native or dominant language is other than English and who have sufficient difficulty speaking, reading, writing, or understanding the English language as to deny them the opportunity to learn successfully in an English-speaking-only classroom.

b. Are there currently any students in your class(es) who are limited English proficient?

c. What percentage of the students you currently teach are limited English proficient?

We are requesting OMB clearance by December 31, 1993.

Frequency: One time

Affected Public: Individuals or households

Reporting Burden:

Responses: 92,175

Burden Hours: 112,571

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

[FR Doc. 93–31199 Filed 12–21–93; 8:45 am]

BILLING CODE 4000–01–M

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under Section 10 (a) (2) of the Federal Advisory Committee Act.

DATE, TIME AND LOCATION: January 7, 1994 from 1 pm to 4:30 pm, Sheraton Inn Hagerstown, The Board Room—1910 Dual Highway, U.S. 40 at I–70, Hagerstown, MD 21740, Hotel Telephone: (301) 790–3010.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20202–7591.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearing of the Commission is open to the public. The proposed agenda for January 7 includes: Testimony from invited participants on "Quality Instructional Time Within the School Day" and reports from the Commissioners on their foreign trips to Japan and Germany. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW, Suite 502, Washington, DC 20202–7591 from the hours of 9:00 am to 5:30 pm.

Dated: December 17, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93–31240 Filed 12–21–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inertial Confinement Fusion Advisory Committee/Defense Programs; Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and Time: Agenda is subject to revision.

Thursday, January 6, 1994, 9 a.m.–11:45 a.m.—Open

Thursday, January 6, 1994, 11:45 a.m.–6 p.m.—Closed

Friday, January 7, 1994, 8:30 a.m.–11 a.m.—Closed

Friday, January 7, 1994, 11 a.m.–11:30 Noon—Open

Place: Lawrence Livermore National Laboratory, Livermore, CA. Building 235, Gold Room (room 1090) (See below for restricted access procedures).

Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Inertial Confinement Fusion (DP–28), Office of Defense Programs, Washington, DC 20585, Telephone: (301) 903–3345.

Persons wishing to attend the meeting must contact Robert Robenseifner at (301) 903–8635, to arrange for visitor passes to the meeting room at the Lawrence Livermore National Laboratory.

Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.

Purpose of the meeting: To evaluate and comment on the progress in inertial confinement fusion toward achieving the technical objectives of the target physics program, and to evaluate the appropriateness of proposed objectives and priorities for determining technical readiness to proceed to preliminary engineering design of the National Ignition Facility.

Tentative agenda: Subject to Revision.

January 6, 1994

9 a.m. Introductory Remarks and Summary of Events Since Previous Advisory Committee Meeting

11:15 a.m. Opportunity for Public Comment (oral presentations limited to 10 minutes)

11:45 a.m. Closed Meeting

January 7, 1994

8:30 a.m. Closed Meeting

11 a.m. Committee Discussion and Wrap-Up

Open to the Public: On January 6, 1994, from 9 a.m. to 11:45 a.m., and on January 7, 1994, from 11 a.m. until adjournment the

meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Robert Robenseifner at the phone number given above. Requests must be received before 3 p.m. (eastern standard time) Thursday, December 30, 1993. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3 p.m. (eastern standard time) Thursday, December 30, 1993, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, app. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from 11:45 a.m. on January 6, 1994, to 11 a.m. on January 7, 1994, will be closed to the public in the interest of national security.

Minutes: Minutes of the open portions of the meeting will be available for public view and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, room 1E-190, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 17, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–31225 Filed 12–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2466–002 Virginia]

Appalachian Power Co.; Availability of Draft Environmental Assessment

December 16, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Niagara Hydroelectric Project, located on the Roanoke River in Roanoke County, Virginia, near the city of Roanoke, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Charles R. Hall, Environmental Coordinator, at (202) 219–2853.

Lois D. Cashell,

Secretary.

[FR Doc. 93–31221 Filed 12–21–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ES94–7–004]

Genesee Power Station Limited Partnership; Amended Application

December 16, 1993.

Take notice that by letter order dated December 13, 1993, the Chief Accountant, under delegated authority, authorized Genesee Power Station Limited Partnership (Genesee): (1) To enter into a long-term loan agreement with the Michigan Strategic Fund (MSF) by December 31, 1993, whereby MSF will issue up to $65 million of tax-exempt bonds and will loan the proceeds to Genesee; (2) to issue up to $26 million of promissory notes no later than December 31, 1995, under a two-year bank loan agreement; and (3) blanket approval for all future issuances of securities and assumptions of liabilities.

On December 14, 1993, Genesee amended its application and requested authority to enter into a long-term loan agreement for up to $75 million of tax-exempt bonds instead of the $65 million originally authorized. No other changes in the authorization are being requested.

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 385.214). All such motions or protests should be filed on or before December 27, 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. 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. 93–31220 Filed 12–21–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–3–4–000]

Granite State Gas Transmission Inc.; Proposed Changes in FERC Gas Tariff

December 16, 1993.

Take notice that on December 10, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 25, with a proposed effective date of January 1, 1994.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that on December 1, 1993, Tennessee filed revised tariff sheets to adjust its recovery for the buydown and buyout of purchase gas contract obligations consistent with the Stipulation and Agreement (the Cosmic settlement) approved by the Commission in Docket Nos. RP83–119, et al. According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-or-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base.

Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to 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 385.214). All such motions or protests should be filed on or before December 23, 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 to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31224 Filed 12-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR93-4-000]

Transok, Inc.; Informal Settlement Conference

December 16, 1993.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Wednesday, January 19, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Mark Hegerle at (202) 208-0927.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31222 Filed 12-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA94-1-000]

Western Gas Resources Storage, Inc.; Petition for Adjustment

December 16, 1993.

Take notice that on December 14, 1993, Western Gas Resources Storage, Inc. (WGRS) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit WGRS to use its tariff on file with the Railroad Commission of Texas (TRC) for services performed pursuant to NGPA section 311.

In support of its petition, WGRS states that it is an intrastate pipeline operating in the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. WGRS owns and operates the Katy Gas Storage Facility, which consists of a storage cavern and associated pipeline facilities as well as a header system. WGRS's transportation and storage rates are subject to regulation by the TRC. WGRS anticipates providing Section 311 transportation and storage service on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for a charge not to exceed the rates on file with the TRC, as follows:

Interruptible Transportation: $0.15 per MMBtu

Interruptible Storage (including related transportation):

Injection—$0.10 per MMBtu

Withdrawal—$0.10 per MMBtu

Capacity—$0.15 per MMBtu per month

The regulations applicable to this proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31223 Filed 12-21-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. CP88-760-017]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

December 15, 1993.

Take notice that on August 26, 1993, Transcontinental Gas Pipe Line Corporation (Transcontinental) tendered for filing with the Federal Energy Regulatory Commission (Commission) a report detailing refunds totaling $1,935,308.14, including interest, paid to its Southern Expansion Project transportation shippers on August 23, 1993, for the period July 5, 1991 through October 31, 1991.

Transcontinental states that the refunds were made to comply with Commission's orders issued March 4, 1993, in Docket No. CP88-760-012 and July 21, 1993 in Docket No. CP88-760-016 which changed the effective date of implementing a switch from modified fixed variable to straight fixed variable rate design from July 5, 1991 to November 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31169 Filed 12-21-93; 8:45 am]

BILLING CODE 6717-01-P

Office of Fossil Energy

[FE Docket No. 93-88-NG]

The Consumers' Gas Co. Ltd.; Order Granting Long-Term Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Consumers' Gas Company Ltd., authorization to export up to 66,000 Mcf per day of natural gas to Canada over a period of 15 years beginning November 1, 1994, or as soon as the necessary pipeline facilities are available for service. The gas would be transported into Canada through the pipeline facilities proposed by InterCoastal Pipe Line Inc. (InterCoastal). The InterCoastal pipeline will be a 157-mile, 24- and 20-inch diameter converted crude oil pipeline extending from Toronto, Ontario, to a new interconnection with ANR Pipeline Company system at the international border near St. Clair, Michigan and Corruna, Ontario. InterCoastal is expected to begin transportation service November 1, 1994.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 9, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31228 Filed 12-21-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-128-NG]

Northridge Gas Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northridge Gas Marketing Inc. authorization to import up to 200 Bcf of natural gas from Canada and to export up to 300 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export after December 4, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31229 Filed 12-21-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-127-NG]

Ocean State Power; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Ocean State Power authorization to import and export up to a combined total of 36.5 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export after December 17, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 9, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31226 Filed 12-21-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-138-NG]

SaskEnergy Inc.; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting SaskEnergy Incorporated authorization to import up to 7.4 Bcf of natural gas from Canada and to export up to 7.4 Bcf of natural gas to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31227 Filed 12-21-93; 8:45 am]

BILLING CODE 6450-01-P

Office of Hearings and Appeals

Cases Filed During the Week of November 19 Through November 26, 1993

During the week of November 19 through November 26, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 15, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of Submission
11/22/93	David DeKok, Harrisburg, Pennsylvania	LFA-0339	Appeal of an Information Request Denial. If Granted: David DeKok would receive access to hard copy versions of 802 microfilmed documents pertaining to the clean-up of the Three Mile Island nuclear accident of 1979.
11/24/93	Paulson Oil Company, Chesterton, Indiana	LEE-0060	Exception to the Reporting Requirements. If Granted: Paulson Oil Company would not be required to file Form EIA-782B "Resellers'/Retailers' Monthly Produce Sales Report."

Date received	Name of refund proceeding/name of refund application	Case No.
11/22/93	Arkansas Electric Cooperative	RF321-19971
11/22/93	Harbert Corporation	RF321-19972
11/22/93	Bill Bewick's Texaco	RF321-19973
11/22/93	Novak Enterprises, Inc	RF340-192
11/22/93	Freeway Texaco	RF321-19974
11/22/93	Lee's Texaco	RF321-19975
11/24/93	Whatley Texaco	RF321-19976

Date received	Name of refund proceeding/name of refund application	Case No.
11/26/93	Wood Automatic Gas Company	RF304-14996
11/19/93 thru 11/26/93	Crude Oil Refund Applications Received	RF272-95033 thru RF272-95046
11/19/93 thru 11/26/93	Atlantic Richfield Applications Received	RF304-14811 thru RF304-14998

[FR Doc. 93-31231 Filed 12-21-93; 8:45 am]
BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4817-3]

Michigan: Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region 5).

ACTION: Notice of tentative determination on partial program application of Michigan for partial program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (USEPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which USEPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as final applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. 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 States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal MSWLF Criteria will apply to all permitted and unpermitted MSWLF facilities.

Michigan applied for a partial determination of adequacy under section 4005 of RCRA. The USEPA reviewed Michigan's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised Federal MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal MSWLF Criteria, and gain full program approval. Michigan's application for partial program adequacy determination is available for public review and comment.

Although RCRA does not require USEPA to hold a hearing on any determination to approve a State/Tribal MSWLF permit program, the USEPA Region 5 may schedule an opportunity for a public hearing on this tentative determination. Details appear below in the "**DATES**" section.

DATES: All comments on Michigan's application for a partial determination of adequacy must be received by USEPA Region 5 by the close of business on February 4, 1994. If there is sufficient public interest, USEPA Region 5 will hold a public hearing on February 4, 1994, starting at 1 p.m., at the offices of the Michigan Department of Public Health, Conference Room 1-C, located at 3423 North Logan Street in Lansing, Michigan. Michigan will participate in the public hearing, if held, by USEPA Region 5 on this subject. Written comments on Michigan's application should be submitted to USEPA Region 5 at the address specified below during the public comment period. In addition, oral and/or written comments can be submitted during the public hearing, if held.

Persons requesting that USEPA Region 5 hold a public hearing and/or wishing to be notified of the public hearing, if held, should contact the USEPA Region 5 contact given below in the "**FOR FURTHER INFORMATION CONTACT**" section, within thirty (30) days of the date of the publication of this notice. Such persons contacting the USEPA will be notified directly if the public hearing will be held or not held, at least 2 weeks prior to February 4, 1994.

ADDRESSES: Copies of Michigan's application for partial adequacy determination are available from 9 am to 4 pm during normal working days at the following addresses for inspection and copying: Michigan Department of Natural Resources, John Hannah Building, 1st floor, Lansing, Michigan 48909, Attn: Mr. Jim Sygo; and USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP-8J. All written comments should be sent to the USEPA Region 5 Office.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP-8J, telephone (312) 886-0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria under part 258. Subtitle D also requires in section 4005 that USEPA determine the adequacy of State municipal solid waste landfill permit programs to ensure compliance with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The Rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

USEPA intends to propose in STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited, narrow part(s) of the State/Tribal 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 40 CFR part 258.

The requirements of the STIR, if promulgated, will address the potential problems posed by the dual State/Tribe and Federal programs that came into effect in October 1993 in those States/Tribes that still have only partial approvals of their MSWLF programs. Federal rules covering any portion of a State/Tribe's program that have not received USEPA approval apply directly to owners and operators as of October 9, 1993. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLFs. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe 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/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program that have been approved.

As provided in the revised Federal Criteria, USEPA's national subtitle D standards took effect on October 9, 1993. On October 1, 1993, the USEPA published a final ruling which modified the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). Thus, for certain small landfills that accept less than 100 tons of waste per day, the Federal landfill criteria will not be effective until April 9, 1994, instead of October 9, 1993. Consequently, any portions of the revised Federal MSWLF Criteria which are not included in a State/Tribal MSWLF program by October 9, 1993, would apply directly to owners and operators of large MSWLFs, and portions not included by April 9, 1994, would apply directly to owners and operators of certain small MSWLFs. The exact classifications of landfills and details on the effective date extensions are contained in the final rule. See 58 FR 51536 (October 1, 1993).

USEPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. USEPA 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 USEPA'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, the USEPA 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.

USEPA Regions will determine whether a State/Tribe has submitted an adequate program, based on the interpretation outlined above. USEPA plans to provide more specific criteria for this evaluation when it proposes the STIR. USEPA 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.

USEPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. USEPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

B. State of Michigan

On October 6, 1993, Michigan submitted an application for partial program adequacy determination. USEPA has reviewed Michigan's application and has tentatively determined that the State's Subtitle D program will ensure compliance with the following portions of the revised Federal Criteria.

1. General requirements, definitions, and consideration of other Federal laws (USEPA approval is for Michigan requirements that are comparable to 40 CFR 258.1, 258.2, and 258.3);

2. Location restrictions for airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas, and closure of existing units (USEPA approval is for Michigan requirements that are comparable to 40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16);

3. Operating criteria for excluding hazardous waste, daily cover material, disease vector control, explosive gases control, air criteria, access restrictions, run-on/run-off control systems, surface water requirements, liquids restrictions, and recordkeeping requirements (USEPA approval is for Michigan requirements that are comparable to 40 CFR 258.20, 258.21, 258.22, 258.23, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.29);

4. Groundwater monitoring applicability, systems, sampling and analysis, detection monitoring, assessment monitoring program, assessment of corrective measures, selection of remedy, and implementation requirements (USEPA approval is for Michigan requirements that are comparable to 40 CFR 258.50, 258.51, 258.52, 258.53, 258.54, 258.55, 258.56, 258.57, and 258.58);

5. Closure and post closure care requirements (USEPA approval is for Michigan requirements that are comparable 40 CFR 258.60 and 258.61).

In addition, USEPA Region 5 is approving Michigan requirements for MSWLF design that are comparable to 40 CFR 258.40. Michigan rules require all new MSWLFs to be designed and constructed utilizing a composite liner system with leachate collection. The primary component of the system is a composite liner comprised of a flexible membrane liner underlain by low permeability recompacted clay soils or naturally occurring clay soils. In areas where such clay soils are naturally occurring or are reasonably available for placement and recompaction, the Michigan requirements for the clay component of the primary liner meet or substantially exceed the thickness and permeability of the clay component of the Subtitle D composite liner.

In areas where clay soils are not naturally occurring or are not reasonably available for placement and recompaction, Michigan rules allow for the use of engineered bentonite geocomposite liners. Designs utilizing bentonite geocomposite liners must consist of a double liner system with a leak detection system in between a primary composite liner and a secondary liner component. The purpose of the leak detection system is to detect and collect any potential leakage of liquids through the primary liner. If contaminants or excessive amounts of liquids are discovered in the leak detection system during the active life or post closure care period of the MSWLF unit, assessment monitoring or a corrective action procedure is

required. USEPA Region 5 feels that this design exceeds the Federal design standards by requiring the point of compliance for maximum contaminant levels allowable in groundwater to be directly underneath the primary composite liner of the MSWLF unit.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were USEPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved.

To ensure compliance with all of the revised Federal Criteria, Michigan needs to adopt into regulation the financial assurance requirements of 40 CFR 258.70(a). In addition, the Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Michigan requires samples to be filtered and preserved in the field in accordance with standard published procedures. The Agency intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State will be required to come into compliance with the provisions of 40 CFR 258.53(b). In the meantime, the State will not be given approval for this requirement.

Michigan plans to complete any revisions and amendments by October 1995. Michigan began the process of revising financial assurance requirements by issuing draft revisions for comment on August 11, 1993. To allow the State to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, USEPA is proposing to approve those portions of the State's program that are ready for action today.

USEPA cautions Michigan that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR part 258 unless the State/Tribe can demonstrate to the Regional Administrator that it has sufficient cause for not meeting the deadline. If the Regional Administrator believes sufficient cause exists, the expiration date may be extended. The extension and new expiration date would be published in the **Federal Register**. Expiration of a partial approval would mean that the Federal Criteria would apply, and the flexibility provided for approved States/Tribes by the Federal Criteria would no longer be available in the State/Tribe. USEPA urges Michigan to work diligently to make the necessary revisions to those portions of its permit program that are not being proposed for approval today.

The public may submit written comments on USEPA's tentative determination until February 4, 1994. USEPA will consider all public comments on its tentative determination that are received during the public comment period and during any public hearing, if held. Issues raised by those comments will be the basis for a final determination of adequacy for Michigan's program. USEPA will make a final decision on whether or not to partially approve Michigan's program by March 11, 1994, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal MSWLF Criteria independent of any State/Tribe enforcement program. As USEPA explained in the preamble to the final MSWLF Criteria, USEPA expects that any owner or operator complying with provisions in an approved State program should be considered to be in compliance with the revised Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

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 tentative 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 proposed 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 14, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93-31271 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180908; FRL 4745-4]

Pesticide Programs Annual Report on Crisis Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during fiscal year 1993. During 1993, State agencies issued 52 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations in 40 CFR 166.40 pursuant to section 18 of the FIFRA. During this time period, EPA revoked two crisis exemptions.

FOR FURTHER INFORMATION CONTACT: By mail: Rebecca S. Cool, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703-308-8417).

SUPPLEMENTARY INFORMATION: The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require EPA to issue annually a notice for publication in the **Federal Register** which summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR part 166 sets forth the regulations pertaining to crisis exemptions. This subpart allows the head of a Federal or State agency to issue a crisis exemption in a situation involving an unpredictable emergency situation when: (1) An emergency condition exists; and (2) the time element with respect to the application of the pesticide is critical and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request. This subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State or Federal agency to utilize the crisis provisions.

During the fiscal year 1993 (October 1, 1992 through September 30, 1993), 52 crisis exemptions were declared by State agencies. A breakdown of the FY'

93 crisis declarations by State agency follows:

State Agency	No. of crisis exemptions	Pesticide	Site
Arkansas	3	Esfenvalerate	Wheat
		Paraquat	Rice
		Sodium chlorate	Wheat
California	5	Avermectin	Melons
		Avermectin	Pears
		Cypermethrin	Sugar beets
		Fenpropathrin	Tomatoes
		Myclobutanil	Tomatoes
Colorado	3	Bifenthrin	Corn
		Cyhalothrin	Onions
		Permethrin	Small grains
Florida	2	Imazethapyr	Lettuce & Escarole
		Propiconazole	Celery
Georgia	2	Avermectin	Tomatoes
		Chlorothalonil	Leafy greens
Iowa	1	Propiconazole	Seed corn
Idaho	2	Chlorpyrifos	Hops
		Paraquat	Dry peas, Lentils
Louisiana	2	Cyhalothrin	Sorghum
		Paraquat	Rice
Michigan	1	Iprodione	Seed Canola
Minnesota	2	Metalaxyl	Potatoes
		Propiconazole	Corn
Mississippi	1	Paraquat	Rice
Montana	2	Carbaryl	Canola
		Permethrin	Small grains
Nebraska	1	Propiconazole	Corn
Nevada	1	Cyhalothrin	Onions
New Mexico	3	Chlorpyrifos	Wheat
		Cyfluthrin	Chili peppers
		Cypermethrin	Onions
New York	1	Fomesafen	Snap & dry beans
North Dakota	2	Metalaxyl	Potatoes
		Sethoxydim	Crambe
Ohio	2	Cypermethrin	Onions
		Dimethoate	Radishes
Oregon	2	Chlorpyrifos	Hops
		Oxyfluorfen	Raspberries
Puerto Rico	1	Avermectin	Tomatoes
Texas	7	Avermectin	Melons
		Avermectin	Peppers
		Chlorpyrifos	Wheat
		Cyhalothrin	Rice
		Metolachlor	Leucaena [1]
		Norflurazon	Bermudagrass
		Oxyfluorfen	Leucaena [1]
Virginia	1	Bifenthrin	Peanuts
Washington	5	Avermectin	Pears
		Chlorothalonil	Rhubarb
		Chlorpyrifos	Hops
		Oxyfluorfen	Raspberries
		Paraquat	Dry peas, Lentils

[1] Crisis revoked

During the 1993 fiscal year, EPA revoked Texas's crisis exemptions for the use of metolachlor and oxyfluorfen on leucaena to control weeds, based on the determination that an emergency

condition did not exist, since the pest problem was routine.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 6, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-30974 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30108D]; FRL-4746-9]

J. J. Mauget Co.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by J. J. Mauget Co., to conditionally register the fungicide product Fungisol, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 27, 1976 (41 FR 8532), which announced that J. J. Mauget Co., PO Box 3422, Burbank, CA 91504, had submitted an application to register the fungicide product Fungisol, (EPA File Symbol 7946-A), containing the active ingredients [2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate at 1.0 percent, active ingredients not included in any previously registered product.

EPA approved the application for general use for Fungisol on July 26, 1982, in which a notice published in the **Federal Register** of September 15, 1982 (47 FR 40707), and contains the active ingredients which were amended to read "[2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate at 1.7 percent and methyl 2-benzimidazolecarbamate at 0.3 percent," EPA Registration Number 7946-6. The product was marketed until October 10, 1989, when it was canceled because of non-payment of the maintenance fees. However, since the non-payment was inadvertent, the company has been trying to get the product registration re-instated.

The application was approved again on September 8, 1993, and classified for general use as Fungisol for internal treatment by micro-injection as a systemic aid in the suppression of certain fungal diseases on ornamental trees. The product was assigned EPA Registration Number 7946-14.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of [2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate and methyl 2-benzimidazolecarbamate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of [2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate and methyl 2-benzimidazolecarbamate, during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(A), provided that you submit an acceptable dermal sensitization study, Guideline Reference Number 81-6, within 12 months of the date of this registration notice. At this time, the Agency is not requiring additional toxicological data. In the event the manufacturing process and/or the method of application of the product change, additional data may be required.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on [2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate and methyl 2-benzimidazolecarbamate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: December 3, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-30866 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30356; FRL-4743-1]

Certain Companies; Applications to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products, containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 21, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30356] and the registration/file symbol to: Public Response and Program Resources Branch, Field Operations Division (7506C), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM18 Phil Hutton	Rm. 213, CM #2 (703-305-7690).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 21 Sidney C. Jackson (Acting)	Rm. 227, CM #2 (703-305-6900).	-Do-
PM 23 Joanne I. Miller	Rm. 237, CM #2 (703-305-7830).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67186-R. Applicant: Mauri Laboratories, 9 Moorebank Ave., Moorebank, NSW 2170 Australia. Product name: Victus. Biological Control Agent. Active ingredient: *Pseudomonas fluorescens* strain NCIB 12089 at 1.0 percent. Proposed classification/Use: None. Controls bacterial blotch of cultivated mushrooms. (PM 21)

2. File Symbol: 27586-L. Applicant: USDA Forest Service, Forest Pest Management, P.O. Box 96090, Washington, DC 20090-6090. Product name: Technical MCH. Insecticide. Active ingredient: 3-Methyl-2-cyclohexene-1-one at 2.1 percent. Proposed classification/Use: General. A controlled release formulation to prevent infestation of Douglas fir, True fir, and Spruce by the Douglas beetle and Spruce beetle. (PM 18)

3. File Symbol: 59639-IR. Applicant: Valent U.S.A. Corporation, 1333 North California Blvd., Walnut Creek, CA 94596-8025. Product name: Flumiclorac Pentyl Technical. Herbicide. Active ingredient: Flumiclorac pentyl at 95.3 percent. Proposed classification/Use: None. For formulation use only. (PM 23)

4. File Symbol: 59639-IE. Applicant: Valent Corporation. Product name: Resource Herbicide. Herbicide. Active ingredient: Flumiclorac pentyl at 10.6 percent. Proposed classification/Use: None. For control of broadleaf weeds in soybeans and field corn. (PM 23)

5. File Symbol: 7501-RUT. Applicant: Gustafson, Inc., P.O. Box 660065, Dallas TX 75266-0065. Product name: Gus 376 Concentrate Biological Fungicide. Fungicide. Active ingredient: *Bacillus subtilis* MBI 600, ATCC-SD 1414 (not more than $5.5X10^{10}$ viable spores per gram) at 2.75 percent. Proposed classification/Use: None. For formulation into registered end-use products and for use as a seed treatment. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: December 2, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-30867 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4817-5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; In re Commercial Oil Services Superfund Site, Oregon, OH

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, notice is hereby given that a proposed administrative settlement concerning the Commercial Oil Services Superfund Site ("the Site") was issued by the Agency on September 28, 1993. Subject to review by the public pursuant to this Notice, the settlement was approved by the United States Department of Justice on November 22, 1993. The settlement agreement, issued pursuant to sections 106(a), 122(g)(4) and 122(h) of CERCLA, requires the Respondents to undertake and complete removal activities at the Site and to reimburse the Agency's past response costs and future oversight response costs incurred at the Site. The settlement agreement also requires the *de minimis* respondents to pay specified amounts of money, which shall be used to pay for performance and completion of work specified in the proposed settlement and to reimburse the Agency's past response costs and oversight response costs incurred at the Site.

DATES: Comments must be submitted on or before January 21, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA-10J, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In Re Commercial Oil Services Superfund Site, Oregon, Ohio, U.S. EPA Docket No. V-W-94-C-213.

FOR FURTHER INFORMATION CONTACT: Richard M. Murawski, U.S. Environmental Protection Agency, Assistant Regional Counsel (CM-3T), 77 W. Jackson Blvd., Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The parties listed below have executed binding certifications of their consent to participate in the settlement.

Respondents: Allied Signal, Inc.; American Metal Cleaning, Inc.; American Shipbuilding Company; FKI Industries, Inc.; Beazer East, Inc.; Black Equipment, Inc.; Brondes Motor Sales, Inc.; Brown Motor Sales Co.; Brush Wellman, Inc.; Chemcentral Corporation Chrysler Corporation; Crown Cork and Seal Company, Inc.; Cooper Industries; Dana Corporation; Doehler-Jarvis Castings; Epic Metals Corporation; Ferry Cap and Set Screw Co.; Fiske Brothers Refining Company; Ford Motor Company; General Motors Corporation; Tri Level, Inc.; Chevron U.S.A., Inc.; Hydro Aluminum Bohn; Hunt-Wesson, Inc.; Safety-Kleen Envirosystems Company; Interlake Corporation; Kelsey-Hayes Company; Latrobe Steel Company; Libbey-Owens-Ford Co.; Lubrizol Corporation; Martin Marietta Corporation; Borg Warner Corporation; Matlack, Inc.; Merce Industries Incorporated; Metal Forge Company; Michigan Ohio-Pipeline; Nabisco Biscuit Co.; National Electrical Carbon Corporation; Ohio Edison Company; Owens-Illinois, Inc.; Peterson American Corporation; Roadway Express, Inc.; Safety-Kleen Corporation; Bob Schmidt Chevrolet, Inc.; Seneca Wire and Manufacturing Company; Shell Oil Company; BP America Inc.; Sun Company, Inc.; Sundstrand Corporation; Superior Overall Laundry Co.; Tecumseh Products Company; Teledyne CAE; Centerior Energy Corporation; Toledo Generator Service; Union Oil Company of California; U.S. Reduction Co.; Westgate Auto Service, Inc.; Total Petroleum, Inc.; Ryder System, Inc.; Whirlpool Corporation; Willson Builders, Inc.

DE MINIMIS Respondents: Abbey Etna Machine Company; George F. Ackerman Co.; Airco Gases Division of the Boc Group, Inc.; Air Products and Chemicals, Inc.; Alpha Tube Corporation; American Koyo Corporation; American Tool & Die, Inc.; Ametek Inc.; Amos Motor & RV; Anthony Wayne Local Schools; Arbor Division of Automotive Industries, Inc.; Arco Pipe Line Company; Atech Chemical Coatings; Auburndale Truck Company, Inc.; Autometric of Royal Oak; Avery Dennison Corporation; B & L Auto Service; The Babcock & Wilcox Company; Bailey Implement Co.; Be-Kan, Inc.; Bernard Plastic Products; Bi-State Ford Truck Sales, Inc.; Blissfield Manufacturing Company; Bohl Equipment Co.; Boilers, Controls & Equipment, Inc.; Bolley Motor Sales, Inc.; A.A. Boos & Sons, Inc.; Bowling Green Jaycees Inc./Recycling Inc.; Bowling Green Lincoln Mercury; Bowling Green State University; Bridgestone/Firestone, Inc.; Browning-Ferris Industries of Michigan, Inc.; Buckeye Aluminum Extrusion; Bud Industries, Inc.; The Budd Company; Buhrow's, Inc.; Burndy Corporation; The Uniroyal Goodrich Tire Company; Campbell Soup Company; Cardox Division Liquid Air Corporation; Toledo Molding & Die, Inc.; Cargill Incorporated; Cascade Chrysler Dodge, Inc.; Cedar Fair, L.P.; Centrex Corporation; Certain-Teed Corporation; Champion International Corporation; Chandler Products; Chapin & Chapin, Inc.; Chemtron Corporation; Ecolab Inc.; Oxy Oil and Gas USA, Inc.; Charlie's Dodge, Inc.; The City of Oregon, Ohio; Clearr Industries, Inc.; Cleveland-Cliffs, Inc.; The Cleveland Twist Drill Company; Coca-Cola Bottling Company of Northern Ohio; Columbia Gas of Ohio, Inc.; Columbia LNG Corporation; Columbia Transportation Div. Oglebay Norton Company; Commercial Aluminum Cookware Company; Consolidated Freightways; Continental Baking Company; Continental Coffee Products Company; Cook's Sohio; Cooper Tire & Rubber Company; Coulton Chemical Corp.; S.E. Johnson Companies, Inc.; CSX Transportation, Inc.; H.L. Crouse Construction Company, Inc.; Cummins Diesel of Northern Ohio; Dale's/Old's Sohio; Dan's Truck Refrigeration, Inc.; Department of the Navy; Detroit and Toledo Shoreline Railroad; Dick's Sohio; Dishop, Richard; Donnelly Corporation; H.H. Donnelly and Associates, Inc.; Pat Doyle Motor Sales, Inc.; Driggs Dairy Farms, Inc.; Dunn Chevrolet Oldsmobile, Inc.; Durr Industries, Inc.; E & L Transport Company; Eaton Corporation; Eisenhour Motor Sales, Inc.; Elton's Union 76; Environmental Management Control, Inc.; Erie Molding; Ervin Amasteel; Exothermics-Eclipse, Inc.; Purolator Products Company; Falcon Aeronautical, Inc.; Falvey Motors of Troy, Inc.; Faunce and Faunce, Inc.; Federal Mogul Corporation; Fields Sunoco; Fondessy Enterprises; The France Stone Company; Les's Sunoco; Franklin Park Lincoln-Mercury, Inc.; Foster Chevrolet, Inc.; Gage Oldsmobile, Inc.; Emro Marketing Company; General Electric Company; General Tire Service; Genoa Motors, Inc.; Girkins Electric Company; Gitgood Trucking Company; Gladieux Food Corporation; Good Displays, Inc.; Goodyear Tire and Rubber Company; Goody's Truck Parts and Equipment; Gould, Inc.; W.W. Williams Company; Great Lakes Towing Company; Greenwood Chevrolet, Inc.; Gross Electric, Inc.; Gulf States Paper Corporation; Gene Hamilton Chevrolet, Inc.; Hancock Landmark, Inc.; Hannah Inland Waterways; Harrington Chevrolet-Cadillac Company; Harrison Ford, Inc.; Hatfield Oldsmobile, Inc.; Heidelberg College; Hertz Corporation; Hill Ford Sales, Inc.; Heatherdowns Auto Service Company, Inc.; H.J. Heinz Company; C.H. Heist Corporation; High Voltage Systems, Inc.; Hoechst Celanese Corporation; U.S. Transportation Systems, Inc.; Huss Equipment Corporation; Industrial Equipment of Northern Ohio, Inc.; BASF Corporation; Inverness Club; Tool & Equipment Sales and Service, Inc.; Janson Tool and Die Company; Johnson BP; Johnson Excavating; Kaiser Aluminum &

Chemical Corporation; Kasle Iron and Metals; Keller Chevrolet, Inc.; Kelly, Edward and Sons, Inc.; Kel-Mar, Inc.; Kiemle-Hankins Company; Kistler Ford, Inc.; K-Mart Corporation; Knapp Motors, Inc.; Kripke-Tuschman Ind., Inc.; Landmark, Inc.; Larry's Gulf Service; Lee's Sales and Service; Lenawee Farm Bureau Oil Co-op, Inc.; LBA Custom Printing Company, Inc.; Norman Levy Associates, Inc.; Leigh Products; Libra Industries, Inc.; Lily-Tulip, Inc.; Linderme Tube Company; Linver-Kripke; Liquid Air Corporation; Lo-Temp Brazing Company, Inc.; Lucas Aerospace Power Equipment Corporation; Lucas County Commissioners; Luedtke Engineering Company; Luttrell Auto Supply Company; Manufacturers Enameling Corporation; Massey Ferguson, Inc.; Maumee Lincoln-Mercury, Inc.; Mayberry's Truck and Auto Service, Inc.; McCoy's Service; McCoy's Sales and Service, Inc.; McLaughlin Car Care; McNeill Chevrolet, Inc.; McNerney and Son, Inc./Wallace Trucking; Medical College of Ohio; Mellocraft Company; Mercy Hospital of Toledo, Ohio; Michael Realty Services; Mid-America Realty Corporation; Midas Muffler Service Stations; Mid-States Terminals, Inc.; Midwest Mica and Insulation Company; Mid-Valley Pipeline Company; Miller's Arco Station; Milt Wagner Chevrolet; Mobil Oil Corporation; Modine Manufacturing Company; Morgan Services, Inc.; Howard T. Moriarity Company, Inc.; Motor Rebuilders and Parts, Inc.; MRMC, Inc.; Municipal Utilities; City of Bowling Green; Napco Plastics Incorporated; NASA-Lewis Research Center; National Laboratories; Nationwide Belting Mfg. Co.; Norfolk and Western Railway Company; North American Car Corporation; Northland Chrysler-Plymouth, Inc.; Northwestern Dodge, Inc.; Ohio Bell Telephone Company; Ohio Diesel Technical Institute; Ohio Department of Transportation; A.J. Boellner; Ottawa River Yacht Club, Inc.; Overnite Transportation Company; OHM Remediation Services Corporation; Packaging Corporation of America; Patton Pontiac Buick Cadillac and GMC, Inc.; Peerless Molded Plastics, Inc.; Penn Aluminum International, Inc.; J.C. Penney Company, Inc.; Pepsi-Cola General Bottlers of Ohio, Inc.; Perrysburg Collision Services, Inc.; Perrysburg Board of Education; Perstorp Polyols, Inc.; Pfizer, Inc.; PMC Industries, Inc.; Placid Refining Company; Point Place Amoco; Polar, Inc.; Professional Automotive Service, Inc.; Dial/Purex; Martin Machine and Tool, Inc.; BTL Specialty Resins Corporation; Reitz Tool and Die Company, Inc.; Robinair Division; Roesch, William R.; Rogar Int.; Roth Motor Sales Company; Ruan Leasing Company; Rubini Motors, Inc.; Ruch Construction Company; Rudolph/Libbe, Inc.; Ruth Corporation; RB&W Corporation; Ryder Truck Rental, Inc.; Sand Creek Community Schools; Sandusky Plastics, Inc.; Schindler Elevator Corporation; Schlageter/Hallet and Associates, Inc.; Schmidt, Ed Pontiac-GMC Truck, Inc.; Schmidt Lease, Inc.; Don Scott Chevrolet-Pontiac, Inc.; Seaway Food Town, Inc.; SEOVAC; Service Garage, Inc.; Service-Maintenance-Sales Company, Inc.; Service Products Buildings, Inc.; Sheller-Globe Corporation; Sherwin Metal Reclaiming Company; Smith, Al Chrysler-Plymouth-Dodge, Inc.; W.E. Smith and Sons, Inc.; Furniture Smith, Inc.; Wayne Smith Sunoco; Southland Corporation; Spartan Chemical Company, Inc.; Spurgeon Motor Sales; Sterling Abrasive Products Company; St. Catherine Parish; St. Vincent Medical Center; Standard Products Company; State Line Auto Parts; Steelcase, Inc.; Gene Stevens Olds, Inc.; Stewart Gibson Company; Stowe Woodward; Straka Service; H.P. Streicher, Inc.; Staub, Tim P.; Suburban Motors Company, Inc.; Swanton Local Schools; Tag Chemicals, Inc.; Tank Motor Sales Company; Taylor Buick, Inc.; Thermal Engineering Company; Throne Auto Service, Inc.; R.W. Tinney, Inc.; Toledo Automobile Dealers Association; Toledo Automatic Screw Company; Toledo Blade Company; City of Toledo; Toledo Heaters Company; Toledo Molding and Die, Inc.; Toledo Pickling and Steel Sales, Inc.; Toledo Public Schools; Toledo Sign Company; Toledo Testing Laboratory, Inc.; Toledo Towel Supply Company; Tony's Gulf; Triangle Garage; Trilby Automotive; Tronair, Inc.; Troy Collision, Inc.; Tuffy Associates Corporation; Tuff-Kote Dinol, Inc.; Union Carbide Corporation; United Parcel Service, Inc.; United States Coast Guard; United States Postal Service; University of Toledo; Valiton Chrysler Plymouth Imports; Village Farm Dairy; Volkswagen of America, Inc.; Vroman Foods; Waco Gas Station; Wacker Silicones Corporation; Wagner Sunoco; E.S. Wagner Company; Walt's Auto World; Webster Manufacturing Company; Weinrich Sohio; Weldon F. Stump and Co., Inc.; Wheaton Cartage Company; White Chevrolet; White Company; Whitman Ford; Washington Local Schools; Wills Trucking; Wolverine Pipeline Company; Wood County Garage; Woodville Quickstop; Wright, James; Young Equipment Company, Inc.; Yaw's Sunoco Service.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this Notice.

A copy of the settlement agreement and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Richard M. Murawski, Assistant Regional Counsel (CM-3T), 77 W. Jackson Blvd., Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601-9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93-31272 Filed 12-21-93; 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 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: 360-0506.

Title: Application for FM Broadcast Station License.

Form Number: FCC Form 302-FM.

Action: Extension of a currently approved collection.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses.)

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 670 responses; 4 hours average burden per response; 2,680 hours of total annual burden.

Needs and Uses: Licensees and permittees of FM broadcast stations are

required to file FCC Form 302–FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. In our continuing Total Quality Management (TQM) efforts, questions were identified that need clarification. These clarifications have been incorporated into the form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC Form 302–FM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–31196 Filed 12–21–93; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Supplemental Notice of Intent To Prepare an Environmental Impact Statement

To All Interested Agencies, Groups, and Persons: The General Services Administration (GSA) published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on 25 March 1993. The project described in the NOI was the proposed construction of a new Federal Building to house the National Oceanic and Atmospheric Administration (NOAA) in Boulder, Colorado. The proposed new building is to consist of approximately 236,000 occupiable square feet of laboratory and related space and will be constructed on property owned by the Federal Government at 325 Broadway, Boulder, Colorado. The new building is proposed to house approximately 1,015 personnel, and provide 600 outside surface parking spaces. The proposed project is being undertaken to consolidate existing NOAA offices and laboratories, now located in leased space and on the NIST campus, and to provide for expansion space for NOAA.

On or about 1 June 1993, GSA and the National Institute of Standards and Technology (NIST) agreed in principle to expand the EIS already underway for GSA activities to encompass NIST's proposed activities at 325 Broadway, as well. Under a formal agreement between NIST and GSA, signed 8 September 1993, NIST agrees to be a cooperating agency while GSA will continue as the lead agency for this joint EIS.

NIST's reasonably foreseeable activities include construction of a new Advanced Technology Laboratory (ATL), a central plant and phased renovation of existing buildings at the 325 Broadway campus. The proposed ATL would be an approximately 64,500 net usable square foot facility to meet the requirements of current and emerging state-of-the-art research and metrology. The proposed Central Plant would supply central site cooling and heating for NIST facilities and replace individual heating and cooling systems in existing buildings. The proposed phased renovations are planned primarily for Building 1, and may also include Buildings 2, 3 and 24.

The joint EIS will evaluate a range of reasonable alternatives to these proposed actions which may include but is not limited to the general areas of: leasing, constructing at an alternate site(s), and no action.

To further identify and clarify the scope of issues that will be addressed in this joint EIS, a scoping summary document will be circulated for public comment. This document is being developed from comments and issues raised by the public and received by GSA as a result of the 21 October 1992 public meeting and comment period, the 25 March 1993 NOI which appeared in the **Federal Register**, a 25 March 1993 scoping letter sent out by GSA, as well as comments and issues raised by the public and received by GSA and NIST regarding the proposed development of the site at 325 Broadway and any potential impacts to the quality of the human environment.

Further public participation is invited by providing written comments to GSA. Comments and any questions regarding the EIS or the scoping process should be directed to: General Services Administration, Public Buildings Service, Planning Staff (8PL), Denver Federal Center/P.O. Box 25546, Denver, Colorado 80225–0546, Attn: Sharon Malloy, Phone: (303) 236–7244.

Comments should be directed to GSA within 30 days of the publishing of this supplemental Notice of Intent.

Dated: December 9, 1993.

John M. Hewins,

Acting Regional Administrator, General Services Administration, Region 8.

[FR Doc. 93–31153 Filed 12–21–93; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6 p.m.–9 p.m., January 9, 1994. 8 a.m.–5 p.m., January 10, 1994.

Place: Sheraton Colony Square Hotel, 188 14th Street, N.E., Atlanta, Georgia 30361.

Status: Open 6 p.m.–7:30 p.m., January 9, 1994. Closed 7:30 p.m., January 9, 1994, through 5 p.m., January 10, 1994.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 7:30 p.m., January 9, through 5 p.m., January 10, the committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4580.

Dated: December 15, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–31176 Filed 12–21–93; 8:45 am]

BILLING CODE 4160–18–M

Savannah River Site Environmental Dose Reconstruction Project: Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Savannah River Site Environmental Dose Reconstruction Project.

Time and Date: 7 p.m.–9 p.m., January 5, 1994.

Place: Ramada Town House Hotel, Salon A, 1615 Gervais Street, Columbia, South Carolina 29201.

Status: Open to the public for observation and comment, limited only by space available.

Purpose: Under a Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and uses.

The Radiological Assessments Corporation (RAC) is currently performing Phase I of a radiation dose reconstruction study at the Savannah River Site (SRS) in South Carolina. The study identifies records of potential value for reconstructing past SRS radiation doses to the public. The information will be used during the study's Phase II to calculate dose and risk to the public from SRS operations.

RAC is evaluating records found during onsite and offsite searches, and is summarizing all important documents in a specially developed computer database. All potentially useful records discovered by RAC during the study will be made available to the public and are being placed in the library reading room at the University of South Carolina. RAC will demonstrate the records database and will discuss information discovered to date in over 30,000 boxes of records under review. Agenda items will include the document review process and findings to date and public comments and suggestions.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 404/448-7040.

Dated: December 15, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-31178 Filed 12-21-93; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9:30 a.m.–4 p.m., January 18, 1994.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will examine the need to advance interagency collaboration and explore health care reform implications for mental health data.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436-7050.

Dated: December 15, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-31177 Filed 12-21-93; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Revision; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Forms; *Form Nos.:* HCFA-114, -116; *Use:* These forms must be completed by entities performing laboratory testing on human specimens for health purposes. The information on these forms is vital to the certification process; *Frequency:* Biennially; *Respondents:* Small businesses or organizations, State or local governments, businesses or other for profit, Federal agencies or employees, nonprofit institutions; *Estimated Number of Responses:* 80,000; *Average Hours Per Response:* 5.5; *Total Estimated Burden Hours:* 440,000.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Third Party Premium Billing Request; *Form No.:* HCFA-2384; *Use:* This form is used as an authorization to designate that a family member or other interested party receive the Medicare premium bill and pay it on behalf of a Medicare beneficiary; *Frequency:* On occasion; *Respondents:* Individuals or households, nonprofit institutions; *Estimated Number of Responses:* 15,000; *Average Hours Per Response:* .4166 (25 minutes); *Total Estimated Burden Hours:* 6,250.

3. *Type of Request:* Revision; *Title of Information Collection:* Ambulatory Surgical Center Payment Rate Survey; *Form No.:* HCFA-452; *Use:* This is a request for reapproval of answer sheets A and B only to collect new data for rate updating after 1994. The forms were used in 1992 to collect procedure charge and utilization data from Medicare participating ambulatory surgical centers for facility payment updating; *Frequency:* Periodically; *Respondents:* Small businesses or organizations; *Estimated Number of Responses:* 250; *Average Hours Per Response:* 10; *Total Estimated Burden Hours:* 2,500.

4. *Type of Request:* New; *Title of Information Collection:* Online Survey Certification and Reporting System (OSCAR); *Form No.:* HCFA-R-159; *Use:* This questionnaire will allow HCFA to ascertain the level of usefulness of the OSCAR system; *Frequency:* One time; *Respondents:* State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 1,400; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 350.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Conditions of Participation for Rehabilitation Agencies and Conditions for Coverage for Physical Therapists in Independent Practice; *Form No.:* HCFA-R-44; *Use:* This information is needed to determine if an agency or therapist is in compliance with published health and safety requirements; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* Not applicable; *Average Hours Per Response:* Not applicable; *Total Estimated Burden Hours:* 21,190.5 (recordkeeping).

Additional Information or Comments: Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503.

Dated: December 10, 1993.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Budget and Administration, Health Care Financing Administration.

[FR Doc. 93-31134 Filed 12-21-93; 8:45 am]

BILLING CODE 4120-03-P

[OIS-023-N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1993

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

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during July, August, and September of 1993 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

No revisions to the Medicare Coverage Issues Manual were published during the third quarter of 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Cotton, (410) 966-5260 (For Medicare instruction information); Walter Rutemueller, (410) 966-5395 (For Medicare coverage information); Pat Prete, (410) 965-3246 (For Medicaid instruction information); Jacqueline Kidd, (410) 966-4682 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 35 million Medicare beneficiaries and 31 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from July 1 through September 30, 1993.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989, publication.

To aid the reader, we have organized and divided this current listing into four addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of March 31, 1993. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those

wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk–Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles are current as of the September 1, 1992 update of the Compilation of the Social Security Laws and the regulations are those in effect as of October 1, 1993.

The CD–ROM disk does not contain Appendices M (Interpretative Guidelines for Hospices) and R (Resident Assessment for Long Term Care Facilities) of the State Operations Manual. Copies of these appendices may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA–Pub. 14–3) transmittal entitled "Completion of the Monthly Statistical State Report for Regional Carriers for Durable Medical Equipment Prosthesis, Orthotics and Supplies," use the Superintendent of Documents No. HE 22.8/7–4, and the HCFA transmittal number 1462.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 965–3246.

Questions concerning all other information may be addressed to Jacqueline Kidd, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4682.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: December 13, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.

March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16, 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)
July 9, 1993 (58 FR 36967)
September 1, 1993 (58 FR 46200)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

Addendum III—Medicare and Medicaid Manual Instructions, July Through September 1993

Trans. No.		Manual/subject/publication number
		Intermediary Manual **Part 3—Claims Process (HCFA–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
IM–93–2	•	Adjustment Bills. Procedures for Submitting Adjustment Bills to CWF. Tolerance Guides for Submitting Adjustment Bills. Automation of Adjustment Processing.
1602	•	Home Dialysis Equipment Provided to Home Hemodialysis and Peritoneal Dialysis Patients. Coverage of Home Dialysis Supplies. Coverage of Home Dialysis Support Services.
1603	•	Provider Electronic Billing File and Record Formats. Alphabetic Listing of Data Elements.
1604	•	Review of Form HCFA–1450 for Inpatient and Outpatient Bills.
1605	•	Outpatient Mental Health Treatment Limitation. Application of Limitation.
		Carriers Manual **Part 3—Claims Process (HCFA–Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7–4)**
1462	•	Completion of the Monthly Statistical State Report for Regional Carriers for Durable Medical Equipment, Prosthesis, Orthotics and Supplies.
1463	•	Nurse Practitioner Services. Clinical Nurse Specialist Services. Services of Nonphysician Personnel Furnished Incident to Physicians' Services. Nurse-Midwife Services. Physician Assistant Services. Determining Reasonable Charges for Services of Physician Assistant. Nurse Practitioner Services.
1464	•	Use of Summary Voucher for Notice of Payment to Physician or Supplier.
		Carriers Manual **Part 4—Professional Relations (HCFA–Pub. 14–4)** **(Superintendent of Documents No. HE 22.8/7–4)**
8	•	Purpose of Health Insurance Claim Form—HCFA–1500. Items 1–13—Patient and Insured Information. Items 14–33—Physicians or Supplier Information. Place of Service Codes and Definitions.
		Program Memorandum **Intermediaries (HCFA–Pub. 60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–93–2	•	Need to Improve Submission of Hospital and Independent Renal Cost Report Data Through the Hospital Cost Report Information System and the Independent Renal Dialysis Information System.
		Program Memorandum **Carriers (HCFA–Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–93–1	•	Therapeutic Shoes for Individuals With Severe Diabetic Foot Disease.
B–93–2	•	Carrier Coordination of Benefits Interim Flat File Formats.
B–93–3	•	Physician Services to Nursing Facility Residents.
B–93–4	•	Allograft Heart Valves.
AB–93–3 ...	•	Medicare Part B Coverage of Influenza Virus Vaccines.
AB–93–4 ...	•	Medicare Coordinated Care Plans Directory.
		Program Memorandum **Medicaid State Agencies (HCFA–Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
93–6	•	Title XIX, Social Security Act, Medicaid Eligibility.
		Peer Review Organization Manual **(HCFA–Pub. 19)** **(Superintendent of Documents No. HE 22.8/6–15)**
20	•	Transmittal Notice—Hearing Case. Electronic Media Formatting.

Trans. No.		Manual/subject/publication number
		Output Procedures.
		Background.
		Beneficiary Hotline.
		PRO Information Brochure.
		Meetings with Beneficiary Groups.
		Beneficiary Liaison Committee.
		Other Activities.
		Physician/Provider Meeting Activities Required by Statute.
		Physician/Provider Meeting Activities Required by PRO Contract.
21	•	Background.
		Eligibility.
		Competing for a PRO Contract.
		Additional Requirements for a Physician-Access or Physician Sponsored Organization.
22	•	Background.
		Duties.
		Rendering Initial Review Determinations.
		Rendering Reconsideration and Re-review Determinations.
		Purpose.
		Scope.
		Instructions and Definitions for Completing Business Proposal Forms.
23	•	PRO Reporting on Medical Review (Receipt and Use of PROBILL Data).
		Changes Not Reported with the Adjustment Record.
		Changes in DRGs.
		Tracking Adjustments.
		Tape Specifications.
		Prepayment Review System Overview.
		PRS Implementation Exceptions.
		PRO Responsibilities for PRS Implementation.
		Authorization of Urgent/Emergent Cases.
		Validation Process.
		Intermediary Responsibilities for PRS Implementation.
		PRO and Intermediary Coordinated Responsibilities for PRS Implementation.
		Carrier Responsibilities for PRS Implementation.
		PRO and Carrier Coordinated Responsibilities for PRS Implementation.
		Statutory and Regulatory Requirements.
		General Requirements.
		Nonconfidential Information.
		Confidential Information.
		Disclosure of PRO Deliberations.
		Disclosure of Confidential PRO Information to Officials and Agencies.
		Disclosure of PRO Information Involving Beneficiary Complaints.
		Disclosure of PRO Information for Research Purposes.
		Redisclosure of PRO Information.
		Disclosure of PRO Sanction Information.
24	•	Introduction.
		Record Descriptions.
		Minimum Reporting Requirements.
		Quarterly Files.
		Monthly Files.
		Sampling Instructions.
		Enrollee Sample Sizes.
		Required Sample Sizes.
		HMOs/CMPs With 1,000 or Fewer Enrollees.
		HMOs/CMPs With Over 1,000 Enrollees.
		Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
IM-93-1	•	Adjustment Bills.
		Claim Change Reasons.
		Late Charges.
653	•	Completion of Form HCFA-1450 For Inpatient and/or Outpatient Billing.
654	•	Completion of Form HCFA-1450 For Inpatient and/or Outpatient Billing.
		Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
262	•	Completion of Form HCFA-1450 For Home Health Agency Billing.

Trans. No.	Manual/subject/publication number
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3
322	• Completion of Form HCFA–1450 For Inpatient and/or Outpatient Billing.
	Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22.8/21:985)
7	• Completion of Form HCFA–1450 By Rural Health Clinics and Federally Qualified Health Centers.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA–Pub. 29) (Superintendent of Documents No. HE 22.8/13)
62	• Completion of Form HCFA–1450 By Independent Facilities For Home Dialysis Items and Services Billed Under The Composite Rate (Method I).
	Hospice Manual HCFA–Pub. 21) (Superintendent of Documents No. HE 22.8/18)
37	• Completion of The Uniform (Institutional Provider) Bill (Form–HCFA–1450) For Hospice Bills.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA–Pub. 9) (Superintendent of Documents No. HE 22.8/9)
111	• Completion of Form HCFA–1450 For Billing CORF, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services.
	Provider Reimbursement Manual Part 1 (HCFA–Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
371	• Prospective Payment System for Inpatient Hospital Capital-Related Costs.
372	• Right to Board Hearing. Request for Board Hearing. Late Filing of Request For Hearing. Board Action On Request For Hearing. List of Issues. Position Papers. Interested Persons. Appointment and Authority of Party's Representative. Ex Parte Communication Prohibited. Composition of Board. Disqualification of Board Member. Responsibility of Board. Prehearing Conference. Prehearing Discovery. Notice of Dismissal of Board Hearing. Scope of Board's Authority. Negotiations. Conduct of Board Hearing. Witnesses. New Evidence. Board Hearing Decision. Hearing on the Record. Expedited Judicial Review Process. Limitation on Expedited Proceedings. Provider Request and Accompanying Documents. Board Action. Effect of Board Determination.

Trans. No.	Manual/subject/publication number
	Provider Reimbursement Manual **Part 1—Chapter 27** **Reimbursement for ESRD and Transplant Services** **(HCFA-Pub. 15-1-27)** **(Superintendent of Documents No. HE 22.8/4)**
23	• Base Composite Rates. General Instructions for Processing Exceptions Under Composite Rate Reimbursement System. Time Period for Requesting Exception. Termination Date. Documentation for Specific Cost Categories. Personnel. Supplies. Inpatient/Outpatient Costs (Hospital-Based Facilities). Home Program. Amount Requested. Reporting Actual Cost. Provider-Based Facilities. Reasonableness of Cost and Comparison to Peer Group. Cost Report Review. Patient Data Summary. Costs That Do Not Meet Criteria. General. Criteria. Documentation. Intermediary Documentation. Application for Exception. Allowable Cost Elements for Granting Exception. Length of Training Period. Payment for Intradialytic Parenteral/Enteral Nutrition. Beneficiary Selection Form.
	Provider Reimbursement Manual **Part II—Provider Cost Reporting Forms and Instructions** **(HCFA-Pub. 15-II-P)** **(Superintendent of Documents No. 22.8/4)**
2	• Skilled Nursing Facility and Skilled Nursing Complex Cost Report, Form HCFA-2540-92.
	Carrier Quality Assurance Handbook **(HCFA-Pub. 25)** **(Superintendent of Documents No. HE 22.8:C 23/982)**
48	• Foreword. Carrier Quality Assurance System. Carrier Responsibilities. Regional Office Responsibilities. Penalty for Nonreviewed Claims. Sample Review Results. Change from a PC System to a Centralized Mainframe System. Claims Review Procedure. Changes in Workload Report Form, Supplier Registration and QA Review Requirements. Error Subcategory Classifications and Revised Category Definitions. Revised Sampling Procedures. Development for Missing Documentation.
	State Medicaid Manual **Part 2—State Organization and General Administration (HCFA-Pub. 45-2)** **(Superintendent of Documents No. HE 22.8/10)**
83	• State Contracts With Outside Parties to Verify for Providers a Medicaid Recipient's Eligibility. Guidelines for State Contracts With Outside Parties to Verify Medicaid Recipient's Eligibility. Data the State May Release to Its Agents or Providers. Accessing the Data. Confidentiality of Data. Definitions.

Trans. No.	Manual/subject/publication number
	State Medicaid Manual Part 3—Eligibility (HCFA-Pub. 45–3) (Superintendent of Documents No. HE 22.8/10)
61	• Index.
	State Medicaid Manual Part 6—Payment for Services (HCFA-Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
23	• Physician Services to Children Under 21. Physician Services to Pregnant Women.
	State Medicaid Manual Part 11—Medicaid Management Information System (HCFA-Pub. 45–11) (Superintendent of Documents No. HE 22.8/10)
17	• Eligibility Verification Systems, Switching Companies, Electronic Claims Capture, and Electronic Claims Management Systems—Overview. Transmitting Operational Requirements Using Switching Companies. Safeguards.
	Medicare/Medicaid Sanction—Reinstatement Report
93–7	• Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Sanctioned/Reinstated.
93–8	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–9	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.

Addendum IV—Regulations and Notices Published July Through September 1993

Publication date/citation	42 CFR part	Title
		Final Rules
07/15/93 (58 FR 38062)	417	Medicare Program; Health Maintenance Organizations: Technical Amendments (Final with Comments).
07/21/93 (58 FR 39092)	435, 436	Medicaid Program; Eligibility and Coverage Requirements.
08/13/93 (58 FR 43156)	433, 437	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals.
08/23/93 (58 FR 44536)	433	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals (Correction).
09/01/93 (58 FR 46270)	412, 413	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates (Final with Comments).
09/17/93 (58 FR 48611)	435, 436	Medicaid Program; Qualified Family Members.
09/28/93 (58 FR 50634)	435, 436, 440	Medicaid Program; Eligibility and Coverage Requirements (Correction).
09/30/93 (58 FR 51130)	433	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals (Correction).
		Proposed Rules
07/14/93 (58 FR 37994)	405, 414	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule.
07/15/93 (58 FR 38170)	417	Health Maintenance Organizations: Organizational Structure and Services.
08/06/93 (58 FR 42041)	435, 436, 441	Medicaid Program: Minimum Physician Qualifications for Certain Services.
08/18/93 (58 FR 43832)	405, 413, 414, 424, 431, 447.	Medicare and Medicaid Programs; Payment for Clinical Diagnostic Laboratory Tests.
09/22/93 (58 FR 49272)	433	Medicaid Program; Referrals to Child Support Enforcement Agencies of Medicaid Families.

Publication date/citation	Title
	Notices
07/08/93 (58 FR 36748)	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1993.
07/09/93 (58 FR 36967)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1993.

Publication date/citation	Title
07/22/93 (58 FR 39154)	Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988.
07/26/93 (58 FR 39820)	Health Maintenance Organizations: Qualification Determinations and Compliance Actions During the Period January 1, 1993 through March 31, 1993.
08/13/93 (58 FR 43184)	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals; Federal Fiscal Year 1993.
08/23/93 (58 FR 44457)	Medicaid Program; Eligibility and Coverage Requirements (Notice of delay of effective dates and compliance dates.)
08/27/93 (58 FR 45343)	Medicare Program; Meeting of the Practicing Physicians Advisory Council.
09/01/93 (58 FR 46200)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1993
09/03/93 (58 FR 46925)	Health Maintenance Organizations, Organizational Structure and Services (Correction).
09/15/93 (58 FR 48323)	Medicare, Medicaid and CLIA Programs; Regulations Implementing the CLIA of 1988 (Correction).
09/24/93 (58 FR 49934)	Medicare Program; Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs) (Correction).
09/30/93 (58 FR 51085)	Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During FY 1994.

[FR Doc. 93-31217 Filed 12-21-93; 8:45 am]
BILLING CODE 4120-01-P

National Institutes of Health Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-594-7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Herman Teitelbaum (301) 594-7269
Date of Meeting: January 10, 1994
Place of Meeting: Westwood Bldg., rm. 7A12, NIH, Bethesda, MD
Time of Meeting: 10 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 1993.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 93-31213 Filed 12-21-93; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Published Social Security Acquiescence Rulings

AGENCY: Social Security Administration, HHS.

ACTION: Notice of published Social Security Acquiescence Rulings.

SUMMARY: Social Security Acquiescence Rulings (ARs) explain the manner in which the Social Security Administration (SSA) applies holdings of the United States Courts of Appeals that conflict with SSA's interpretation of a provision of the Social Security Act (the Act) or regulations when adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act. This notice lists ARs and rescissions of ARs that were published in the **Federal Register** from April 1990 through April 1, 1993. In addition, we have included **Federal Register** references for three prior notices of cumulative listings of ARs. The purpose of this notice is to assist individuals in finding ARs.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 965-1755.

SUPPLEMENTARY INFORMATION: Even though we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), SSA's regulations were amended on January 11, 1990, to provide that ARs are to be published in their entirety in the **Federal Register** under authority of the Commissioner of Social Security (20 CFR 422.406(b)(2)). An AR explains how SSA will apply a holding of a United States Court of Appeals that is at variance with SSA's interpretation of the Act or regulations in adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act.

Although regulations and ARs are published in the **Federal Register**, only the regulations are subsequently published in the Code of Federal Regulations (CFR). The CFR is a codification of the general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Consequently, the CFR may not state the circuitwide standard in effect when we have determined that the holding in a decision of a United States Court of Appeals is at variance with our national interpretation. Therefore, we are publishing this listing to assist individuals who need to reference ARs in effect as a result of holdings of the United States Court of Appeals. If an AR is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided for in 20 CFR 404.985(e), 410.670c(e), or 416.1485(e). If we decide to relitigate an issue covered by an AR, as provided for by 20 CFR 404.985(c), 410.670c(c), or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation and not the standard expressed in the AR, and explain why we have decided to relitigate the issue. In either of these situations, we will include the information in notices of published ARs such as this one.

This notice contains a listing of all ARs published under the requirements of 20 CFR 422.406(b)(2) during the period from April 1990 through April 1, 1993. (This latter date is the cutoff date

for inclusion of material in the annual edition of title 20 of the CFR.) The listing includes the AR number, title, publication date and the **Federal Register** reference number. This notice also lists ARs which were rescinded during this period. In addition, we have included **Federal Register** references for three prior cumulative AR listing notices. We anticipate publishing a notice each year that will list similar information.

We believe this publication will assist individuals in findings ARs.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: November 18, 1993.

Shirley S. Chater,

Commissioner of Social Security.

Published Social Security Acquiescence Rulings

Published cumulative lists of Acquiescence Rulings (ARs) issued prior to April 1990, relating to claims under title II and title XVI of the Social Security Act and part B of the Black Lung Benefits Act.

1. The first notice announcing 14 ARs, issued during the period from January 23, 1986, through April 30, 1986, was published in the **Federal Register** on June 4, 1986 (51 FR 20354).

2. A second notice announcing 12 additional ARs, issued during the period from May 20, 1986, through March 31, 1987, was published in the **Federal Register** on August 7, 1987 (52 FR 29441).

3. A third notice announcing 11 more ARs, issued during the period from May 1, 1987, through November 14, 1988, the withdrawal of one AR which was issued earlier, and the withdrawal of one of the ARs issued during this period was published in the **Federal Register** on July 10, 1990 (55 FR 28302).

This notice lists ARs published in the **Federal Register** during the period from April 1990 through April 1, 1993. It includes three ARs which were issued earlier, rescinded and replaced by revised ARs under their original AR number. It also includes the outright rescission of three ARs issued during this period, and the outright rescission of two ARs issued earlier. Two ARs published during this period required correction. The correction notices are also discussed in this notice. (The parenthetical number that follows each AR number refers to the United States judicial circuit involved.)

Acquiescence Rulings

AR 86–2R(2) *Rosenberg* v. *Richardson*, 538 F.2d 487 (2d Cir. 1976); *Capitano* v. *Secretary of HHS*, 732 F.2d 1066 (2d Cir. 1984)—Entitlement of a Deemed Widow When a Legal Widow is Entitled on the Same Earnings Record—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28527 as AR 86092(2).

Note: The original AR for the Second Circuit Court of Appeals' holding in *Rosenberg* and *Capitano* (AR 86–2(2)), issued January 23, 1986, was rescinded and replaced by this revised AR.

AR 86–18R(5) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28529 as AR 860918(5).

Note: The original AR for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86–18(5)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 86–19R(11) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28524.

Note: The original AR applicable in the Eleventh Circuit for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86–19(11)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 90–1(9) *Paxton* v. *Secretary of Health and Human Services*, 856 F.2d 1352 (9th Cir. 1988)—Treatment of a Dependent's Portion of an Augmented Veterans Benefit Paid Directly To a Veteran—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28946.

AR 90–2(2) *Ruppert* v. *Bowen*, 871 F.2d 1172 (2d Cir. 1989)—Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28947.

AR 90–3(4) *Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987)—Use of Vocational Expert or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28949.

AR 90–4(4) *Culbertson* v. *Secretary of Health and Human Services*, 859 F.2d 319 (4th Cir. 1988); *Young* v. *Bowen*, 858 F.2d 951 (4th Cir. 1988)—Waiver of Administrative Finality in Proceedings Involving Unrepresented Claimants Who Lack the Mental Competence to Request Administrative Review—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28943.

AR 90–5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38400.

Rescinded—See section on Rescissions in this notice.

AR 90–6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied*, April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38398.

Rescinded—See section on Rescissions in this notice.

AR 90–7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38402.

Rescinded—See section on Rescissions in this notice.

AR 91–1(5) *Lidy* v. *Sullivan*, 911 F.2d 1075 (5th Cir. 1990)—Right to Subpoena an Examining Physician for Cross-examination Purposes—Titles II and XVI of the Social Security Act.

Published: December 31, 1991, at 56 FR 67625 as AR 91–X(5).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 91–1(5).

AR 92–1(3) *Mazza* v. *Secretary of Health and Human Services*, 903 F.2d 953 (3d Cir. 1990)—Order of Effectuation in Concurrent Application Cases (Title II/Title XVI).

Published: January 10, 1992, at 57 FR 1190 as AR 91–X(3).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 92–1(3).

AR 92–2(6) *Difford* v. *Secretary of Health and Human Services*, 910 F.2d 1316 (6th Cir. 1990), *reh'g denied*, February 7, 1991—Scope of Review on Appeal in a Medical Cessation of Disability Case—Title II of the Social Security Act.

Published: March 17, 1992, at 57 FR 9262.

AR 92–3(4) *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human*

Services, 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Published: March 10, 1992, at 57 FR 8463.

AR 92-4(11) *Bloodsworth* v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983)—Judical Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge (ALJ) Decision.

Published: April 8, 1992, at 57 FR 11961.

AR 92-5(9) *Quinlivan* v. *Sullivan*, 916 F.2d 524 (9th Cir. 1990)—Meaning of the Term "Against Equity and Good Conscience" in the Rules for Waiver of Recovery of an Overpayment—Titles II and XVI of the Social Security Act; Title IV of the Federal Mine Safety and Health Act of 1977.

Published: June 22, 1992, at 57 FR 27783.

AR 92-6(10) *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before 12 Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Published: September 17, 1992, at 57 FR 43007.

AR 92-7(9) *Gonzalez* v. *Sullivan*, 914 F.2d 1197 (9th Cir. 1990)—Effect of Initial Determination Notice Language on the Application of Administrative Finality—Titles II and XVI of the Social Security Act.

Published: September 30, 1992, at 57 FR 45061.

Rescissions Without Replacement ARs

AR 87-5(3) *Velazquez* v. *Heckler*, 802 F.2d 680 (3d Cir. 1986)—Consideration of Vocational Factors in Past Work Determinations.

Notice of Rescission Published: July 16, 1990, at 55 FR 28943.

AR 88-7(5) *Hickman* v. *Bowen*, 803 F.2d 1377 (5th Cir. 1986)—Evaluation of Loans of In-Kind Support and Maintenance for Supplemental Security Income Benefit Calculation Purposes.

Notice of Rescission Published: September 8, 1992, at 57 FR 40918.

AR 90-5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 90-6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied*, April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23591.

AR 90-7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

[FR Doc. 93-31230 Filed 12-21-93; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the collection of information and related explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395-7340.

Title: National Mapping Division Data Grant Program for Land Processes Research.

Abstract: Respondents supply application information and awardees supply a final report. Application information identifies the land processes research project and remotely sensed data requirements. Final report identifies utility of Data Grant Program in the completion of the nonprofit institution's research project.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Nonprofit institutions.

Estimated Completion Time: 25 hours.

Annual Responses: 520.

Annual Burden Hours: 13,000.

Bureau Clearance Officer: Geraldine A. Wilson (703) 648-7309.

Dated: November 8, 1993.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 93-31142 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[AA-260-4210-01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0153), Washington, DC 20503, telephone 202-395-7340.

Title: Conveyance of Federally Owned Manual Interests, 43 CFR 2720.

OMB approval number: 1004-0153.

Abstract: Respondents supply identifying information to be used by the agency to process applications to determine an applicant's eligibility for benefits and whether all statutory requirements have been met.

Bureau form number: None.

Frequency: Once.

Description of respondents: Individuals whose land surface ownership overlie federally owned mineral interests.

Estimated completion time: 8 hours.

Annual responses: 29.

Annual burden hours: 232.

Bureau clearance officer (Alternate): Marsha Harley 202-452-5001.

Michael J. Penfold,

Assistant Director for Lands and Renewable Resources.

[FR Doc. 93-31139 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement, related forms and explanatory material may be obtained by contacting the Bureau's Clearance

Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Paperwork Reduction Project (1076–0111), Washington, DC 20503 (202) 395–7340.

Title: 25 CFR 23.13—Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.

OMB Approval number: 1076–0111.

Abstract: A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a state court for which appointment of counsel is not authorized by state law shall send written notice to the Bureau. The Area Director, using this information, can certify if the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act.

Bureau Form Number: None.

Frequency: Upon request for assistance.

Description of Respondents: State courts.

Annual Response: 4.

Annual Burden Hours: 60.

Bureau Clearance Officer: Gail Sheridan (202) 208–2685.

Betty B. Tippiconnic,

Acting Chief, Division of Social Services.

December 8, 1993.

[FR Doc. 93–31141 Filed 12–21–93; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[OR–015–94–4410–02: G4–047]

Management Framework Plans; Etc. Oregon

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

ACTION: Notice of Intent, Plan Amendment to the High Desert Management Framework Plan, Lake Abert Area of Critical Environmental Contern (ACEC).

SUMMARY: The Lakeview District is initiating the planning process for a proposed plan amendment to the High Desert Management Framework Plan (MFP) which will evaluate the potential designation of the Lake Abert area as an ACEC. Lake Abert is located north of Valley Falls in central Lake County in southeastern Oregon. This area was nominated as a potential ACEC by the Oregon Waterfowl and Wetlands Association and the Oregon Department of Fish and Wildlife in August 1992. The Lakeview District evaluated the area in accordance with 43 CFR 1610.7–2 and found it met the relevance and importance criteria for four resource values: prehistoric cultural values, scenic values, wildlife values, and natural processes. This evaluation was documented in a report that is available for public review at the Lakeview District Office address listed below.

Currently, three preliminary issues have been proposed: (1) How large an area should be considered for ACEC designation, (2) how should the area be managed and which resource values should be emphasized, and (3) what type of restrictions should be placed on conflicting resource uses? One preliminary management goal has been identified: to protect relevant and important values while allowing compatible resource uses.

Three preliminary alternatives have also been identified: (1) No action, (2) designate the area as an ACEC with a management emphasis on relevant and important resource values while reducing or eliminating future conflicting resource uses, and (3) designate the area as an ACEC, but manage for a balance between resource protection and other uses.

DATES: This notice constitutes the beginning of the public scoping process for the proposed plan amendment. Interested individuals, organizations, and other agencies are encouraged to review the proposed plan amendment and provide written comments on the preliminary issues, goals, and alternatives by February 23, 1994, to the point of contact identified below. In addition, two public scoping meetings are planned in February 1994 at the locations specified below.

ADDRESSES: Meeting location (1) is BLM—Lakeview District Office, 1000 S. 9th St., Lakeview, Oregon, on Wednesday evening (7–9:00 p.m.) February 2, 1993. Meeting location (2) is Deschutes National Forest Headquarters, 1645 Highway 20, Bend, Oregon, on Wednesday evening (7–9:00 p.m.) February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Whitman, BLM—Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630, (Telephone: 503–947–6110).

SUPPLEMENTARY INFORMATION: Those individuals, organizations, and agencies with a known interest in the proposed plan amendment have been sent a copy of a scoping document. Persons wishing to be added to the mailing list for this proposed plan amendment may do so by contacting the point of contact listed above. Additional copies of this document may also be obtained at the above address. In order to get the public and other agencies more involved in the planning process, the Lakeview District is interested in forming a working group composed of representatives of a wide variety of public and agency interests to aid in the formulation of formal management goals, objectives, and alternatives. Those interested in serving on such a working group should notify the point of contract.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 93–31138 Filed 12–21–93; 8:45 am]

BILLING CODE 4310–33–M

[CA–942–5700–10]

Filing of Plats of Survey; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 8 S., R. 21 E.,
Supplemental plat of the E½ of section 32 and the W½ of section 33, accepted August 13, 1993, to meet certain administrative needs of the BLM, Bakersfield District, Hollister Resource Area.

T. 10 N., R. 9 W.,
Corrective dependent resurvey, (Group 743) accepted September 1, 1993, to meet certain administrative needs of the BLM, Ukiah District, Clear Lake Resource Area.

T. 21 N. R. 5 E.,
Dependent resurvey and subdivision of sections 13 and 14, (Group 1128) accepted September 13, 1993, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

T. 45 N., R. 8 W.,
Supplemental plat of E½ of section 24, accepted September 27, 1993, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 16 N., R. 9 W.,

Dependent resurvey, (Group 935) accepted September 30, 1993, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 2 N., R. 15 E.,
Supplemental plat of the SW¼ section 30, accepted October 6, 1993, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 17, S. R. 29 E.,
Supplemental plat of the NW¼ of the NE¼ of section 9, accepted October 6, 1993, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 2 S., R. 26 E.,
Amended plat of Tract 42, accepted October 6, 1993, to meet certain administrative needs of the U.S. Forest Service, Inyo National Forest.

T. 29 N., R. 10 E.,
Dependent resurvey and subdivision of section 30, (Group 1143) accepted October 15, 1993, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

San Bernardino Meridian, California

T. 17 S., R. 13 E.,
Dependent resurvey and subdivision of section 18, (Group 1082) accepted September 1, 1993, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 6 N., R. 3 W.,
Supplemental plat of W½ section 6, and NW¼ section 7, accepted September 14, 1993, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 7 N., R. 3 W.,
Supplemental plat of sections 3 and 4, accepted September 14, 1993, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 7 N., R. 3 W.,
Supplemental plat of section 20, accepted September 14, 1993, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 1 S., R. 19 W.,
Dependent resurvey and survey, (Group 1040) accepted September 27, 1993, to meet certain administrative needs of the National Park Service, Santa Monica Mountains Recreation Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: December 10, 1993.

Clifford A. Robinson,
Chief, Branch of Cadastral Survey.

[FR Doc. 93-31136 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-40-M

[UT-933-04-4332-01]

Utah Bureau of Land Management: Maps for Identification of Boundaries for Implementation of the BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review: Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation.

SUMMARY: This notice cancels the subject notice on page 64334 of the **Federal Register** of December 6, 1993. Subsequent to that notice, it was determined that the maps need additional refinement.

DATES: This cancellation is effective immediately.

ADDRESSES: State Director (UT-933), Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Margaret Kelsey, Wilderness Program Leader, Utah State Office, (801) 539-4068.

James M. Parker,
State Director.

[FR Doc. 93-31137 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-930-4920-10-4329; COC-55373]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado; Correction

December 13, 1993.

In 58 FR 41289 dated August 3, 1993, second column, make the following correction under Site B:

New Mexico Principal Meridian: Site B, T. 46 N., R 18 W., should read T. 44 N., R. 18 W.

Robert S. Schmidt,
Chief, Branch of Realty Programs.

[FR Doc. 93-31154 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-JB-M

[CO-930-4214-10; COC-55991]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

December 13, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 4,725 acres of National Forest System land for 50 years to protect recreational resources and existing and planned facilities of the Telluride Ski Area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before March 22, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-239-3706.

SUPPLEMENTARY INFORMATION: On December 3, 1993, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. ch. 2): Uncompahgre National Forest.

New Mexico Principal Meridian

T. 42 N., R. 9 W.
Sec. 1, lots 2, 3, 4, 6, 7, and 8, S½NW¼, and SW¼;
Sec. 2, lots 1, 2, 3, and 4, S½NE¼, S½SW¼, and SE¼;
Sec. 4, lot 2;
Sec. 9, S½S½NE¼, S½NW¼, and S½;
Sec. 10, W½NE¼SE¼NE¼, S½SW¼NW¼, W½SW¼, and E½SE¼;
Sec. 11;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14;
Sec. 15, E½, and NW¼;
Sec. 22, NE¼NE¼;
Sec. 23, N½;
Sec. 24, NW¼.

T. 43 N., R. 9 W.,
Sec. 33, lots 18, 19, and 20;
Sec. 34, lots 17, 18, 22, 23, and 24;
Sec. 35, lots 28, 29, 30, 31, and 32.

The areas described aggregate approximately 4,725 acres of National Forest System lands in San Miguel County. (This description excludes any non-Federal lands lying within the above-described areas.)

The purpose of this withdrawal is to protect the high recreational resource values and existing and planned recreational development and use associated with the Telluride Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present

their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–31135 Filed 12–21–93; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Little Aguja Pondweed for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Little Aguja pondweed (*Potamogeton clystocarpus*). Little Aguja pondweed is an aquatic plant species in the family Potamogetonaceae. This endangered species has a very limited distribution and is currently known from only a few miles of a single stream on private land in Jeff Davis County, Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 11, 1994 to assure consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kathryn Kennedy, Botanist (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Little Aguja pondweed (*Potamogeton clystocarpus*) was listed as endangered on November 14, 1991 (56 FR 57844). This species has never been reported to grow anywhere except in the drainage of Little Aguja Canyon, in quite pools within the streambed of Little Aguja Creek. Only one population has been documented, and it has not been observed since severe flooding occurred in the canyon in 1990 and 1991. The species is probably adapted to the periodic floods and droughts typical of the area but is vulnerable to extinction from catastrophic events; it is possible that it could have succumbed to the severe floods of 1990 and 1991. The reason for the apparent decline and presence of low plant numbers and extremely limited distribution is unclear, but may be related to changes in water quality, quantity or seasonal flow regime in the watershed. If so, these changes may have been human-related, natural, or a combination of the two factors. Little Aguja pondweed occurs on private property, and present activities on the property appear to be compatible with the requirements of the species. It must be noted however, that periodic droughts, scouring floods, consumption by animals such as fish and invertebrates, changes in water quality, reduced flows, or significant changes in stream configuration could harm the pondweed by destroying both plants and habitat.

The objectives of the Draft Little Aguja pondweed Recovery Plan are to prevent extinction of the species, to determine if full recovery of the species is feasible, and to develop recovery criteria as appropriate. Recommendations outlined in the draft recovery plan include an extensive search for the Little Aguja pondweed. If the species is relocated, additional efforts; site protection, habitat management, propagation, and research will be among the recovery actions pursued.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 16, 1993.

John G. Rogers,

Regional Director.

[FR Doc. 93–31283 Filed 12–21–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395–7340.

Title: Collection of Information on Requests for Royalty Refunds and Credits.

Abstract: The Minerals Management Service is amending 30 CFR adding new regulations codifying procedures for obtaining refunds and credits of excess royalty payments made under Outer Continental Shelf (OCS) leases subject to Section 10 of the Outer Continental Shelf Lands Act. Many lease holders have in the past requested refunds or credits, but the information required in the request has never before been codified. This new regulation will make clear the information required from leaseholders requesting royalty refunds or credits from Section 10 OCS leases.

Bureau Form Number: None

Frequency: Whenever a refund is requested

Description of Respondents: Oil and gas companies

Estimated Completion Time: 1 hour

Annual Responses: 3,000

Annual Burden Hours: 3,000

Bureau Clearance Officer: Arthur Quintana (703) 787-1101.

Dated: November 10, 1993.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 93-31143 Filed 12-21-93; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-645 (Final)]

Certain Calcium Aluminate Cement and Cement Clinker From France

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-645 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of certain calcium aluminate cement and cement clinker, provided for in subheadings 2523.30.00 and 2523.10.00, respectively, of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain calcium aluminate cement and cement clinker from France are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The Department of Commerce also made a negative preliminary determination regarding imports of calcium aluminate flux from France. The Commission, therefore, is not instituting a final investigation regarding calcium aluminate flux. Pursuant to 19 U.S.C. 1673b(3), if the Department of Commerce's final determination regarding imports of calcium aluminate flux is affirmative, the Commission will institute a final investigation at that time. The investigation was requested in a petition filed on March 31, 1993, by Lehigh Portland Cement Company, Allentown, PA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 11, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 24, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 21, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 22, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 18, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for

filing posthearing briefs is April, 1, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 1, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: December 17, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-31232 Filed 12-21-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 1993, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.15 billion gallons. Seven percent of this amount is 80.5 million gallons (these figures have been rounded). Therefore, the base quantity for 1994 should be 80.5 million gallons.

EFFECTIVE DATE: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Williams (202-205-3313) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-205-3091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

BACKGROUND: For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332-288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations. Section 225 of the Customs and Trade Act of 1990 (Public Law 101-382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.

Issued: December 15, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-31234 Filed 12-21-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-356]

Certain Integrated Circuit Devices, Processes for Making Same, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) granting complainants' motion to amend the complaint.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3108.

SUPPLEMENTARY INFORMATION: On November 17, 1993, complainants National Semiconductor Corp. (National) and Fairchild Semiconductor Corp. (Fairchild) moved to supplement the complaint. In section IX of the complaint, complainants inadvertently omitted a counterclaim which they filed on May 7, 1993, in a parallel district court case, *Hughes Aircraft Co.* v. *National Semiconductor Corp.*, Civ. Action No. C-93-1022 (N.D. Cal.). National and Fairchild represented that they had met and conferred with the other parties and those parties do not oppose the motion. Complainants also stated that the proposed supplement would not prejudice any of the parties as it is neither material nor affects the scope of the investigation.

On November 23, 1993, the ALJ granted the motion in view of the nature of the supplement and the lack of opposition to it.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

By order of the Commission.

Issued: December 16, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-31233 Filed 12-21-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-357]

Certain Sports Sandals and Components Thereof; Notice of Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Respondent Fang Chun Ind. Ltd. on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 2) issued on November 19, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Deckers Corporation and respondent Fang Chun Ind. Ltd. to terminate the investigation as to Fang Chun on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3063.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of sports sandals that infringe three claims of U.S. Letters Patent 4,793,075, on September 8, 1993.

On October 7, 1993, Deckers and Fang Chun filed a joint motion to terminate the investigation on the basis of a settlement agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to Fang Chun. No petitions for review or agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: December 14, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-31235 Filed 12-21-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-350]

Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives; Notice of Decision To Review and Modify Initial Determination Designating the Investigation As "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and modify an initial determination (ID) (Order No. 73) issued on November 22, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation designating the investigation as "more complicated."

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Harry E. Aine ("Aine") alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464 ("the '464 patent").

On November 4, 1993, Aine and all respondents filed separate motions to declare the investigation "more complicated." In his ID, the ALJ granted the motions and indicated that the investigation should be designated to be "more complicated" because discovery in the investigation had been stayed for approximately three months pending a ruling by the Commission on the jurisdictional issues in the investigation and because the case involved many factually and legally complex issues concerning the validity and enforceability of the '464 patent. The ID extended the issuance of the final ID by five months, or until July 6, 1994, and stated that "the statutory time period for Commission action is extended from May 5, 19[9]4 to October 5, 1994." No petitions for review of the ID were filed. No agency comments were received.

After consideration of the record, including the ID, the Commission has determined on its motion to review the ID and to modify it by striking its statement concerning the statutory deadline for Commission action. In all other respects, the Commission adopts the ID as the determination of the Commission.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.55 and 210.59(a) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.55, 210.59(a)). Copies of the ID, the Commission order modifying the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Dated: December 13, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-31236 Filed 12-21-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-314 (Sub-No. 1X)]

Chicago Central & Pacific Railroad Company—Discontinuance of Trackage Rights Exemption—in Chicago, Cook County, IL

Chicago Central & Pacific Railroad Company (CCP) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to discontinue trackage rights (and interchange rights) over and upon the tracks, yard tracks and facilities of Illinois Central's (IC) IMX yard [1] adjacent to IC's main line between milepost 4.50 and milepost 5.46 in

[1] The IMX yard is owned by IC, and trackage rights operations were granted to CCP by IC pursuant to an order served by the Commission on December 24, 1985, in Finance Docket No. 30663.

Chicago, Cook County, IL.[2] Operations on the subject line will continue by other carriers.

CCP has certified that: (1) No local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (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 1152.50(d)(1) (notice to governmental agencies) has been met.[3]

As a condition to use of this exemption, any employee adversely affected by the discontinuance 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.

This exemption will be effective on January 21, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by January 3, 1994. Petitions to reopen must be filed by January 11, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representatives: Edward J. Krug, 526 Second Avenue SE, P. O. Box 2457, Cedar Rapids, IA 52406. If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: December 14, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-31276 Filed 12-21-93; 8:45 am]

BILLING CODE 7035-01-P

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of January 20, 1994. Because the verified notice was not filed until December 2, 1993, consummation should not have been proposed to take place prior to January 21, 1994. Applicant's representative has confirmed that the correct consummation date is on or after January 21, 1994.

[3] No environmental or historical documentation is required here pursuant to 49 CFR 1105.6(b)(3).

[4] Because IC will continue to provide service over the line, there is no need to provide for trail use/rail banking or public use conditions, or to include offer of financial assistance language, routinely provided for in abandonment proceedings.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *D'Imperio, et al.*, Civil Action No. 93-5321(JEI) was lodged on December 8, 1993 with the United States District Court for the District of New Jersey. The complaint in this action, filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, seeks to recover costs incurred by EPA at the D'Imperio Property Superfund Site located in Hamilton Township, Atlantic County, New Jersey.

The proposed Consent Decree embodies an agreement by Dr. Francesco D'Imperio and Quinton D'Imperio (1) to provide EPA with access to the property for purposes of performing all response actions; (2) to sell the uncontaminated portion of their property and pay a portion of the proceeds from such sale to EPA; and (3) upon the completion of the remedy, to sell the presently contaminated portion of their property and pay the proceeds to EPA. The Consent Decree also provides the D'Imperios with a complete release for liability for both past and future CERCLA response costs and natural resource damages at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *D'Imperio, et al.*, DOJ Ref. No. 90-11-2-295.

The proposed consent decree may be examined at the Office of the United States Attorney, Post Office Building, 401 Market Street, 5th Floor, Camden, New Jersey 08101; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room 309, New York, New York 10278, and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $44.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-31146 Filed 12-21-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Evcon Industries, Inc., New Coleman Holdings, Inc., and Recreational Vehicle Products, Inc.*, Civil Action No. *93-1491-MLB*, was lodged on *December 10, 1993* with the United States District Court for the District of Kansas. Contemporaneously with the lodging of the consent decree, the United States filed a civil action under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9606 and 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health or welfare or the environment due to the release or threatened release of hazardous substances from a facility, and for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the same facility, known as the Coleman Operable Unit of the 29th and Mead Superfund site, located in Sedgwick County, Kansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and

should refer to *United States* v. *Evcon Industries, Inc., New Coleman Holdings, Inc., and Recreational Vehicle Products, Inc*, DOJ Ref. # 90-11-2-879.

The proposed consent decree may be examined at the office of the United States Attorney, 1200 Epic Centre, 301 N. Main Street, Wichita, Kansas; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $42.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-31147 Filed 12-21-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Giles Armature & Electric Works, Inc., et al.*, Civil Action No. S91-0042-C, was lodged on December 6, 1993 with the United States District Court for the Eastern District of Missouri, Southeastern Division. Pursuant to the Consent Decree, Defendants Giles Armature & Electric Works, Inc., a dissolved Illinois corporation, Harold L. Chase, Betty Lea Grassinger, Gardner J. Grassinger, Martha Gene Lundemo, Grace N. Giles, and Jenna V. Vickery, will pay to the United States $370,000 to be used by the United States for unreimbursed response costs relating to the Missouri Electric Works, Inc. Superfund Site in Cape Girardeau, Missouri.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Giles Armature & Electric Works, Inc., et al.*, DOJ Ref. #90-11-2-614.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, Southeastern Division, 325 Broadway, Second Floor Cape Girardeau, Missouri; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101: and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-31144 Filed 12-21-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Consent Judgment Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of New York and Dino Oil Company, Inc.*, (S.D.N.Y.), Civil Action No. 93CIV8442(MBM), was lodged with the United States District Court for the Southern District of New York on December 8, 1993. The proposed consent decree requires the Defendants to pay a civil penalty of $8,250 each for their violations of the Clean Air Act, 42 U.S.C. 7601 et seq., and title 6 NYCRR Part 230, of the New York State Implementation Plan, which requires that gasoline transport vehicles and gasoline dispensing sites use Stage 1 vapor control equipment when loading gasoline storage tanks. The proposed Consent Decree also requires that Dino Oil Company, Inc. train employees of gasoline transport vehicles on the operation and use of Stage I vapor control equipment, and that the City of New York post a notice on the requirement for use of the Stage 1 vapor control device at its gasoline dispensing sites.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City of New York and Dino Oil Company, Inc.*, D.O.J. Ref. No. 90-5-2-1-1638.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of New York, 100 Church Street, New York, New York 10007 (c/o Allan Taffet); at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room no. 437, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $10.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-31148 Filed 12-21-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rubicon Vista Associates, L.P., et al*, Civil Action No. CIV-S-92-680 WBS JFM (E.D. Calif.), was lodged on December 2, 1993 with the United States District Court for the Eastern District of California. This is a civil action against Rubicon Vista Associates, L.P., Robert L. Brandon, the D. Benvenuti Company, Inc., and Sacramento Valley Environmental Waste Company under section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413, for violation of the Asbestos National Emission Standard for Hazardous Air Pollutants ("NESHAP"). The Complaint sought civil penalties and injunctive relief to ensure future compliance with the NESHAP regulations. The alleged violations involved failure to notify EPA prior to commencement of a demotion; failure to follow proper procedures for handling the asbestos material during and following the demolition; failure to properly dispose of the asbestos material following demolition; allowing visible emissions; failing to mark with visible signs the vehicles in which asbestos waste was transported; and failure to dispose of the asbestos waste in a proper disposal site, in violation of

the asbestos NESHAP. Rubicon Vista Associates, L.P., of which Robert L. Brandon is the general partner, was the owner of the building where the alleged violations occurred and the D. Benvenuti Company, Inc., was the contractor in charge of the demolition that resulted in the alleged violations. The Sacramento Valley Environmental Waste Company transported the asbestos waste that was removed from the site.

Under the Consent Decree, Rubicon Vista Associates, Robert L. Brandon and the D. Benvenuti Company, Inc. will jointly pay a civil penalty of $250,000. Each of those three defendants is required by the Consent Decree to perform diligent inspection prior to any future demolition or renovation activity, to immediately stop all work at any site where suspect regulated asbestos containing material ("RACM") is discovered during a demolition or renovation until the materials has been sampled, analyzed, and if found to be RACM, removed by trained asbestos abatement workers. The Sacramento Valley Environmental Waste Company will pay a civil penalty of $25,000 and is not subject to the injunctions provided by the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Rubicon Vista Associates, L.P. et al.*, DOJ Ref. #90-5-2-1-1646.

The proposed consent decree may be examined at the office of the United States Attorney, 555 Capitol Mall, Suite 1550, Sacramento, California 95814; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-31145 Filed 12-21-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Youth Fair Chance Demonstration Projects

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), under Title IV of the Job Training Partnership Act (JTPA) as amended in 1992, is announcing Youth Fair Chance (YFC) demonstration projects that will provide comprehensive employment and training services to youth (14–21 years) and young adults (22–30 years) in high poverty areas of urban and rural communities. The YFC program concentrates resources in small geographic areas to provide an integrated array of services and thereby increases the chances that high-risk youth will find jobs, develop careers, and lead productive lives.

Up to twenty-five (25) YFC grants will be awarded this year and will operate for 18 months. The grants will be awarded on a competitive basis. Each YFC program grantee will initially receive an average of $3 million for 18 months. Based on the availability of funds, effective program operation and the needs of the Department, up to 3½ additional years of support will be provided to each site.

This notice describes the process that eligible entities must use to apply for demonstration funds, the subject areas for which applications shall be accepted for funding, how grantees are to be selected, and the responsibilities of grantees.

DATES: Applications for grant awards will be accepted commencing December 22, 1993. The closing date for receipt of applications shall be March 22, 1993, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Brenda M. Banks, Reference: SGA/DAA 94-003, 200 Constitution Avenue NW., room S-4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda M. Banks, Division of Acquisition and Assistance, telephone: (202) 219-7984 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. Part I provides the background and purpose of the demonstration projects. Part II provides (1) the application process, (2) detailed guidelines for use in applying for the demonstration grants (3) the government's requirements for the demonstration projects, and (4) the selection criteria used by the Department in reviewing applications. Part III describes the reporting requirements.

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Part I—Background

A. Authorization

Youth who live in impoverished rural and urban communities around the country face great challenges because of the limited economic, fiscal and social capital available to them. Existing family and community resources are often severely strained. Complicating this are the high rates of joblessness and dependency among adults which in turn limit the number of positive role models for youth and reduce their access to jobs obtained by more middle class youth through informal brokering networks. Families and other community residents

often lack effective strategies on how to support youth and encourage positive behavior to enhance rather than restrict their futures.

To address these concerns, in August 1992, Congress passed legislation authorizing the Secretary of Labor to establish a national program of Youth Fair Chance grants aimed at providing comprehensive services to youth living in high poverty areas in urban and rural communities.

In stating the purposes of the program, the Congress pointed to the conditions of poverty and need that put the targeted group of youth at risk of dropping out of school, becoming teenage parents, and unemployed.

B. Purpose

The purpose of the YFC program is to provide all youth living in designated target areas with improved access to the types of services and support necessary to help them acquire the skills and knowledge they need to succeed in the world of work and to participate fully in society. Such services include employment, training, education, child care, transportation, and assistance in resolving personal or family crises. To achieve its objectives, YFC encourages the active involvement in the effort of local employers, labor unions, junior and senior high schools, two-and four-year post secondary institutions, and community agencies. The YFC legislation specifies six broad objectives:

- To saturate small neighborhoods or communities (YFC target areas) of not more than 25,000 residents, or in appropriate cases not more than 50,000 except that in the event that the population of an area from which a high school draws a substantial portion of its enrollment exceeds either limit, the target area may encompass such boundary.
- To guarantee access to appropriate education, training, and supportive services for all youth residing in the target community;
- To guarantee access to comprehensive services combined with outreach and recruitment efforts to increase participation of previously unserved or underserved youth residing in the target community;
- To integrate service delivery in the target community, including systems of common intake, assessment, and case management;
- To increase the rates of school completion, enrollment in advanced education or training, and employment; and
- To determine the feasibility of offering these services nationwide.

The purpose of this solicitation is to award grants that will work toward achieving these objectives in the targeted areas. While there are specific core components comprising the YFC model, local decision-making plays an integral role. The planning, design, and implementation of a YFC project should involve those who are closest to the target community, including local residents. To the extent feasible, the local target community should be empowered to decide which services are needed and who can best provide them. Planning and implementation of a YFC project should take place "from the ground up" with the active involvement and participation of local entities.

Part II—Application Process

A. Eligible Applicants

The competition for these awards is limited to cities and counties with the highest concentrations of poverty. The definitions being used to identify the cities and counties with the highest concentration of poverty are: (a) Those cities with at least 25,000 residents living below the poverty level or a poverty rate of 30 percent or greater, as determined by the 1990 U.S. Bureau of Census, (See Appendix No. 5) and (b) those counties with at least 10,000 residents living below the poverty levels as determined by the U.S. Bureau of Census; or (c) those consortia of counties with at least 25,000 residents living below the poverty level and an overall poverty rate of at least 40 percent. (See Appendix No. 3.) Eligible SDAs with Youth Opportunity Unlimited (YOU) projects may apply; however, such SDAs may not apply to operate YFC projects in the YOU target area.

Additionally, Indian Reservations or Alaskan Native villages designated under subsections (c) and (d) of section 401, Title IV of the Job Training and Partnership Act (JTPA) or a consortium of such grantees and the State, and migrant or seasonal farmworker grantees designated under subsection 402(c) of Title IV of JTPA or a consortium of such grantees and the State, are eligible to apply for YFC grants.

B. Funding

Initial funding for this solicitation will come from the Youth Fair Chance program authorized as part of the Job Training Partnership Act (JTPA) 1992 Amendments. Funds for the YFC program may also be provided from other sources, pending availability. Each YFC program grantee will initially receive an average of $3 million for 18 months. Funds per site, thereafter, will be between $1–$2 million per year, if all grant conditions are met and based on the available funds and the needs of the Department. Grant award amounts will depend on the size of the community, numbers of youth living in the target community, and the comprehensives of services proposed.

C. Application Procedures

1. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts: Part I shall contain the Standard Form (SF) 424, "Application for Federal Assistance:" (See Appendix No. 1) and SF 424A, "Budget" (See Appendix No. 2). Also, the budget shall include on a separate page(s) a detailed cost analysis of each line item in the budget, as well as an allocation of costs for school-to-work and other activities.

Part II shall contain a technical proposal that demonstrates the offeror's capabilities in accordance with the Statement of Work in part II. E of this solicitation. No cost data or reference to price shall be included in the technical proposal. In order to assist offerors in the preparation of their proposals and to facilitate the expeditious evaluation by the panel, proposals should be organized and presented in the same sequential order as the Rating Criteria in part II. F. of this solicitation. Applications shall be limited to 250 single side pages, doubled-spaced.

The proposal should be submitted on behalf of the community by (1) the mayor of a city or the chief elected official in a metropolitan statistical area, after the Governor of the State has had an opportunity to comment on the application; (2) the chief elected official of a nonmetropolitan county or the designated chief elected official of contiguous nonmetropolitan counties, after the Governor of the State has had an opportunity to comment on the application (Evidence that the Governor has commented on the application shall be submitted in a form of a letter signed by the Governor or his Designee; (3) Indian Reservations or Alaskan Native villages designated under subsection (c) and (d) of section 401 or consortium of such grantees and the State; and (4) migrant or seasonal farmworkers communities designated under subsection 402(c) or a consortium of such grantees and the State, are eligible for grants.

While a proposal will be submitted by the SDA to the Mayor or Chief Elected Official, the prospective project operator should be closely identified with the

target community and able to reach and serve its residents. This can include community based organizations that have experience working in the local community with youth, employers, social service providers and local school systems. The organization should have demonstrated ability to operate a comprehensive and extremely complex program. A Memorandum of Commitment (See Appendix No. 4) should be signed by local officials who have jurisdiction over resources to be contributed or programs to be offered.

Any agreements signed by the appropriate officials and representatives of participating service provider agencies shall be included as part of the technical proposal. The proposal should cover items discussed in part II. E. Offerors should make sure that their proposal reflect the intent of the legislation as described in part I. B.

2. Hand Delivered Proposals

Proposals must be mailed at least five days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated place by 2 p.m., Eastern time by March 22, 1994. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

3. Late Proposals

Proposals received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th);

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Postal Office to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The term "post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

4. Period of Performance

The period of performance under this grant will be 18 months from the date of grant execution.

5. Option to Extend

Based on the availability of funds, effective program operation and the needs of the Department, options for annual funding of up to 3½ additional years support may be provided to each site.

D. Matching Requirements

DOL Funding under these awards shall equal 70 percent of the total grant cost. The awardee shall provide 20 percent from other federal sources and 10 percent from non-federal sources.

E. Government's Requirements/ Statement of Work Solicitation Specifications

While establishing core components for in-school and out-of-school youth is essential, local target area needs will determine the extent to which other options for serving youth are incorporated into a YFC project. Offerors are not limited to the information requested and can add any information in which they feel provides a more complete picture of the proposed YFC project in their target area.

To enable offerors to benefit from some of the experiences of the Youth Opportunities Unlimited demonstration (which is a prototype of the YFC program) a handbook on useful lessons learned is available upon request by calling the contact person identified in the solicitation. The following specifications cover target area selection, YFC project design and linkages.

1. Target Area Selection

Offerors should select a geographic target area within the city/county characterized by high rates of poverty, school dropout, teen pregnancy, and crime. Offerors are requested to:

- Provide a description of the target area. The proposal may include a brief history; the schools, community development corporations, and social service agencies that serve the area; relevant locally based public or private non-profit agencies; educational, sports, employment, and cultural opportunities available to youth in the target area.
- Describe youth unemployment, crime, school dropout and teen pregnancy rates in the target area from data available. For purposes of this procurement, the youth age range is 14 to 30 years old. Available local data which may encompass slightly different age ranges for youth are acceptable.
- Provide a rationale for why the particular target area was selected over other poverty areas in the city or counties. Offerors that wish to have a target area of more than 25,000 should submit a justification in their proposals. With approval of the Secretary, the maximum size of a target area is 50,000. However, the offeror should not assume that the larger target area will be approved.

2. YFC Project Design

Based on the experience of the Youth Opportunities Unlimited program and latitude permitted the DOL under the YFC legislation, the Department recommends that the YFC project design (model) include in-school youth and out-of-school youth core components. The recommended core component for in-school youth is a school-to-work (STW) transition program.

A. In-school youth: School-to-work core component. Offerors can propose a variety of in-school youth programs as part of the YFC project. However, the school-to-work transition program should be the central or core component of YFC in-school youth initiatives.

School-to-work programs enable localities to transform high schools and improve the education, training and employment opportunities of youth in targeted areas. It is important that the YFC school-to-work programs be consistent and in accord with any local and State plans developed under the proposed School-to-Work Opportunities Act of 1993 and the proposed Goals 2000: Educate America Act. The STW requirements under YFC are modeled to a great extent upon the proposed School-to-Work Opportunities Act of 1993. Under this pending legislation, the STW concept integrates academic and vocational technical learning, to prepare youth for high-wage, high-skill employment.

Programs are to contain three main components: (1) Work-based learning, (2) school-based learning, and (3) connecting activities such as: (a) matching students with employers' work-based learning opportunities; (b) serving as a liaison among the employer school, teacher, parent, and student; (c) providing technical assistance and services to employers and others in designing work-based learning components and counseling and case management services, and in training teachers, workplace mentors and counselors; (d) providing assistance to students who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program; (e) collecting and analyzing information

regarding post-program outcomes of students who participate in the School-to-Work Opportunities program component; and (f) linking youth development activities under this program with employers' strategies for upgrading the skills of their workers.

Successful school-to-work programs require the active involvement of business, community and labor leaders, and educators. Employers, in partnership with labor, define the skill requirements for jobs, participate jointly in the governance of the program, offer quality learning experiences for the students at the worksite, and provide jobs for students and graduates.

Businesses share information with schools on the technologies, management processes, business practices, and structure of work in today's organization. STW programs require agreement from partners to work together to develop curricula that will prepare students to enter and succeed in the workplace of tomorrow. STW programs are more likely to work if there is ongoing community ownership of the program and if the system is flexible enough to fit local circumstances and needs. As part of this procurement, offerors are expected where feasible to implement STW programs in two (2) secondary schools in which residents of the community are enrolled, with at least one school physically located in the target community. Exceptions to this apply to rural and Indian Reservation areas where there may be only one secondary school serving the target area. To the extent feasible, the STW program design should correspond to that contained in the brief description of examples of complementary national programs (See below).

In discussing the STW program, offerors are requested to:

- Provide a description of the local program envisioned and how locally elected officials, employers, secondary and post secondary institutions, organized labor, teachers, students, parents, community-based organizations and others will be involved in the planning, development and implementation.
- Describe how the proposed STW program complements existing STW programs available to students.
- Identify the schools to be targeted by the STW program and who will be responsible for the program design and administration, enrollment procedures, numbers of youth to be served, and achievement of STW goals and objectives.
- Provide a description of the steps to be taken to determine customer need and customer satisfaction.
- Establish and formalize a STW "partnership" among those who will be primarily responsible for the school-to-work program in the public and private sectors.
- Provide evidence of agreement by local schools to participate in the STW demonstration and their willingness to make the changes needed to enhance the learning experiences for youth, engage the employer community in the training process, and achieve the goals of the STW program. This is important because of the critical role of the school system in STW.
- Provide the estimated annual cost and a time-phased work plan/work schedule covering the planning, development, and implementation of a STW program for the first three years.
- Describe how the STW proposal relates to other education reform being undertaken in the community.

In discussing other in-school programs, besides school-to-work, offerors are requested to describe the programs, how they are to be implemented, by whom and the measurable goals and objectives.

B. Out-of-school youth: Center for continuing education and training core component. Offerors are encouraged to establish a center for continuing education and occupational training for out-of-school youth and young adults, or a similar type of facility. The center should be identifiable and may be collocated with or separate from other programs. The center does not have to be a newly built facility but may be housed within an existing facility by modifying, improving, and expanding existing property.

To help youth acquire the knowledge and skills necessary to get and hold jobs, the center should be in a position to offer youth information and intelligence on the local labor market, occupational skills and other requirements needed for employment, and local educational and training resources. It should enable out-of-school youth to pursue a high school degree and/or post-secondary education by offering youth a coordinated and comprehensive range of education and training opportunities.

The center should also offer youth a variety of services such as GED instruction, basic skills instruction, English as a Second Language (ESL) classes, life management skills, vocational education or training, and job search assistance. Referral to supportive services should be available at the centers. Various social service agencies can be collocated at such centers.

Offerors should be able to attract out-of-school youth and young adults to the core program through outreach and recruitment activities. Students between the ages of 17 and 30 enrolled full-time in a training and education program at these centers may receive stipends of up to $1200 a week for up to one year or until they become employed, whichever occurs first. If a youth is employed but does not earn $100 per week, the difference can be paid through stipends.

Offerors are asked to:

- Describe such a center and its measurable goals/outcomes and strategy, including services, to accomplish the goals.
- Identify where the center will be located, how it will be staffed, and who will be responsible for it.
- Provide a description of the steps to be taken to recruit out-of-school participants and to determine customer need and customer satisfaction.

C. YFC Project Design and Implementation. Offerors are encouraged to develop a YFC project which meets the requirements of the governing legislation and best serves the interests and needs of the target community.

YFC Center: In considering the design and implementation of the project, offerors should give special attention to the feasibility of operating the YFC program (except school-to-work) out of a single building.

A central YFC facility should help to ensure that grant funds are used to start new programs, rather than simply displace existing local projects. It should also make it easier to track the progress of participants. An identifiable physical site strengthens community perceptions of the program, gives YFC an identity within the community, and because of its visibility may help attract more resources within the community and increase chances that the program will continue beyond the Federal grant period.

If renovations are needed to establish such a physical site, the use of Community Block Development Grants (CBDG) or other funds should be explored. Funds provided under the YFC grant cannot be used for constructing facilities. However, a limited amount of funds may be used for alternations for educational purposes, such as preparations for installation of computers, etc. In some cases, sites may choose to use the center for a dual purpose by serving in-school as well as out-of-school youth.

Community Advisory/Resource Board: Offerors should establish a Community

Advisory/Resource Board, or similar organization, consisting of government and private sector leaders, as well as representatives (e.g., residents, parents, business, community leaders, ministers, educators) of the target community to further the goals and objectives of the YFC program.

Sports and Recreation Initiatives: Offerors should establish a comprehensive sports and recreation program for children and youth in the target area and describe how such activities might complement YFC program objectives.

Permanent YFC Program: Offerors should ensure that the community is committed to building support and leveraging State, local, and private resources to continue the comprehensive program services beyond the duration of the Federal grant.

Recruitment, Common Intake Procedure and Case Management: Offerors should have a viable plan for recruitment and establish a common intake procedure which utilizes a case management approach and individualized assessment. Such an approach is intended to enhance the likelihood that all participating youth and young adults will receive basic services meant for everyone and customized services tailored to individual needs.

Performance Measures: Offerors shall have performance measures as a part of the YFC program as required by YFC legislation.

Ability to Get the Job Done: Offerors should be able to demonstrate on the basis of past or current experience that they have the capability to implement a YFC project and achieve the goals and objectives of the program on schedule.

College Bound Initiative: Offerors should be able to establish a public/private program to assist youth from target areas learn about and attend college, including providing "last dollar" financial aid.

Middle School Initiative: Local school districts should be able to establish initiatives to improve middle school in target area, based on the Carnegie Council on Adolescent Development's Turning Points recommendations. This includes breaking up large middle schools by using either "houses" or block roistering.

Offerors are asked to:

- Provide a description of the YFC center, its goals, the services it will provide, its location, staffing, and programs. The Centers can include training in cultural activities such as; art, music, creative writing, etc.
- Describe plans that specifically focus on outreach and recruitment efforts in the target area to encourage and promote maximum participation by at-risk youth and young adults who are currently underserved by education and training programs in the target community. YFC legislation cities the importance of steps designed specifically to enlist the participation of youth, particularly males, under the jurisdiction of the child welfare, juvenile justice, and criminal justice systems.
- Provide a description of the common intake procedures, individualized assessment, and case management approach to be used by the program.
- Discuss the performance measures to be used. Identify YFC measurable goals and outcomes for target area youth which may include: high school completion or equivalency; youth entering postsecondary institutions, apprenticeships, or other advanced training programs; youth placed in jobs; or youth participating in education, training and employment services. They also may include supporting goals for the target area such as increasing security and safety, or reducing the number of drug-related arrests or teenage pregnancies.
- Provide a description of how customer need and customer satisfaction can be ascertained and measured.
- Provide written assurances that all youth in the target area will have access to: (1) a coordinated and comprehensive range of education and training opportunities from a diverse range of education and training providers in the participating community; and (2) supportive services necessary for successful participation in society. Supportive services may include: child care, transportation, and assistance in resolving personal or family crisis, such as crises related to substance abuse, homelessness, migration, or family violence.
- Provide evidence from past or recent experiences which demonstrate that the offeror will be able to implement a successful YFC project.

3. Linkages to Complementary Programs

Offerors are encouraged to explore the feasibility of linking YFC initiatives with other ongoing local community programs. They should attempt to create and maintain broad-based partnerships to address the needs of urban and rural youths through a system of structured, comprehensive services. Complementary programs are intended to strengthen the overall service delivery system available to youth in the target area and are an integral part of the YFC program. There are a wide range of possibilities. Examples of complementary programs include such as: the Youth Construction Corps, Youth Apprenticeship Programs, Teen Parent Programs, Summer Education and Training Programs (STEP), Middle College Special Programs for Dropouts, Community Service Programs for Youth, Community Youth Centers, Alternative Schools as well as linkages with other programs funded under JTPA including Job Corps and the Job Guarantee Program. The Job Guarantee Program is authorized in YFC legislation as an option which some offerors may want to explore. Complementary programs also include national initiatives, such as Healthy Start operated by the U.S. Department of health and Human Services (HHS), Empowerment Zones or Enterprise Communities under the U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture, and youth programs supported by the U.S. Departments of Education, Justice, Transportation, and Defense.

The following is a description of examples of complementary program:

1. *Youth Build.* Program provides assistance for a wide range of multi-disciplinary activities and services to assist economically disadvantaged youth. The opportunities are designed to help disadvantaged young adults who have dropped out of school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities.

2. *Initiatives aimed at increasing rural student enrollment in postsecondary education.* Initiatives could include establishing community college satellites, or small, two year, work-study colleges, and last dollar opportunities for tuition.'

3. *Youth Apprenticeship Programs.* Programs for out-of-school youth developed in conjunction with local trade unions to train youth in construction and other skilled trades.

4. *Teen Parent Programs.* Programs that included an employability development program for teen parents operated in conjunction with a health center that serves teen parents. The emphasis is on returning teenagers to school and on long-term career development. A case management approach is used with the aim of ensuring that the teen parent receives a sequence of services including counseling, basic education, mentoring,

vocational training, and job search assistance. Programs for both teen mothers and teen fathers can be developed.

5. *Summer Training and Education Programs (STEP).* Programs that add a remedial education component to traditional summer youth jobs programs and enroll students during the school year to ensure academic success. Such programs can be operated on college campuses during the Summer to provide a residential experience for enrollees.

6. *Middle Colleges.* Alternative schools for dropouts and potential dropouts run by community colleges on the college campus.

7. *Community Service Programs for Youth.* Programs that allow youth to participate in community service. Such programs can be aimed at both in-school and out-of-school youth. Service corps programs enrolling out-of-school youth should include education and training components. These programs could also be aimed at youth offenders, with community service offered as an alternative form of sentencing.

8. *Community Youth Centers.* Community centers in which youth can gather and receive counseling, recreation and cultural opportunities, and educational and job market information.

9. *Public-Private Collaborations to Assure School Graduates Either Enter College or Obtain Career-Track Jobs.* Program such as the Boston Compact or College Bound in Baltimore in which the private sector offers both "Last Dollar" college financial aide and career-track jobs to graduating seniors.

10. *Alternative Schools.* Schools operated by the local school system aimed specifically at high school dropouts or potential dropouts.

11. *Job Guarantee.* Effort under which a target community with a population of 20,000 or less reserves up to $1 million of its YFC grant budget to provide a job guarantee to youth ages 16–19 who either agree to stay in school or to return to school. (Target communities with a larger population should not plan to offer such a guarantee because it will be too expensive given the number of youth in the area.) The job guarantee should be limited to an eight-hour Saturday job during the 39 weeks of the school year, and a summer job funded under Title II–B of JTPA. The guarantee of a summer job should continue through the Summer following high school graduation, or until the youth reaches age 19 whichever is later.

The wage paid for the part-time job during the school year should be the minimum wage. To maintain eligibility for the guaranteed job, youth must maintain a C average and a school attendance rate of 90 percent (except for doctor's excused absences).

Grantees offering this component must provide participating youth with additional services to assist them in remaining in school and subsequently entering college or a career-track job. Such services can include counseling, job development and placement, and supportive services while attending school or working (including child care and transportation).

The job guarantee program can also include a 50 percent wage subsidy to encourage private employers to hire youth for the Saturday job. The duration of these subsidies should be not more than a year. Priority in these subsidies should be given to employers who provide advanced or specialized training, or who provide a structured and integrated learning experience involving the school and employer.

12. *Youth Construction Corps.* Programs in which youth are trained in construction trades while rehabilitating houses. Such programs make use of union craftsmen as instructors and foremen. Models for such programs include Ventures in Community Improvement (VICI) and Youthbuild. Before implementing this program an analysis of the construction market in local labor market should be completed to determine the probability of employment once the program is successfully completed.

The following is a brief description of examples of complementary national programs:

U.S. Department of Agriculture

(a) Extension Service (State 4–H Program)—Coordinates and provides administrative, technical, and other services to a nationwide Cooperative Extension System, in partnership with State and local governments and the private sector. The primary function of this system is to take the research findings of the Department of Agriculture, the State Land-Grant Colleges and programs administered by the Department of Agriculture, and to develop and deliver informal, out-of-school educational programs.

(b) Food and Nutrition Service—Administers programs to make food assistance available to people who need it. These programs are operated in cooperation with State and local government.

U.S. Department of Commerce

(a) Economic Development Administration (EDA)—Operates a long-range economic development program in areas with severe unemployment and low family income problems; aids in the development of public facilities and private enterprise to help create new, permanent jobs.

U.S. Department of Health and Human Services

(a) Public Health Service—Stimulates and assists States and communities with the development of local health resources and further the development of education for the health professions; assist in the delivery of health services to all Americans with reinforced emphasis upon assisting the health care needs of the nation's needy populations.

Such programs include:

(1) Healthy Start—This program maximizes the positive development of young children.

(2) Runaway and Homeless Youth Basic Centers—This program addresses the spiraling trend toward drug experimentation and abuse by children and youth, especially those who are runaways and homeless, and those who become entrapped in youth gang activities.

(3) Drug Education and Prevention—This program focuses upon the specific needs of youth involved with drugs that communities across the nation are combating.

U.S. Department of Housing and Urban Development

(a) Community Planning and Development—This program builds communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income.

(b) Empowerment Zones and Enterprise Communities—This program offers local communities the incentives, targeted investments, deregulation and flexibility they need to work with the private sector to develop comprehensive economic strategies to generate business, create jobs, make their streets safe, build community, and empower people to get ahead.

(c) Youthbuild Program—This program offers a wide range of multi-disciplinary activities and services to assist economically disadvantaged youth. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities.

U.S. Department of Justice

(a) National Performance Review Laboratory Related to Comprehensive Anti-Crime and Social Delivery Systems—This is a comprehensive "Weed and Seed" program designed to bring into communities of high crime services and programs that offer positive alternatives to youths who reside in these areas.

(b) Community Partnerships with Local Police—This program involves the community residents in patrolling, neighborhood watch and the actual selection of local police who will work in the community.

U.S. Department of Transportation

(a) Urban and Rural Mass Transportation—Programs are designed to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private. Demonstration projects are underway in several urban and rural areas to enhance the local services to individuals residing in communities that have inadequate transportation services.

State and Local Programs

(a) Local programs that encourages participation by community residents to be involved in programs design to serve youth and build a safe, clean and supportive community.

As part of this section, offers are requested to:

- *Discuss how the YFC program will make use of the resources, expertise, and commitment of programs and services from organizations* such as: (1) the school system; (2) community-based and related organizations serving youth; (3) youth corps programs; (4) Job Corps centers; (5) apprenticeship programs; (6) other projects and programs funded under the JTPA and other Federal legislation.
- *Include a description of the resources available in the participating community* from private, local, State, and Federal sources that will be used to achieve the goals of the program.
- *Estimate the funds required to ensure access to appropriate education, training, and support services* for all youth and young adults in the target area to achieve YFC goals.

4. Additional Considerations

Offerors should identify a time-phased work schedule covering the planning, development, and implementation of the YFC program's first 18 months.

Evaluation is an integral and necessary part of the YFC program. Offerors will be expected to cooperate with and participate in a national evaluation of all YFC sites. A contractor will be selected to conduct the evaluation.

To aid in YFC program implementation, a national technical assistance contractor will be available to sites awarded grantees.

F. Rating Criteria for Award

Prospective offerors are advised that the selection of grantees for awards is to be made after careful evaluation of proposals by a panel of specialists. Panelists will evaluate the proposals on the basis of five (5) factors enumerated below:

The factors are:

1. Need in the Designated Target Area as evidenced by description of the target community, poverty population in the community, poverty rate, school dropout rate, teen pregnancy rate, and other such data. (5 points).

2. Quality of the School-to-Work YFC Initiative as indicated by the offerors in-school youth projects; understanding of the STW core component as reflected in the planning, development and implementation of a STW program; the soundness of the plan to accomplish the goals and objectives of the STW program; the extent of coordination and involvement with key partners such as the State education system, local schools, employers, labor unions, apprenticeship programs, community-based organizations, business and trade organizations, parents, and youth. (25 points).

3. Quality of Out-of-School YFC Initiative as indicated by the offerors plan to establish a permanent center; proposed employment, education and training programs; support services to be provided to meet the needs of a diverse target population, including young adults 22 to 30 years of age; outreach and recruitment initiatives; extent of coordination and involvement with key employment, education, and training partners; and the soundness of the plan to accomplish the goals and objectives of the YFC program. (25 points).

4. Quality of Overall YFC Project Design and Implementation Plan as reflected in the plan for incorporating into a YFC project the necessary elements to provide needed services to the target population and to achieve YFC program goals and objectives. Consideration will be given to factors such as: organizational structure, program components and activities, staffing and resources; establishment of a central YFC facility; recruitment, common intake and case management; plans for an advisory/resource board; ability of offeror to accomplish the goals and objective of the YFC program. (25 points).

5. Linkages to complementary programs and commitment of State and local resources to the project. Extent of linkages with complementary programs and the ability of the offeror to garner support for YFC initiatives from public and private sectors, including Federal, State, and local agencies; soundness of plans for linking community resources; and plans for continuing the program on a permanent basis. Programs that establish linkages with the U.S. Department of Justice's local Weed and Seed program and/or that apply to be designated an Empowerment Zone or Enterprise Community with the U.S. Department of Housing and Urban Development will receive special emphasis under this criterion. (20 points)

Cost shall be rated separately. Cost will be analyzed to determine reasonableness. Available resources should be adequate to the services proposed in the application. The total cost of the project, however, must be reasonable in view of anticipated results. Applicants should document their expected costs and justify why they consider these costs to be reasonable.

Offerors are advised that discussions may be necessary in order to clarify any inconsistencies in their application. The panel results are advisory in nature and not binding on the Grant Officer. The scores based on rating of proposals will be used to establish a competitive range as determined by the Department of Labor. Therefore, the final awards and selection of grantees will be based on such factors as the overall technical quality of the proposal, population served, and what's in the best interests of the government.

Part III—Reporting Requirements

A. Quarterly Reports on the Youth Fair Chance program are required.

B. Quarterly Progress Reports on the Youth Fair Chance program are required.

C. Special reports, including a final, on the progress of the implementation of the Youth Fair Chance model may be required.

Signed at Washington, DC, this 15th day of December 1993.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

BILLING CODE 4510-30-M

APPENDIX No. 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	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:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐☐

TITLE:

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," 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

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
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.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
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.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
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: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
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.
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.
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.
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.)

BUDGET INFORMATION – Non Construction Programs APPENDIX No. 2

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1._____	$_____	$_____	$_____	$_____
2._____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT **						
(E) SUPPLIES						
(F) CONTRACTUAL (Consultants)						
(G) OTHER Staff/Product Devel. Eval/Dissemination						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

** SEE PART IV - SPECIAL CONDITION #9 AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

APPENDIX No. 3

U.S. Cities
Ranked By # Below Poverty

CITY	STATE	BELOW POVERTY LEVEL	POPULATION	POVERTY RATE	PERCENT OF U.S. POVERTY
1 New York city	New York	1,384,994	7,322,564	18.9%	4.098%
2 Los Angeles city	California	643,809	3,485,398	18.5%	1.905%
3 Chicago city	Illinois	592,298	2,783,726	21.3%	1.752%
4 Houston city	Texas	332,974	1,630,672	20.4%	0.985%
5 Detroit city	Michigan	328,467	1,027,974	32.0%	0.972%
6 Philadelphia city	Pennsylvania	313,374	1,585,577	19.8%	0.927%
7 San Jian Municipio	Puerto Rico	208,319	437,745	47.6%	0.616%
8 San Antonio city	Texas	207,161	935,927	22.1%	0.613%
9 Dallas city	Texas	177,790	1,006,831	17.7%	0.526%
10 Baltimore city	Maryland	156,284	736,014	21.2%	0.462%
11 New Orleans city	Louisiana	152,042	496,938	30.6%	0.450%
12 San Diego city	California	142,382	1,110,549	12.8%	0.421%
13 Cleveland city	Ohio	142,217	505,616	28.1%	0.421%
14 Phoenix city	Arizona	137,406	983,403	14.0%	0.407%
15 Memphis city	Tennessee	136,123	610,337	22.3%	0.403%
16 Milwaukee city	Wisconsin	135,583	628,088	21.6%	0.401%
17 El Paso city	Texas	128,886	515,342	25.0%	0.381%
18 Ponce Municipio	Puerto Rico	115,720	187,749	61.6%	0.342%
19 Miami city	Florida	109,594	358,548	30.6%	0.324%
20 Columbus city	Ohio	105,494	632,958	16.7%	0.312%
21 Atlanta city	Georgia	102,364	394,017	26.0%	0.303%
22 Boston city	Massachusetts	102,092	574,283	17.8%	0.302%
23 Washington city	Dist. of Col.	96,278	606,900	15.9%	0.285%
24 St. Louis city	Missouri	95,271	396,685	24.0%	0.282%
25 Bayamon Municipio	Puerto Rico	94,381	220,262	42.8%	0.279%
26 San Francisco city	California	90,019	723,959	12.4%	0.266%
27 Indianapolis city	Indiana	89,831	731,321	12.3%	0.266%
28 Cincinnati city	Ohio	85,319	364,040	23.4%	0.252%
29 Fresno city	California	83,108	354,202	23.5%	0.246%
30 Buffalo city	New York	81,601	328,123	24.9%	0.241%
31 Austin city	Texas	80,369	465,577	17.3%	0.238%
32 Jacksonville city	Florida	80,016	635,230	12.6%	0.237%
33 Tucson city	Arizona	79,287	405,390	19.6%	0.235%
34 Denver city	Colorado	78,515	467,610	16.8%	0.232%
35 Fort Worth city	Texas	75,597	447,619	16.9%	0.224%
36 Pittsburgh city	Pennsylvania	75,172	369,879	20.3%	0.222%
37 San Jose city	California	71,676	782,225	9.2%	0.212%
38 Newark city	New Jersey	70,702	275,221	25.7%	0.209%
39 Long Beach city	California	69,694	429,433	16.2%	0.206%
40 Oklahoma City city	Oklahoma	69,096	444,730	15.5%	0.204%
41 Oakland city	California	68,781	372,242	18.5%	0.203%
42 Minneapolis city	Minnesota	65,556	368,383	17.8%	0.194%
43 Kansas City city	Missouri	65,381	435,141	15.0%	0.193%
44 Birmingham city	Alabama	64,572	265,852	24.3%	0.191%
45 Nashville–Davidson	Tennessee	62,497	488,518	12.8%	0.185%

46 Toledo city	Ohio	62,426	332,943	18.7%	0.185%
47 Sacramento city	California	62,232	369,365	16.8%	0.184%
48 Portland city	Oregon	62,058	437,398	14.2%	0.184%
49 Seattle city	Washington	61,681	516,259	11.9%	0.182%
50 Louisville city	Kentucky	59,144	269,157	22.0%	0.175%
51 Baton Rouge city	Louisiana	54,669	219,531	24.9%	0.162%
52 Tulsa city	Oklahoma	53,768	367,193	14.6%	0.159%
53 Albuquerque city	New Mexico	52,903	384,736	13.8%	0.157%
54 Tampa city	Florida	52,557	280,015	18.8%	0.155%
55 Rochester city	New York	52,237	231,636	22.6%	0.155%
56 Santa Ana city	California	51,835	293,742	17.6%	0.153%
57 Corpus Christi city	Texas	50,525	257,453	19.6%	0.149%
58 Shreveport city	Louisiana	49,215	198,528	24.8%	0.146%
59 Dayton city	Ohio	46,480	182,044	25.5%	0.138%
60 Laredo city	Texas	45,126	122,899	36.7%	0.134%
61 Akron city	Ohio	44,544	223,019	20.0%	0.132%
62 St. Paul city	Minnesota	44,115	272,235	16.2%	0.131%
63 Stockton city	California	43,990	210,943	20.9%	0.130%
64 Norfolk city	Virginia	43,944	261,229	16.8%	0.130%
65 Jackson city	Mississippi	43,216	196,594	22.0%	0.128%
66 Mobile city	Alabama	42,838	196,278	21.8%	0.127%
67 Brownsville city	Texas	42,594	98,962	43.0%	0.126%
68 Jersey City city	New Jersey	42,539	228,537	18.6%	0.126%
69 Charlotte city	North Carolina	42,312	396,003	10.7%	0.125%
70 Flint city	Michigan	42,218	140,761	30.0%	0.125%
71 Omaha city	Nebraska	41,357	335,795	12.3%	0.122%
72 Richmond city	Virginia	40,103	203,056	19.7%	0.119%
73 Wichita city	Kansas	37,321	304,011	12.3%	0.110%
74 Hartford city	Connecticut	36,397	139,739	26.0%	0.108%
75 San Bernardino city	California	36,174	164,164	22.0%	0.107%
76 Lubbock city	Texas	34,593	186,281	18.6%	0.102%
77 Syracuse city	New York	34,402	163,860	21.0%	0.102%
78 Providence city	Rhode Island	34,120	160,728	21.2%	0.101%
79 Gary city	Indiana	33,964	116,646	29.1%	0.100%
80 Hialeah city	Florida	33,830	188,004	18.0%	0.100%
81 Montgomery city	Alabama	32,778	187,106	17.5%	0.097%
82 Knoxville city	Tennessee	32,189	165,121	19.5%	0.095%
83 Columbus city	Georgia	31,811	178,701	17.8%	0.094%
84 St. Petersburg city	Florida	31,475	238,629	13.2%	0.093%
85 Camden city	New Jersey	30,588	87,492	35.0%	0.090%
86 Springfield city	Massachusetts	30,241	156,983	19.3%	0.089%
87 Lexington–Fayette	Kentucky	30,108	225,366	13.4%	0.089%
88 Colorado Springs city	Colorado	29,973	281,140	10.7%	0.089%
89 Honolulu	Hawaii	29,873	365,272	8.2%	0.088%
90 Spokane city	Washington	29,863	177,196	16.9%	0.088%
91 Savannah city	Georgia	29,854	137,557	21.7%	0.088%
92 Grand Rapids city	Michigan	29,103	189,126	15.4%	0.086%
93 Las Vegas city	Nevada	29,084	258,295	11.3%	0.086%
94 Madison city	Wisconsin	28,640	191,262	15.0%	0.085%
95 Tacoma city	Washington	28,632	176,664	16.2%	0.085%
96 Anaheim city	California	27,933	266,406	10.5%	0.083%

97	Waco city	Texas	27,767	103,590	26.8%	0.082%
98	McAllen city	Texas	27,236	84,021	32.4%	0.081%
99	Youngstown city	Ohio	27,109	95,732	28.3%	0.080%
100	Mesa city	Arizona	27,087	288,091	9.4%	0.080%
101	Chattanooga city	Tennessee	26,803	152,488	17.6%	0.079%
102	Kansas City city	Kansas	26,433	149,768	17.6%	0.078%
103	Riverside city	California	26,280	226,505	11.6%	0.078%
104	Amarillo city	Texas	26,058	157,615	16.5%	0.077%
105	Bakersfield city	California	25,782	174,820	14.7%	0.076%
106	Paterson city	New Jersey	25,677	140,891	18.2%	0.076%
107	Salt Lake City city	Utah	25,651	159,936	16.0%	0.076%
108	Tallahassee city	Florida	25,518	124,773	20.5%	0.075%
109	Glendale city	California	25,484	180,038	14.2%	0.075%
110	New Haven city	Connecticut	25,481	130,474	19.5%	0.075%
111	Little Rock city	Arkansas	25,193	175,781	14.3%	0.075%
112	Macon city	Georgia	25,178	106,640	23.6%	0.074%
113	Fort Lauderdale city	Florida	24,793	149,377	16.6%	0.073%
114	Lansing city	Michigan	24,513	127,321	19.3%	0.073%
115	Compton city	California	24,460	90,454	27.0%	0.072%
116	Worcester city	Massachusetts	24,228	169,759	14.3%	0.072%
117	Des Moines city	Iowa	24,137	193,187	12.5%	0.071%
118	Orlando city	Florida	23,797	164,693	14.4%	0.070%
119	Pomona city	California	23,648	131,723	18.0%	0.070%
120	Beaumont city	Texas	23,494	114,323	20.6%	0.070%
121	Bridgeport city	Connecticut	23,463	141,686	16.6%	0.069%
122	El Monte city	California	23,446	106,209	22.1%	0.069%
123	Provo city	Utah	23,434	86,848	27.0%	0.069%
124	Springfield city	Missouri	23,223	140,494	16.5%	0.069%
125	Newport News city	Virginia	23,169	170,045	13.6%	0.069%
126	Miami Beach city	Florida	22,993	92,639	24.8%	0.068%
127	Raleigh city	North Carolina	22,942	207,951	11.0%	0.068%
128	Virginia Beach city	Virginia	22,307	393,069	5.7%	0.066%
129	Saginaw city	Michigan	21,647	69,512	31.1%	0.064%
130	Arlington city	Texas	21,272	261,763	8.1%	0.063%
131	Albany city	Georgia	21,011	78,122	26.9%	0.062%
132	Modesto city	California	20,930	164,730	12.7%	0.062%
133	Pueblo city	Colorado	20,778	98,640	21.1%	0.061%
134	Winston–Salem city	North Carolina	20,713	143,485	14.4%	0.061%
135	Lincoln city	Nebraska	20,521	191,972	10.7%	0.061%
136	Peoria city	Illinois	20,516	113,504	18.1%	0.061%
137	Yonkers city	New York	20,436	188,082	10.9%	0.060%
138	Greensboro city	North Carolina	20,214	183,521	11.0%	0.060%
139	Erie city	Pennsylvania	20,192	108,718	18.6%	0.060%
140	Lafayette city	Louisiana	19,898	94,460	21.1%	0.059%
141	Gainesville city	Florida	19,860	84,770	23.4%	0.059%
142	Fort Wayne city	Indiana	19,531	173,072	11.3%	0.058%
143	Monroe city	Louisiana	19,241	54,909	35.0%	0.057%
144	Durham city	North Carolina	19,163	136,594	14.0%	0.057%
145	Pasadena city	California	19,043	131,591	14.5%	0.056%
146	Lawrence city	Massachusetts	18,946	70,207	27.0%	0.056%
147	Kalamazoo city	Michigan	18,621	80,277	23.2%	0.055%

148 Tempe city	Arizona	18,603	141,865	13.1%	0.055%
149 Tuscaloosa city	Alabama	18,455	77,759	23.7%	0.055%
150 Pontiac city	Michigan	18,222	71,166	25.6%	0.054%
151 Eugene city	Oregon	18,176	112,669	16.1%	0.054%
152 Rockford city	Illinois	18,127	139,426	13.0%	0.054%
153 Huntsville city	Alabama	18,093	159,866	11.3%	0.054%
154 Portsmouth city	Virginia	17,920	103,907	17.2%	0.053%
155 Lowell city	Massachusetts	17,900	103,439	17.3%	0.053%
156 Canton city	Ohio	17,864	84,161	21.2%	0.053%
157 Ontario city	California	17,853	133,179	13.4%	0.053%
158 Evansville city	Indiana	17,812	126,272	14.1%	0.053%
159 Inglewood city	California	17,806	109,602	16.2%	0.053%
160 Oxnard city	California	17,608	142,192	12.4%	0.052%
161 Elizabeth city	New Jersey	17,451	110,002	15.9%	0.052%
162 Odessa city	Texas	17,205	89,783	19.2%	0.051%
163 Albany city	New York	16,903	101,082	16.7%	0.050%
164 Glendale city	Arizona	16,756	148,134	11.3%	0.050%
165 Pasadena city	Texas	16,724	119,363	14.0%	0.049%
166 Columbia city	South Carolina	16,652	98,052	17.0%	0.049%
167 Salinas city	California	16,652	108,777	15.3%	0.049%
168 New Bedford city	Massachusetts	16,430	99,922	16.4%	0.049%
169 Berkeley city	California	16,370	102,724	15.9%	0.048%
170 Port Arthur city	Texas	16,344	58,724	27.8%	0.048%
171 Aurora city	Colorado	16,288	222,110	7.3%	0.048%
172 Charleston city	South Carolina	16,227	80,414	20.2%	0.048%
173 Irving city	Texas	16,209	155,037	10.5%	0.048%
174 Lake Charles city	Louisiana	16,172	70,580	22.9%	0.048%
175 College Station city	Texas	15,648	52,456	29.8%	0.046%
176 Ann Arbor city	Michigan	15,624	109,592	14.3%	0.046%
177 Anchorage city	Alaska	15,614	226,338	6.9%	0.046%
178 Trenton city	New Jersey	15,348	88,675	17.3%	0.045%
179 Pine Bluff city	Arkansas	15,283	57,140	26.7%	0.045%
180 Abilene city	Texas	15,244	106,665	14.3%	0.045%
181 Roanoke city	Virginia	15,238	96,397	15.8%	0.045%
182 Muncie city	Indiana	15,173	71,035	21.4%	0.045%
183 Reno city	Nevada	15,085	133,850	11.3%	0.045%
184 South Gate city	California	14,956	86,284	17.3%	0.044%
185 Wichita Falls city	Texas	14,896	96,259	15.5%	0.044%
186 Reading city	Pennsylvania	14,857	78,380	19.0%	0.044%
187 South Bend city	Indiana	14,854	105,536	14.1%	0.044%
188 San Angelo city	Texas	14,737	84,474	17.4%	0.044%
189 Garden Grove city	California	14,652	143,050	10.2%	0.043%
190 Bloomington city	Indiana	14,462	60,633	23.9%	0.043%
191 Davenport city	Iowa	14,452	95,333	15.2%	0.043%
192 Boulder city	Colorado	14,393	83,312	17.3%	0.043%
193 Utica city	New York	14,308	68,637	20.8%	0.042%
194 Salem city	Oregon	14,300	107,786	13.3%	0.042%
195 Topeka city	Kansas	14,292	119,883	11.9%	0.042%
196 Tyler city	Texas	14,251	75,450	18.9%	0.042%
197 Garland city	Texas	14,062	180,635	7.8%	0.042%
198 Harrisburg city	Pennsylvania	14,002	52,376	26.7%	0.041%

199 Springfield city	Ohio	13,999	70,487	19.9%	0.041%
200 Lorain city	Ohio	13,980	71,245	19.6%	0.041%
201 Lawrence city	Kansas	13,928	65,657	21.2%	0.041%
202 Fort Collins city	Colorado	13,910	87,758	15.9%	0.041%
203 Richmond city	California	13,909	87,425	15.9%	0.041%
204 Galveston city	Texas	13,891	59,072	23.5%	0.041%
205 Las Cruces city	New Mexico	13,872	62,126	22.3%	0.041%
206 Hampton city	Virginia	13,831	133,793	10.3%	0.041%
207 Merced city	California	13,804	56,216	24.6%	0.041%
208 Fayetteville city	North Carolina	13,764	75,695	18.2%	0.041%
209 Duluth city	Minnesota	13,578	85,493	15.9%	0.040%
210 Huntington Park city	California	13,508	56,065	24.1%	0.040%
211 Chesapeake city	Virginia	13,329	151,976	8.8%	0.039%
212 Lynwood city	California	13,291	61,945	21.5%	0.039%
213 Hollywood city	Florida	13,264	121,697	10.9%	0.039%
214 North Charleston city	South Carolina	13,248	70,161	18.9%	0.039%
215 Columbia city	Missouri	13,195	69,101	19.1%	0.039%
216 Racine city	Wisconsin	13,136	84,298	15.6%	0.039%
217 Visalia city	California	13,075	75,636	17.3%	0.039%
218 Springfield city	Illinois	13,065	105,227	12.4%	0.039%
219 Chula Vista city	California	13,036	135,163	9.6%	0.039%
220 Daytona Beach city	Florida	13,026	61,921	21.0%	0.039%
221 Fall River city	Massachusetts	13,017	92,703	14.0%	0.039%
222 Allentown city	Pennsylvania	12,999	105,090	12.4%	0.038%
223 Waterbury city	Connecticut	12,922	108,961	11.9%	0.038%
224 Decatur city	Illinois	12,855	83,885	15.3%	0.038%
225 Oceanside city	California	12,823	128,398	10.0%	0.038%
226 Midland city	Texas	12,774	89,443	14.3%	0.038%
227 Lynn city	Massachusetts	12,756	81,245	15.7%	0.038%
228 East Orange city	New Jersey	12,699	73,552	17.3%	0.038%
229 Champaign city	Illinois	12,625	63,502	19.9%	0.037%
230 Green Bay city	Wisconsin	12,607	96,466	13.1%	0.037%
231 Wilmington city	Delaware	12,598	71,529	17.6%	0.037%
232 Lawton city	Oklahoma	12,522	80,561	15.5%	0.037%
233 Brockton city	Massachusetts	12,396	92,788	13.4%	0.037%
234 Denton city	Texas	12,273	66,270	18.5%	0.036%
235 Iowa City city	Iowa	12,074	59,738	20.2%	0.036%
236 Huntington city	West Virginia	12,021	54,844	21.9%	0.036%
237 Escondido city	California	12,016	108,635	11.1%	0.036%
238 Scranton city	Pennsylvania	11,907	81,805	14.6%	0.035%
239 Bryan city	Texas	11,887	55,002	21.6%	0.035%
240 Alhambra city	California	11,819	82,106	14.4%	0.035%
241 Wilmington city	North Carolina	11,780	55,530	21.2%	0.035%
242 Longview city	Texas	11,637	70,316	16.5%	0.034%
243 Boise City city	Idaho	11,598	125,738	9.2%	0.034%
244 St. Joseph city	Missouri	11,596	71,852	16.1%	0.034%
245 Niagara Falls city	New York	11,387	61,840	18.4%	0.034%
246 Pompano Beach city	Florida	11,295	72,411	15.6%	0.033%
247 Hammond city	Indiana	11,284	84,236	13.4%	0.033%
248 Norman city	Oklahoma	11,221	80,071	14.0%	0.033%
249 East Lansing city	Michigan	11,211	50,677	22.1%	0.033%

250	El Cajon city	California	11,184	88,693	12.6%	0.033%
251	Waterloo city	Iowa	11,067	66,467	16.7%	0.033%
252	Lancaster city	Pennsylvania	11,059	55,551	19.9%	0.033%
253	Greeley city	Colorado	11,044	60,536	18.2%	0.033%
254	Fullerton city	California	10,985	114,144	9.6%	0.032%
255	Pensacola city	Florida	10,832	58,165	18.6%	0.032%
256	Sioux City city	Iowa	10,801	80,505	13.4%	0.032%
257	Yakima city	Washington	10,742	54,831	19.6%	0.032%
258	Baldwin Park city	California	10,727	69,330	15.5%	0.032%
259	Hayward city	California	10,640	111,498	9.5%	0.031%
260	Santa Barbara city	California	10,588	85,571	12.4%	0.031%
261	West Palm Beach city	Florida	10,578	67,643	15.6%	0.031%
262	Cedar Rapids city	Iowa	10,567	108,751	9.7%	0.031%
263	Charleston city	West Virginia	10,560	57,287	18.4%	0.031%
264	Independence city	Missouri	10,557	112,301	9.4%	0.031%
265	Union City city	New Jersey	10,513	58,012	18.1%	0.031%
266	Ogden city	Utah	10,482	63,909	16.4%	0.031%
267	North Little Rock city	Arkansas	10,386	61,741	16.8%	0.031%
268	Anderson city	Indiana	10,320	59,449	17.4%	0.031%
269	Binghamton city	New York	10,291	53,008	19.4%	0.030%
270	Aurora city	Illinois	10,285	99,581	10.3%	0.030%
271	Victoria city	Texas	10,227	55,000	18.6%	0.030%
272	Clearwater city	Florida	10,203	98,773	10.3%	0.030%
273	Hamilton city	Ohio	10,179	61,368	16.6%	0.030%
274	Santa Maria city	California	10,172	61,284	16.6%	0.030%
275	Rosemead city	California	10,149	51,638	19.7%	0.030%
276	Baytown city	Texas	10,148	63,838	15.9%	0.030%
277	Kenner city	Louisiana	10,146	72,033	14.1%	0.030%
278	Terre Haute city	Indiana	10,140	57,483	17.6%	0.030%
279	National City city	California	10,092	54,249	18.6%	0.030%
280	Warren city	Ohio	9,949	50,793	19.6%	0.029%
281	Kenosha city	Wisconsin	9,923	80,375	12.3%	0.029%
282	West Valley City city	Utah	9,913	86,976	11.4%	0.029%
283	Monterey Park city	California	9,900	60,738	16.3%	0.029%
284	Lynchburg city	Virginia	9,889	66,049	15.0%	0.029%
285	Billings city	Montana	9,887	81,151	12.2%	0.029%
286	Grand Prairie city	Texas	9,883	99,613	9.9%	0.029%
287	La Crosse city	Wisconsin	9,881	51,003	19.4%	0.029%
288	Moreno Valley city	California	9,870	118,779	8.3%	0.029%
289	Fort Smith city	Arkansas	9,869	72,798	13.6%	0.029%
290	Fontana city	California	9,867	87,535	11.3%	0.029%
291	Hawthorne city	California	9,833	71,349	13.8%	0.029%
292	Eau Claire city	Wisconsin	9,818	56,930	17.2%	0.029%
293	Owensboro city	Kentucky	9,804	53,549	18.3%	0.029%
294	Danville city	Virginia	9,795	53,056	18.5%	0.029%
295	Passaic city	New Jersey	9,794	58,041	16.9%	0.029%
296	Battle Creek city	Michigan	9,643	53,540	18.0%	0.029%
297	Greenville city	South Carolina	9,605	58,282	16.5%	0.028%
298	Dearborn city	Michigan	9,604	89,286	10.8%	0.028%
299	Fargo city	North Dakota	9,603	74,115	13.0%	0.028%
300	Lakeland city	Florida	9,483	70,576	13.4%	0.028%

301 Asheville city	North Carolina	9,442	61,654	15.3%	0.028%
302 Joliet city	Illinois	9,419	76,836	12.3%	0.028%
303 Schenectady city	New York	9,399	65,566	14.3%	0.028%
304 Huntington Beach city	California	9,367	181,519	5.2%	0.028%
305 Lakewood city	Colorado	9,348	126,481	7.4%	0.028%
306 Redding city	California	9,343	66,462	14.1%	0.028%
307 Warren city	Michigan	9,303	144,864	6.4%	0.028%
308 New Britain city	Connecticut	9,289	75,491	12.3%	0.027%
309 Santa Rosa city	California	9,269	113,313	8.2%	0.027%
310 Cicero town	Illinois	9,269	67,436	13.7%	0.027%
311 Altoona city	Pennsylvania	9,218	51,881	17.8%	0.027%
312 Killeen city	Texas	9,146	63,608	14.4%	0.027%
313 Lancaster city	California	9,128	97,291	9.4%	0.027%
314 Clarksville city	Tennessee	9,093	75,494	12.0%	0.027%
315 Arden–Arcade CDP	California	9,063	92,040	9.8%	0.027%
316 Vallejo city	California	9,007	109,199	8.2%	0.027%
317 Dothan city	Alabama	8,980	53,583	16.8%	0.027%
318 Suffolk city	Virginia	8,864	52,141	17.0%	0.026%
319 Westminster city	California	8,859	78,118	11.3%	0.026%
320 Cambridge city	Massachusetts	8,794	95,802	9.2%	0.026%
321 Portland city	Oregon	8,783	64,358	13.6%	0.026%
322 Rialto city	California	8,720	72,388	12.0%	0.026%
323 Chandler city	Arizona	8,701	90,524	9.6%	0.026%
324 Manchester city	New Hampshire	8,694	99,567	8.7%	0.026%
325 Bethlehem city	Pennsylvania	8,626	71,428	12.1%	0.026%
326 Yuma city	Arizona	8,621	54,923	15.7%	0.026%
327 Costa Mesa city	California	8,614	96,357	8.9%	0.025%
328 High Point city	North Carolina	8,600	69,394	12.4%	0.025%
329 Orange city	California	8,559	110,658	7.7%	0.025%
330 Norwalk city	California	8,504	94,279	9.0%	0.025%
331 Somerville city	Massachusetts	8,492	76,210	11.1%	0.025%
332 Mansfield city	Ohio	8,474	50,627	16.7%	0.025%
333 Troy city	New York	8,440	54,269	15.6%	0.025%
334 Taylor city	Michigan	8,325	70,811	11.8%	0.025%
335 Montebello city	California	8,246	59,564	13.8%	0.024%
336 Vista city	California	8,230	71,872	11.5%	0.024%
337 Sioux Falls city	South Dakota	8,227	100,814	8.2%	0.024%
338 Everett city	Washington	8,217	69,961	11.7%	0.024%
339 Bossier City city	Louisiana	8,110	52,718	15.4%	0.024%
340 Bellingham city	Washington	8,033	52,278	15.4%	0.024%
341 Santa Monica city	California	7,979	86,905	9.2%	0.024%
342 Great Falls city	Montana	7,952	55,097	14.4%	0.024%
343 Mount Vernon city	New York	7,823	67,153	11.6%	0.023%
344 Mesquite city	Texas	7,771	101,484	7.7%	0.023%
345 Alexandria city	Virginia	7,732	111,183	7.0%	0.023%
346 Burbank city	California	7,723	93,643	8.2%	0.023%
347 Elyria city	Ohio	7,661	56,746	13.5%	0.023%
348 Pawtucket city	Rhode Island	7,632	72,644	10.5%	0.023%
349 Gastonia city	North Carolina	7,622	54,732	13.9%	0.023%
350 Scottsdale city	Arizona	7,583	130,069	5.8%	0.022%
351 Melbourne city	Florida	7,475	59,646	12.5%	0.022%

352 Concord city	California	7,349	111,348	6.6%	0.022%
353 West Covina city	California	7,347	96,086	7.6%	0.022%
354 Fremont city	California	7,316	173,339	4.2%	0.022%
355 Rapid City city	South Dakota	7,257	54,523	13.3%	0.021%
356 Downey city	California	7,189	91,444	7.9%	0.021%
357 Irvine city	California	6,948	110,330	6.3%	0.021%
358 Torrance city	California	6,791	133,107	5.1%	0.020%
359 Pico Rivera city	California	6,785	59,177	11.5%	0.020%
360 Stamford city	Connecticut	6,728	108,056	6.2%	0.020%
361 Santa Fe city	New Mexico	6,707	55,993	12.0%	0.020%
362 Daly City city	California	6,560	92,315	7.1%	0.019%
363 Sarasota city	Florida	6,500	50,978	12.8%	0.019%
364 Council Bluffs city	Iowa	6,485	54,315	11.9%	0.019%
365 Evanston city	Illinois	6,409	73,233	8.8%	0.019%
366 Waukegan city	Illinois	6,404	69,392	9.2%	0.019%
367 Oshkosh city	Wisconsin	6,325	55,006	11.5%	0.019%
368 Lodi city	California	6,284	51,874	12.1%	0.019%
369 Corona city	California	6,278	76,095	8.3%	0.019%
370 Hesperia city	California	6,246	50,418	12.4%	0.018%
371 Kendall CDP	Florida	6,094	87,271	7.0%	0.018%
372 Palmdale city	California	6,077	68,917	8.8%	0.018%
373 San Buenaventura (Ventur	California	6,017	92,575	6.5%	0.018%
374 Orem city	Utah	6,012	67,561	8.9%	0.018%
375 Dubuque city	Iowa	5,958	57,546	10.4%	0.018%
376 Westland city	Michigan	5,928	84,724	7.0%	0.018%
377 Bellflower city	California	5,862	61,815	9.5%	0.017%
378 Elgin city	Illinois	5,841	77,010	7.6%	0.017%
379 Whittier city	California	5,811	77,671	7.5%	0.017%
380 Midwest City city	Oklahoma	5,807	52,267	11.1%	0.017%
381 Carson city	California	5,790	83,995	6.9%	0.017%
382 Vineland city	New Jersey	5,739	54,780	10.5%	0.017%
383 Quincy city	Massachusetts	5,707	84,985	6.7%	0.017%
384 Santa Clara city	California	5,657	93,613	6.0%	0.017%
385 Antioch city	California	5,612	62,195	9.0%	0.017%
386 Gresham city	Oregon	5,550	68,235	8.1%	0.016%
387 Arvada city	Colorado	5,543	89,090	6.2%	0.016%
388 Rancho Cucamonga city	California	5,516	101,409	5.4%	0.016%
389 Fairfield city	California	5,492	77,211	7.1%	0.016%
390 Buena Park city	California	5,468	68,784	7.9%	0.016%
391 Sunnyvale city	California	5,461	117,229	4.7%	0.016%
392 Chicopee city	Massachusetts	5,455	56,632	9.6%	0.016%
393 Palm Bay city	Florida	5,428	62,632	8.7%	0.016%
394 Bayonne city	New Jersey	5,391	61,444	8.8%	0.016%
395 Rochester city	Minnesota	5,380	70,745	7.6%	0.016%
396 Redwood City city	California	5,328	66,072	8.1%	0.016%
397 Redlands city	California	5,232	60,394	8.7%	0.015%
398 San Mateo city	California	5,186	85,486	6.1%	0.015%
399 Clovis city	California	5,173	50,323	10.3%	0.015%
400 Nashua city	New Hampshire	5,135	79,662	6.4%	0.015%
401 Cheyenne city	Wyoming	5,105	50,008	10.2%	0.015%
402 Lakewood city	Ohio	5,043	59,718	8.4%	0.015%

403 Bloomington city	Illinois	4,969	51,972	9.6%	0.015%
404 New Rochelle city	New York	4,937	67,265	7.3%	0.015%
405 Westminster city	Colorado	4,897	74,623	6.6%	0.014%
406 Upland city	California	4,878	63,374	7.7%	0.014%
407 Bellevue city	Washington	4,807	86,878	5.5%	0.014%
408 Largo city	Florida	4,788	65,690	7.3%	0.014%
409 La Mesa city	California	4,765	52,931	9.0%	0.014%
410 Cranston city	Rhode Island	4,715	76,060	6.2%	0.014%
411 Napa city	California	4,693	61,842	7.6%	0.014%
412 Alameda city	California	4,662	76,459	6.1%	0.014%
413 Henderson city	Nevada	4,555	64,942	7.0%	0.013%
414 Encinitas city	California	4,519	55,386	8.2%	0.013%
415 Wyoming city	Michigan	4,498	63,891	7.0%	0.013%
416 Thornton city	Colorado	4,492	55,031	8.2%	0.013%
417 Cleveland Heights city	Ohio	4,482	54,052	8.3%	0.013%
418 Haverhill city	Massachusetts	4,418	51,418	8.6%	0.013%
419 Cape Coral city	Florida	4,391	74,991	5.9%	0.013%
420 Southfield city	Michigan	4,371	75,728	5.8%	0.013%
421 Thousand Oaks city	California	4,340	104,352	4.2%	0.013%
422 Appleton city	Wisconsin	4,333	65,651	6.6%	0.013%
423 Carlsbad city	California	4,284	63,126	6.8%	0.013%
424 Plano city	Texas	4,279	128,679	3.3%	0.013%
425 Meriden city	Connecticut	4,266	59,479	7.2%	0.013%
426 Janesville city	Wisconsin	4,262	52,133	8.2%	0.013%
427 Brooklyn Park city	Minnesota	4,221	56,381	7.5%	0.012%
428 Euclid city	Ohio	4,201	54,875	7.7%	0.012%
429 Mountain View city	California	4,157	67,460	6.2%	0.012%
430 Sunrise city	Florida	4,156	64,407	6.5%	0.012%
431 Sterling Heights city	Michigan	4,153	117,810	3.5%	0.012%
432 Coral Springs city	Florida	4,087	79,443	5.1%	0.012%
433 La Habra city	California	4,082	51,266	8.0%	0.012%
434 Warwick city	Rhode Island	4,078	85,427	4.8%	0.012%
435 Santa Clarita city	California	4,045	110,642	3.7%	0.012%
436 Norwalk city	Connecticut	4,034	78,331	5.1%	0.012%
437 Malden city	Massachusetts	4,029	53,884	7.5%	0.012%
438 Longmont city	Colorado	3,984	51,524	7.7%	0.012%
439 Peoria city	Arizona	3,914	50,618	7.7%	0.012%
440 Vacaville city	California	3,872	71,479	5.4%	0.011%
441 Medford city	Massachusetts	3,834	57,407	6.7%	0.011%
442 Sparks city	Nevada	3,797	53,367	7.1%	0.011%
443 Chino city	California	3,772	59,682	6.3%	0.011%
444 Broken Arrow city	Oklahoma	3,761	58,043	6.5%	0.011%
445 Newport Beach city	California	3,731	66,643	5.6%	0.011%
446 Edmond city	Oklahoma	3,730	52,315	7.1%	0.011%
447 Carrollton city	Texas	3,695	82,169	4.5%	0.011%
448 Danbury city	Connecticut	3,599	65,585	5.5%	0.011%
449 Lakewood city	California	3,559	73,557	4.8%	0.011%
450 Parma city	Ohio	3,541	87,876	4.0%	0.010%
451 Simi Valley city	California	3,536	100,217	3.5%	0.010%
452 Union City city	California	3,461	53,762	6.4%	0.010%
453 St. Charles city	Missouri	3,454	54,555	6.3%	0.010%

454 Beaverton city	Oregon	3,402	53,310	6.4%	0.010%
455 San Leandro city	California	3,375	68,223	4.9%	0.010%
456 Waukesha city	Wisconsin	3,359	56,958	5.9%	0.010%
457 East Providence city	Rhode Island	3,356	50,380	6.7%	0.010%
458 Redondo Beach city	California	3,355	60,167	5.6%	0.010%
459 Tustin city	California	3,339	50,689	6.6%	0.010%
460 Newton city	Massachusetts	3,335	82,585	4.0%	0.010%
461 Clifton city	New Jersey	3,327	71,742	4.6%	0.010%
462 Dearborn Heights city	Michigan	3,313	60,838	5.4%	0.010%
463 Waltham city	Massachusetts	3,288	57,878	5.7%	0.010%
464 Boca Raton city	Florida	3,282	61,491	5.3%	0.010%
465 Richardson city	Texas	3,279	74,842	4.4%	0.010%
466 West Allis city	Wisconsin	3,258	63,221	5.2%	0.010%
467 Pembroke Pines city	Florida	3,252	65,452	5.0%	0.010%
468 West Haven city	Connecticut	3,190	54,021	5.9%	0.009%
469 Roseville city	Michigan	3,163	51,412	6.2%	0.009%
470 South San Francisco city	California	3,161	54,312	5.8%	0.009%
471 Bloomington city	Minnesota	3,154	86,335	3.7%	0.009%
472 Overland Park city	Kansas	3,142	111,790	2.8%	0.009%
473 Sandy city	Utah	3,141	75,058	4.2%	0.009%
474 Port St. Lucie city	Florida	2,995	55,866	5.4%	0.009%
475 Royal Oak city	Michigan	2,963	65,410	4.5%	0.009%
476 Livermore city	California	2,915	56,741	5.1%	0.009%
477 Santee city	California	2,745	52,902	5.2%	0.008%
478 Bristol city	Connecticut	2,610	60,640	4.3%	0.008%
479 Livonia city	Michigan	2,578	100,850	2.6%	0.008%
480 Olathe city	Kansas	2,569	63,440	4.0%	0.008%
481 Palo Alto city	California	2,561	55,900	4.6%	0.008%
482 Kettering city	Ohio	2,502	60,569	4.1%	0.007%
483 Coon Rapids city	Minnesota	2,499	52,978	4.7%	0.007%
484 Wheaton city	Illinois	2,494	51,464	4.8%	0.007%
485 St. Clair Shores city	Michigan	2,462	68,107	3.6%	0.007%
486 Oak Park village	Illinois	2,425	53,648	4.5%	0.007%
487 Plantation city	Florida	2,339	66,692	3.5%	0.007%
488 Milpitas city	California	2,317	50,686	4.6%	0.007%
489 Walnut Creek city	California	2,276	60,569	3.8%	0.007%
490 Skokie village	Illinois	2,274	59,432	3.8%	0.007%
491 Camarillo city	California	2,236	52,303	4.3%	0.007%
492 Farmington Hills city	Michigan	2,202	74,652	2.9%	0.007%
493 Burnsville city	Minnesota	2,142	51,288	4.2%	0.006%
494 Cerritos city	California	2,096	53,240	3.9%	0.006%
495 Troy city	Michigan	2,061	72,884	2.8%	0.006%
496 Oak Lawn village	Illinois	1,902	56,182	3.4%	0.006%
497 Fountain Valley city	California	1,883	53,691	3.5%	0.006%
498 Diamond Bar city	California	1,860	53,672	3.5%	0.006%
499 Schaumburg village	Illinois	1,826	68,586	2.7%	0.005%
500 Arlington Heights villag	Illinois	1,788	75,460	2.4%	0.005%
501 Mount Prospect village	Illinois	1,732	53,170	3.3%	0.005%
502 Plymouth city	Minnesota	1,681	50,889	3.3%	0.005%
503 Florissant city	Missouri	1,657	51,206	3.2%	0.005%
504 Rochester Hills city	Michigan	1,580	61,766	2.6%	0.005%

505 Mission Viejo city	California	1,420	72,820	2.0%	0.004%
506 Naperville city	Illinois	1,278	85,351	1.5%	0.004%
507 Pleasanton city	California	1,212	50,553	2.4%	0.004%
508 Des Plaines city	Illinois	1,145	53,223	2.2%	0.003%
509 Yorba Linda city	California	993	52,422	1.9%	0.003%
510 West Bloomfield Township	Michigan	974	54,843	1.8%	0.003%
TOTAL		14,016,471	85,994,221	16.3%	41.469%

APPENDIX No. 4

MEMORANDUM OF COMMITMENT

Through this memorandum of commitment, a Youth Fair Chance program will be established in the community of _____.
(Name Target Community)

The State, local and community officials commit to provide links with the following programs (signatures of program heads below) _____
_____
_____
_____
(Name the Programs that Linkages will be established)

State, local and community officials also commit to making a good faith effort to continue on a permanent basis programs started under this initiative.

Additionally, the City/County of _____ commits to increasing _____ in the target area and to make the area as near as is possible a
_____.
(Identify other initiatives)

The City/County of _____ agrees to work collaboratively with other State, local and Federal programs and to bring other resources into the community which will support and enhance the services offered through the Youth Fair Chance program.

(SIGNATURES AND TITLES)

_____ _____

_____ _____

_____ _____

_____ _____

APPENDIX No. 5

1990 CENSUS DATA

COUNTY	STATE	BELOW POVERTY	POPULATION	POVERTY RATE	PERCENT OF TOTAL US POVERTY
Puerto Rico	Puerto Rico	2,057,377	3,522,037	58.4%	6.087%
Hidalgo County	Texas	159,216	383,545	41.5%	0.471%
Orleans Parish	Louisiana	152,042	496,938	30.6%	0.450%
Cameron County	Texas	101,362	260,120	39.0%	0.300%
Webb County	Texas	50,116	133,239	37.6%	0.148%
St. Landry Parish	Louisiana	28,665	80,331	35.7%	0.085%
Apache County	Arizona	28,640	61,591	46.5%	0.085%
Navajo County	Arizona	26,458	77,658	34.1%	0.078%
McKinley County	New Mexico	26,118	60,686	43.0%	0.077%
Tangipahoa Parish	Louisiana	25,950	85,709	30.3%	0.077%
Starr County	Texas	24,150	40,518	59.6%	0.071%
Washington County	Mississippi	22,671	67,935	33.4%	0.067%
Maverick County	Texas	18,217	36,378	50.1%	0.054%
Bolivar County	Mississippi	17,158	41,875	41.0%	0.051%
Dallas County	Alabama	17,099	48,130	35.5%	0.051%
Acadia Parish	Louisiana	16,832	55,882	30.1%	0.050%
Coahoma County	Mississippi	13,997	31,665	44.2%	0.041%
Leflore County	Mississippi	13,987	37,341	37.5%	0.041%
Avoyelles Parish	Louisiana	13,817	39,159	35.3%	0.041%
Val Verde County	Texas	13,790	38,721	35.6%	0.041%
Floyd County	Kentucky	13,521	43,586	31.0%	0.040%
McDowell County	West Virginia	13,195	35,233	37.5%	0.039%
Washington Parish	Louisiana	13,117	43,185	30.4%	0.039%
Sunflower County	Mississippi	12,302	32,867	37.4%	0.036%
Phillips County	Arkansas	12,229	28,838	42.4%	0.036%
Harlan County	Kentucky	11,995	36,574	32.8%	0.035%
Pike County	Mississippi	11,904	36,882	32.3%	0.035%
Natchitoches Parish	Louisiana	11,594	36,689	31.6%	0.034%
Evangeline Parish	Louisiana	11,471	33,274	34.5%	0.034%
Knox County	Kentucky	11,289	29,676	38.0%	0.033%
Holmes County	Mississippi	11,266	21,604	52.1%	0.033%
Bell County	Kentucky	11,209	31,506	35.6%	0.033%
Adams County	Mississippi	10,634	35,356	30.1%	0.031%
Whitley County	Kentucky	10,622	33,326	31.9%	0.031%
Mingo County	West Virginia	10,370	33,739	30.7%	0.031%
St. Francis County	Arkansas	10,302	28,497	36.2%	0.030%
Panola County	Mississippi	10,031	29,996	33.4%	0.030%
Yazoo County	Mississippi	9,861	25,506	38.7%	0.029%
Morehouse Parish	Louisiana	9,645	31,938	30.2%	0.029%
Perry County	Kentucky	9,636	30,283	31.8%	0.029%
Clay County	Kentucky	8,656	21,746	39.8%	0.026%
Copiah County	Mississippi	8,528	27,592	30.9%	0.025%
Letcher County	Kentucky	8,524	27,000	31.6%	0.025%
Caldwell County	Texas	8,010	26,392	30.4%	0.024%
Willacy County	Texas	7,848	17,705	44.3%	0.023%
Macon County	Alabama	7,812	24,928	31.3%	0.023%

Cibola County	New Mexico	7,753	23,794	32.6%	0.023%
Pemiscot County	Missouri	7,728	21,921	35.3%	0.023%
Franklin Parish	Louisiana	7,500	22,387	33.5%	0.022%
Lincoln County	West Virginia	7,197	21,382	33.7%	0.021%
Uvalde County	Texas	7,102	23,340	30.4%	0.021%
McCreary County	Kentucky	7,062	15,603	45.3%	0.021%
Knott County	Kentucky	7,035	17,906	39.3%	0.021%
Butler County	Alabama	6,815	21,892	31.1%	0.020%
Richland Parish	Louisiana	6,638	20,629	32.2%	0.020%
Wayne County	Kentucky	6,446	17,468	36.9%	0.019%
Tallahatchie County	Mississippi	6,328	15,210	41.6%	0.019%
Chicot County	Arkansas	6,299	15,713	40.1%	0.019%
Concordia Parish	Louisiana	6,268	20,828	30.1%	0.019%
Sumter County	Alabama	6,131	16,174	37.9%	0.018%
Lee County	Arkansas	6,119	13,053	46.9%	0.018%
Shannon County	South Dakota	6,118	9,902	61.8%	0.018%
Breathitt County	Kentucky	6,072	15,703	38.7%	0.018%
Wilcox County	Alabama	6,034	13,568	44.5%	0.018%
Zavala County	Texas	6,004	12,162	49.4%	0.018%
Luna County	New Mexico	5,645	18,110	31.2%	0.017%
Desha County	Arkansas	5,621	16,798	33.5%	0.017%
Magoffin County	Kentucky	5,479	13,077	41.9%	0.016%
Humphreys County	Mississippi	5,479	12,134	45.2%	0.016%
Hale County	Alabama	5,420	15,498	35.0%	0.016%
Madison Parish	Louisiana	5,416	12,463	43.5%	0.016%
Jefferson County	Georgia	5,312	17,408	30.5%	0.016%
East Carroll Parish	Louisiana	5,293	9,709	54.5%	0.016%
Jasper County	Mississippi	5,204	17,114	30.4%	0.015%
Noxubee County	Mississippi	5,193	12,604	41.2%	0.015%
Frio County	Texas	5,158	13,472	38.3%	0.015%
Perry County	Alabama	5,154	12,759	40.4%	0.015%
Covington County	Mississippi	5,137	16,527	31.1%	0.015%
Rolette County	North Dakota	5,103	12,772	40.0%	0.015%
Walthall County	Mississippi	5,101	14,352	35.5%	0.015%
Dimmit County	Texas	5,062	10,433	48.5%	0.015%
Duval County	Texas	5,021	12,918	38.9%	0.015%
Lawrence County	Kentucky	4,980	13,998	35.6%	0.015%
Choctaw County	Oklahoma	4,919	15,302	32.1%	0.015%
Lowndes County	Alabama	4,858	12,658	38.4%	0.014%
Bienville Parish	Louisiana	4,824	15,979	30.2%	0.014%
Choctaw County	Alabama	4,809	16,018	30.0%	0.014%
Leslie County	Kentucky	4,808	13,642	35.2%	0.014%
Fentress County	Tennessee	4,695	14,669	32.0%	0.014%
Jefferson Davis County	Mississippi	4,633	14,051	33.0%	0.014%
Tunica County	Mississippi	4,597	8,164	56.3%	0.014%
Greene County	Alabama	4,575	10,153	45.1%	0.014%
Jackson County	Kentucky	4,544	11,955	38.0%	0.013%
San Juan County	Utah	4,523	12,621	35.8%	0.013%
Rockcastle County	Kentucky	4,498	14,803	30.4%	0.013%
Karnes County	Texas	4,450	12,455	35.7%	0.013%
Martin County	Kentucky	4,422	12,526	35.3%	0.013%

Dawson County	Texas	4,343	14,349	30.3%	0.013%
Morgan County	Kentucky	4,328	11,648	37.2%	0.013%
Quitman County	Mississippi	4,315	10,490	41.1%	0.013%
Glacier County	Montana	4,224	12,121	34.8%	0.012%
Montgomery County	Mississippi	4,153	12,388	33.5%	0.012%
Todd County	South Dakota	4,143	8,352	49.6%	0.012%
Amite County	Mississippi	4,100	13,328	30.8%	0.012%
Claiborne County	Mississippi	4,087	11,370	35.9%	0.012%
Jefferson County	Mississippi	4,048	8,653	46.8%	0.012%
Wilkinson County	Mississippi	4,033	9,678	41.7%	0.012%
Monroe County	Arkansas	4,022	11,333	35.5%	0.012%
Catahoula Parish	Louisiana	3,989	11,065	36.1%	0.012%
Big Horn County	Montana	3,949	11,337	34.8%	0.012%
Lewis County	Kentucky	3,946	13,029	30.3%	0.012%
Clay County	West Virginia	3,901	9,983	39.1%	0.012%
Allendale County	South Carolina	3,837	11,722	32.7%	0.011%
Ripley County	Missouri	3,814	12,303	31.0%	0.011%
Zapata County	Texas	3,790	9,279	40.8%	0.011%
Bullock County	Alabama	3,776	11,042	34.2%	0.011%
Webster County	West Virginia	3,700	10,729	34.5%	0.011%
Early County	Georgia	3,635	11,854	30.7%	0.011%
Kemper County	Mississippi	3,522	10,356	34.0%	0.010%
Clinton County	Kentucky	3,447	9,135	37.7%	0.010%
Alexander County	Illinois	3,395	10,626	31.9%	0.010%
St. Helena Parish	Louisiana	3,358	9,874	34.0%	0.010%
Lafayette County	Arkansas	3,305	9,643	34.3%	0.010%
Sharkey County	Mississippi	3,305	7,066	46.8%	0.010%
Woodruff County	Arkansas	3,239	9,520	34.0%	0.010%
Tensas Parish	Louisiana	3,235	7,103	45.5%	0.010%
Red River Parish	Louisiana	3,216	9,387	34.3%	0.010%
Dooly County	Georgia	3,191	9,901	32.2%	0.009%
Presidio County	Texas	3,172	6,637	47.8%	0.009%
Marion County	Texas	3,024	9,984	30.3%	0.009%
Brooks County	Texas	2,989	8,204	36.4%	0.009%
Wolfe County	Kentucky	2,835	6,503	43.6%	0.008%
Charles Mix County	South Dakota	2,785	9,131	30.5%	0.008%
Franklin County	Mississippi	2,760	8,377	32.9%	0.008%
Randolph County	Georgia	2,740	8,023	34.2%	0.008%
Lee County	Kentucky	2,704	7,422	36.4%	0.008%
Turner County	Georgia	2,694	8,703	31.0%	0.008%
Hancock County	Tennessee	2,627	6,739	39.0%	0.008%
Owsley County	Kentucky	2,570	5,036	51.0%	0.008%
Calhoun County	West Virginia	2,514	7,885	31.9%	0.007%
Conejos County	Colorado	2,510	7,453	33.7%	0.007%
Elliott County	Kentucky	2,456	6,455	38.0%	0.007%
Dewey County	South Dakota	2,438	5,523	44.1%	0.007%
Gilmer County	West Virginia	2,378	7,669	31.0%	0.007%
Benson County	North Dakota	2,251	7,198	31.3%	0.007%
Lynn County	Texas	2,179	6,758	32.2%	0.006%
Cumberland County	Kentucky	2,112	6,784	31.1%	0.006%
Thurston County	Nebraska	2,107	6,936	30.4%	0.006%

Warren County	Georgia	1,943	6,078	32.0%	0.006%
La Salle County	Texas	1,918	5,254	36.5%	0.006%
Menominee County	Wisconsin	1,860	3,890	47.8%	0.006%
Jim Hogg County	Texas	1,798	5,109	35.2%	0.005%
Childress County	Texas	1,798	5,953	30.2%	0.005%
Wade Hampton Census	Alaska	1,794	5,791	31.0%	0.005%
Corson County	South Dakota	1,779	4,195	42.4%	0.005%
Menifee County	Kentucky	1,776	5,092	34.9%	0.005%
Sioux County	North Dakota	1,769	3,761	47.0%	0.005%
San Saba County	Texas	1,762	5,401	32.6%	0.005%
Stewart County	Georgia	1,741	5,654	30.8%	0.005%
Guadalupe County	New Mexico	1,589	4,156	38.2%	0.005%
Calhoun County	Georgia	1,558	5,013	31.1%	0.005%
Mora County	New Mexico	1,540	4,264	36.1%	0.005%
Saguache County	Colorado	1,399	4,619	30.3%	0.004%
Harmon County	Oklahoma	1,236	3,793	32.6%	0.004%
Bennett County	South Dakota	1,179	3,206	36.8%	0.003%
Clay County	Georgia	1,170	3,364	34.8%	0.003%
Ziebach County	South Dakota	1,131	2,220	50.9%	0.003%
Costilla County	Colorado	1,101	3,190	34.5%	0.003%
Hudspeth County	Texas	1,089	2,915	37.4%	0.003%
Jackson County	South Dakota	1,077	2,811	38.3%	0.003%
Issaquena County	Mississippi	939	1,909	49.2%	0.003%
Edwards County	Texas	939	2,266	41.4%	0.003%
Mellette County	South Dakota	864	2,137	40.4%	0.003%
Dickens County	Texas	791	2,571	30.8%	0.002%
Buffalo County	South Dakota	785	1,759	44.6%	0.002%
Quitman County	Georgia	727	2,209	32.9%	0.002%
Real County	Texas	724	2,412	30.0%	0.002%
Menard County	Texas	690	2,252	30.6%	0.002%
Taliaferro County	Georgia	606	1,915	31.6%	0.002%
McPherson County	Nebraska	181	546	33.2%	0.001%
Kalawao County	Hawaii	48	130	36.9%	0.000%
TOTAL FROM ABOVE		3,600,307	7,771,072	46.3%	10.652%
ALL OTHER COUNTIES		30,199,934	244,460,838	12.4%	89.348%
U.S. TOTAL (including Puerto Rico)		33,800,241	252,231,910	13.4%	100.000%

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 29, 1993, through December 10, 1993. The last biweekly notice was published on December 8, 1993 (58 FR 64598).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 21, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's 'Rules of Practice for Domestic Licensing Proceedings' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 11, 1993

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) for both Units 1 and 2 by relocating the tables of response time limits for the Reactor Protection System and the Engineered Safety Features Actuation System (ESFAS) instruments from the TSs to the Updated Final Safety Analysis Report (UFSAR). This proposed amendment is a 'line-item' TS improvement and follows the guidance of the proposed generic communication that was published in the **Federal Register** on April 7, 1993 (58 FR 18118). The amendments are being requested at this time to support modifications that are scheduled for the spring 1994 refueling outage for Unit 1.

The relocation of the response time tables from the TSs to the UFSAR will not affect the safety function in that the operability and surveillance requirements for these instruments specified in the TSs are not changed. Any changes in instrument response times that result in safety system response less than those assumed in the current accident analysis would require prior review and approval by the NRC.

Specifically the requested changes are:

Delete TS Tables 3.3-2, 'Reactor Protective Instrumentation Response Times.'

Delete TS Tables 3.3-5, 'Engineered Safety Features Response Times.'

Modify TSs 3/4.3.1 and 3/4.3.2 by deleting references to TS Tables 3.3-2 and 3.3-5. A footnote is added to TS 3/4.3.1 indicating that the neutron detectors are exempt from response time testing.

The TSs Bases 3/4.3.1 and 3/4.3.2, "Protective and Engineered Safety Features (ESF) Instrumentation," are revised to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protective System (RPS) and the Engineered Safety Features Actuation System (ESFAS) provide the signals needed to actuate the safety equipment necessary to mitigate accidents and transients. The proposed change relocates the RPS and the ESFAS instrument response times from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR) but will not change the operability or surveillance requirements for these instruments. With this proposed change, revisions to the response times for these instruments can be made pursuant to 10 CFR 50.59 without Nuclear Regulatory Commission (NRC) approval unless the revision involves an unreviewed safety question. The proposed change will not change any accident initiators or the consequences of any analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change relocates the RPS and the ESFAS response time limits from the Technical Specifications to the UFSAR but does not change the function of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed change. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the functions of the RPS or the ESFAS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements on these instruments. The administrative change control provisions for the UFSAR and the plant procedures written pursuant to 10 CFR 50.59 are adequate to control revisions to the response time limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 19, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by changing the low temperature overpressure protection setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LTOP PORV actuation setpoint is not assumed to be an initiator of any analyzed event. However, pressure and temperature limits do preclude operation in an unanalyzed condition. The revised limitations provide an increase level of protection to the previous limitations. Revising the LTOP setpoint specification from 435 psig to less than or equal to 414 psig will allow the incorporation of correction factors into the PORV actuation setpoint and will result in LTOP System actuation at a pressure below that assumed in the LTOP transient analyses. A lower setpoint which includes correction factors associated with the RCS pressure transmitter locations and Reactor Coolant Pump (RCP) and Residual Heat Removal (RHR) pump operation is more conservative. The incorporation of correction factors into the setpoint calculations has no impact on any event precursor. Therefore, the proposed amendment will not significantly increase the probability of any accident previously evaluated.

Reactor vessel integrity is assumed in mitigating the consequences of design basis accidents. The revised limitations will not affect the performance of any safety systems or structures beyond ensuring the continued integrity of the reactor vessel. The amendment will allow the setpoints to be conservatively reduced based on engineering calculations which incorporate the correction factors associated with the RCS pressure transmitter locations and RCP and RHR pump operation and will continue to ensure that the pressure-temperature limits of 10 CFR 50, Appendix G, are met. Therefore, the change to the LTOP PORV actuation setpoint does not result in a significant increase in the consequences of any accident previously evaluated.

The proposed amendment does not change the actions required in the event of an LTOP system actuation or if the LTOP Specification requirements can not be met. Any changes to the PORV actuation setpoint will be in accordance with the "LTOP PORV Actuation Setpoint Methodology" and will be implemented per the requirements of 10 CFR 50.59. This will ensure that future changes to the LTOP PORV actuation setpoint will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not involve the addition of any new or different type of equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. No safety-related equipment or safety function will be altered as a result of this proposed change. The amendment will allow the LTOP setpoints to be conservatively reduced based on engineering calculations which incorporate the correction factors associated with RCS pressure transmitter locations and RCP and RHR pump operation and will continue to ensure that the pressure-temperature limits of 10 CFR 50, Appendix G, are met. The change will result in more conservative protective actions in the event of an overpressure transient at low temperature. The proposed change does not affect the actions required in the event of an LTOP system actuation, nor does it affect the required actions in the event that the LTOP Specification can not be met.

LTOP setpoint calculations will be performed using established engineering practices consistent with the LTOP PORV actuation setpoint methodology. Changes to the LTOP setpoints will be evaluated in accordance with 10 CFR 50.59 to assure that operation of the facility in accordance with the new setpoints will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The amendment will allow the LTOP setpoints to be conservatively reduced based on engineering calculations which incorporate the correction factors associated with the RCS pressure transmitter locations and RCP and RHR pump operation and will continue to ensure that the pressure-temperature limits of 10 CFR 50, Appendix G, are met in the event of a low temperature overpressure transient. Reducing the setpoints to incorporate the correction factors will provide an increase level of protection to that which currently exists and will not adversely affect the margin of safety.

LTOP setpoint calculations will be performed using established engineering practices and consistent with the LTOP PORV actuation setpoint methodology. Changes to the LTOP setpoints will be evaluated in accordance with 10 CFR 50.59 to assure that operation of the facility in accordance with the new setpoints will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 25, 1993

Description of amendment request: The amendments would reduce the required minimum measured reactor coolant system flow from 385,000 gallons per minute (gpm) to 382,000 pgm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The reduction in flow will not change the probability of actuation of any Engineered Safeguard Feature or other device. The consequences of previously-analyzed accidents have been found to be insignificantly different when the reduced flow rate is assumed. The system transient response is not affected by the initial RCS [reactor coolant system] flow assumption, unless the initial assumption is so low as to impair the steady-state core cooling capability or the steam generator heat transfer capability. This is clearly not the case with a <1% reduction in RCS flow.

The change to Technical Specification 2.1.1 to refer to DNB and CFT limits rather than Figure 2.1-1 will not cause the consequences of a previously analyzed accident to increase. No new mechanisms are introduced which could exacerbate a previously analyzed accident.

2. This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could create the possibility or a new event not previously considered. The reduction in flow will not initiate any new events.

The change to Specification 2.1.1 will not initiate any new events. The introduced T_{avg} and thermal power limits define a more restrictive operating range than could be inferred from the existing figure. There are no new mechanisms introduced which could create the possibility of a different accident not previously analyzed.

3. This amendment will not involve a significant reduction in a margin of safety.

As described in Attachment II [refer to the licensee's October 25, 1993, application], the decrease in RCS flow has been analyzed and found to have an insignificant effect on the applicable transient analyses found in the FSAR [Final Safety Analysis Report]. In order to support the reduced flow rate, the OT[delta]T and OP[delta]T setpoint equation constants have been revised. There is no significant reduction in a margin of safety.

The change to Technical Specification 2.1.1 will not reduce a margin of safety. The limits on T_{avg} and thermal power will provide the reactor operator with meaningful and identifiable indications in the event that normal operating conditions are exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: February 24, 1993

Description of amendment request: The amendment corrects typographical errors in the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specifications (TSs). The errors were introduced in the original ANO-1 TSs and in subsequent amendments. These changes are administrative in nature and are intended to improve the readability of the ANO-1 TSs without changing the meaning or intent of any specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not involve a significant increase in the probability or consequence[s] of an[y] accident previously evaluated.

These changes do not affect the intent of any specification. Also, the proposed changes do not provide any relief from the requirements of the TS[s], or change the intended operation or administrative requirements of the plant or its design basis.

The proposed changes clarify the existing specification requirements and are administrative in nature.

Since they are administrative in nature; these changes do not significantly increase the probability or consequences of any previously analyzed accident occurring.

Criterion 2 - Does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve any design changes, plant modifications or changes in plant operation; rather, they only reflect a more accurate description of the specification requirements.

The proposed changes clarify the existing specification requirements and are administrative in nature.

Since they are administrative in nature, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does not involve a significant reduction in a margin of safety.

The proposed changes only clarify the existing requirements. They do not relax any specification requirements.

The proposed changes are administrative in nature and do not affect any plant safety parameters, accident mitigation capabilities, or margin of safety.

Since these changes are administrative in nature, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 22, 1993

Description of amendment request: The proposed amendment would revise the value for the internal volume of the Arkansas Nuclear One, Unit No. 1 (ANO-1) reactor building as specified in Technical Specification (TS) 5.2.1 and change the wording of the specification to clarify that the volume specified is the net free volume of the reactor building. The change of the specified volume is the result of a more accurate calculation of the reactor building net free volume.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Reactor Building [RB] internal volume is not an event initiator of any accident analyzed in the ANO-1 SAR [safety analysis report]. The proposed changes do not provide any relief from the requirements of the TS, or change the intended operation or administrative requirements of the plant or its design basis.

The reduction in the calculated value for the RB net free volume has been reevaluated for its impact on the consequences of the RB DBA [design-basis accident] analysis. Only a 0.9 psig increase from the original SAR analysis peak RB pressure results from this smaller calculated RB volume. This new peak RB pressure is still less than the RB design pressure of 59 psig. The peak RB temperature increase results in a value that is still below the RB design temperature of 286°F. The new temperature profile was verified not to impact the Environmental Qualification Program.

The reduction in the calculated value for the RB net free volume has been verified to have a slight impact on the post-LOCA [loss-of-coolant accident] hydrogen generation calculation and negligible impact on the MHA [maximum hypothetical accident] dose calculation. The reduction in the calculated value is in the conservative direction with respect to the LOCA analysis.

For 10CFR50 Appendix J Type A ILRT [integrated leak rate test] calculations, the leak rate is calculated based upon percentage mass ratio. This eliminates the RB net free volume from the calculations. Therefore, the calculated value for RB net free volume has essentially no impact on the final results of Appendix J Type A ILRTs. For Appendix J Type B and C leak rate tests, the proposed reduction in the calculated value for RB net free volume results in the calculation of more restrictive leak rate test criteria to which the test results are compared.

The wording change clarifies that the internal volume specified for the RB is the internal net free volume and is considered to be a purely administrative change.

Therefore, this change does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any design changes, plant modifications, or changes in plant operation; rather they reflect a more accurate description of the design features of the ANO-1 reactor building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The increased RB DBA peak pressure and temperature values do not exceed the RB design pressure and temperature values of 59 psig and 286°F, respectively. The slight decrease in margin is not considered significant given that recent studies have shown that large dry prestressed concrete containments with steel liners do not leak until greater than twice the design pressure is reached, and that higher pressures are required for rupture to occur. The new temperature profile was verified not to impact the Environmental Qualification Program.

The reduction in the calculated value for the RB net free volume has been verified to have a slight impact on the post-LOCA hydrogen generation calculation which is not considered significant, and negligible impact on the MHA dose calculation. The reduction in the calculated value is in the conservative direction with respect to the LOCA analysis.

The calculated value for RB net free volume has essentially no impact on the final results of Appendix J Type A ILRTs. For Appendix J Type B and C leak rate tests, the proposed reduction in the calculated value for RB net free volume results in the calculation of more restrictive leak rate test criteria to which the test results are compared.

The wording change clarifies that the internal volume specified for the RB is the internal net free volume and is considered to be a purely administrative change.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 15, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by removing the requirement to maintain operational and test the containment hydrogen recombiners. This action is proposed in conjunction with a request for exemption to 10 CFR 50.44 'Standards for Combustion Gas Control System in Light Water-Cooled Power Reactor'.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Short term post LOCA [loss of coolant accident] hydrogen generation is less than 1%, well below the 4% hydrogen flammability limit. Long term post LOCA hydrogen generation at 30 days is about 5.7% which is less than the flame propagation limit of 6% which according to Regulatory Guide 1.7 would not result in effects adverse to containment systems. A time period of 30 days would provide ample time within which to mobilize resources and to implement long term recovery actions, such as containment venting, for example, by using the Containment Atmosphere Release System, (CARS). Waterford 3 analyses establish that a hydrogen burn at 8.1% hydrogen concentration, following a design basis LOCA without long term hydrogen control would produce a peak pressure of 31.0 psig which is below the containment design pressure of 44 psig. A hydrogen concentration of 8.1% envelops the TMI [Three Mile Island] burn which occurred at about 7 to 8% hydrogen concentration..., and produced a peak pressure of 28 psig. The pressure resulting from the hydrogen burn, 31.0 psig, is also below the Waterford 3 limiting design basis accident (MSLB) [Main Steam Line Break] peak pressure of 43.6 psig. The actual containment failure pressure for Waterford 3 is expected to be in the range of 2.5 to 3.0 times the containment design pressure based on containment failure pressures for containment designs similar to Waterford 3. Recombiners have a negligible impact on reducing hydrogen generation from severe accidents. Accordingly, removing the hydrogen recombiners has a negligible impact on severe accident risks. Thus, there is significant assurance the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter the configuration or operation of any other plant system or component. The change does not involve any change to the operational or design limits of any other plant systems or components. Thus, no new failure modes are introduced or associated with the proposed change. Therefore, the proposed change will not create the possibility of a new of different kind of accident previously evaluated.

The proposed change will have no adverse impact on the protective boundaries, safety limits, or margin or safety. There are no limits or margins of safety being revised for any systems, components, or protective boundaries. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 25, 1993

Description of amendment request: These amendments remove surveillance requirements related to dune and mangrove surveys from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Title 10 of the Code of Federal Regulations, Part 50.92, states that a proposed amendment to an operating license involves a no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not; (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The changes proposed are a no significant hazards consideration and will be discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deletion of the flood protection surveillance (beach dune and mangrove survey) requirements would not involve a significant increase in the probability or consequences of the design basis events for flooding (the PMH [probable maximum hurricane] or the stalled PMH). The lack of these surveillances does not increase the frequency of occurrence of such a storm. The beach dune and mangroves are not relied upon to provide mitigating protection from hurricanes. Rather, the dune is assumed to be eroded and no reduction of wave height or energy by the mangroves is assumed. The probable maximum surge flooding analysis for the St. Lucie site is based on a comparison of the storm strength versus the plant layout, the plant grade elevation and

existing structures/ barriers. Flood protection for seismic Category I structures and safety-related systems and components at the St. Lucie site is based on positioning components and structures at sufficient grade to preclude inoperability due to external flooding, designing them to withstand such effects, or housing them within waterproof structures.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deletion of the flood protection surveillance requirements does not create a new or different kind of accident since the beach dune and mangroves are passive elements which do not provide new failure types. The dune and mangroves, although considered, are not relied upon for safety in the present St. Lucie site's PMH analysis. Natural ground elevations (which are not dependent on the existence of the mangroves) are used in determining breaking wave heights. No reduction of wave height or energy by the mangroves is assumed. The beach dune and the mangroves are not credited in the analysis but only add conservatism into the erosion estimates.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Deletion of the flood protection surveillance requirements would not involve a significant reduction in a margin of safety since the dune and mangroves are not relied upon to provide protection from hurricanes. The dune and mangroves do not perform a safety function. The dune is conservatively assumed to be eroded with no credit taken for the energy dissipated or the time consumed in erosion of the dune. Similarly, wave height and energy is assumed to be unaffected by the mangroves.

Based on the above, the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 26, 1993

Description of amendment request: The proposed amendments will make changes to Technical Specification (TS) 4.6.1.2.a, Containment Leakage Surveillance Requirements, consistent with the guidance of NUREG-1432, 'Standard Technical Specifications for Combustion Engineering Plants.' FPL considers these proposed amendments to be administrative changes to the manner in which the retest schedule for Type A Tests, which determine the Overall Integrated Containment Leakage Rate, is stated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1432, "Standard Technical Specifications for Combustion Engineering Plants" for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1432 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987. Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. Therefore, the probability or consequences of an accident previously evaluated are not affected.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1432, "Standard Technical Specifications for Combustion Engineering Plants" for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance and wording was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1432 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987.

Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. The proposed Technical Specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of an accident previously evaluated would not be created.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1432, "Standard Technical Specifications for Combustion Engineering Plants" for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance and wording was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1432 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987.

Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. The proposed Technical Specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it affect any assumptions or conditions in any of the accident analysis. Therefore, a significant reduction in a margin of safety would not be involved.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 19, 1993

Description of amendment request: The proposed change would revise both the surveillance requirements of Unit 1 Technical Specification (TS) 3.9.D and Unit 2 TS 3/4.8.2, 'Electrical Power Monitoring for Reactor Protection System,' to add time delays to the reactor protection system electrical power monitoring trips.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the RPS [Reactor Protection System] electric power monitoring system is to isolate the RPS buses from their power supplies in the event of an over-voltage, under-voltage, or under-frequency condition. This isolation protects safety-related equipment powered by the RPS buses from damage due to unacceptable voltage or frequency conditions. Adding a 4-second time delay to the monitoring instrumentation will not prevent the system from performing its intended function. Any credible events which could affect the voltage or frequency of the RPS buses would not be of sufficient magnitude to cause damage to equipment powered by the RPS buses within the 4-second time period. The system will continue to ensure the safety-related components powered by the RPS buses will remain operable and fully capable of performing their intended mitigation functions. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The RPS electric power monitoring system is designed to protect the safety-related equipment powered by the RPS buses from damage due to an unacceptable voltage or frequency condition. This equipment is designed to mitigate the consequences of analyzed transients and accidents. Adding a 4-second time delay to the monitoring instrumentation will not change the mode of operation of the system or prevent the system from performing its intended function. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The RPS electric power monitoring system is designed to protect the safety-related equipment powered by the RPS buses from damage due to an unacceptable voltage or frequency condition. This equipment is designed to mitigate the consequences of analyzed transients and accidents. As long as the safety-related equipment continues to perform its intended function, the margin of safety associated with the various analyzed events will be maintained. Since adding a 4-second time delay to the monitoring instrumentation will not prevent the system from performing its intended function, no safety margins will be affected. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Loren R. Plisco, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 9, 1993

Description of amendment request: The proposed change would revise both the surveillance requirements of Unit 1 Technical Specification (TS) Section 4.9, 'Auxiliary Electrical Systems," and Unit 2 TS 4.8, "AC Sources - Operating,' to change the requirements for diesel generator testing under hot initial conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The intended safety function of the diesel generators (DGs) is to provide AC power to emergency equipment during events involving a loss of offsite power (LOSP). The purpose of the hot start test is to demonstrate that the DG can restart from a hot condition, such as subsequent to shutdown from normal surveillances, in case an LOSP occurs under these conditions. Since a 2-hour warm-up run will adequately heat up the DG, separating the hot start test from the 24-hour load test has no impact on the validity of the hot start test. Since the LOSP logic will not be affected by heating up the DG, deleting the requirement for the hot start test to be an LOSP functional test has no impact on the validity of the hot start test. Therefore, the hot start test will still fulfill its function of demonstrating a specific aspect of DG operability. Therefore, the ability of the DGs to perform their intended safety function will not be affected by this proposed change. The discussion of the new surveillance requirement which is being added to the bases of both units' Technical Specifications will only provide the user with information concerning the purpose of the revised tests, and has no impact on DG operation or testing requirements. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident than any accident previously evaluated.

The proposed change only affects surveillance requirements and has no impact on the operation of the plant or any safety related equipment. The DGs are designed to mitigate the consequences of accidents involving an LOSP. Therefore, they have no effect on the probability of occurrence of any type of accident. The discussion of the new surveillance requirement which is being added to the bases of both units' Technical Specifications will only provide the user with information concerning the purpose of the revised tests, and has no impact on DG operation or testing requirements. For these reasons, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

In the event of a design basis large break loss of coolant accident coupled with an LOSP, the DGs are required to start and achieve rated voltage and frequency within 12 seconds. This requirement ensures that power is provided for the low pressure emergency core cooling pumps such that they can start and inject quickly enough to assure adequate core cooling. As long as the DGs perform this function, the analyzed peak clad temperature margin will be maintained. The proposed hot start testing requirements

still ensure the DGs are capable of performing this function when starting from a hot condition. The discussion of the new surveillance requirement which is being added to the bases of both units' Technical Specifications will only provide the user with information concerning the purpose of the revised tests, and has no impact on DG operation or testing requirements. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Loren R. Plisco, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 19, 1993

Description of amendment request: The proposed change would add a footnote to Technical Specification (TS) Table 3.3-2, Engineered Safety Features Actuation System Instrumentation, modifying the mode for which Item 6.e, "Trip of All Main Feedwater Pumps, Start Motor-Driven Pumps," is required to be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because it only affects the AFW [auxiliary feedwater] start signal during the time when the AFW system is already operating.

2. The proposed change to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because it only affects the AFW start signal during the time when the AFW is already performing the function that the start signal is intended to initiate.

3. The proposed change to the Technical Specifications does not involve a significant reduction in a margin of safety because it will not change the requirement for operable AFW initiation instrumentation when the AFW is required to be operable but not operating. The change does not affect any accident or transient analysis assumptions; therefore, the margin of safety provided by operation according to the proposed change does not affect the safety limits or analyses used to demonstrate operation within safety limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, Nations Bank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Loren R. Plisco, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 19, 1993

Description of amendment request: The first proposed change would revise the surveillance requirements of Technical Specifications (TS) 4.8.2.1.e and 4.8.2.1.f, "DC Sources," to reflect recommended maintenance and testing practices in draft IEEE Standard 450-1992, "Recommended Practice for Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Generating Stations and Substations," incorporating maintenance and testing practices contained in the draft standard. The second proposed change would revise TS Table 4.8-2, "Battery Surveillance Requirements," changing the value of float voltage allowed for each connected cell from ">2.10 volts" to ">2.07 volts," in accordance with IEEE Standard 450-1980, 1987, the draft IEEE Standard 450-1992, and the new Standard Technical Specifications (NUREG-1431).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The revision to the battery surveillance requirements does not involve a significant increase in the probability or consequence of an accident previously evaluated. The proposed revision to the surveillance requirements ensures the batteries are properly tested and can perform their safety function. The proposed change will have no effect on any initiating event assumed in the safety analysis since it relates only to the frequency of performance testing. Since the batteries will continue to be properly tested and therefore capable of performing their safety function, the consequences of any accident previously evaluated will not be affected.

The proposed change to the value of float voltage does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed value of float voltage provides assurance that sufficient capacity exists to perform the intended function and maintain a margin of safety for the station batteries. As such, the proposed change would have no effect on the probability of any initiating event assumed in the safety analysis. Furthermore, since the batteries will remain capable of performing their safety function, the proposed change would have no effect on the consequences of any accident previously evaluated.

[2. The proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.]

The revision to the battery surveillance requirements does not create the possibility of a new or different kind of accident from any accident previously evaluated. The existing surveillance of the batteries provides an indication of degraded performance, which indicates the battery cells may need to be replaced. The proposed revision will provide the same indication of degraded performance. No new equipment is being introduced to the plant as a result of the proposed change, and no new modes of operation are contemplated. Furthermore, no new limiting single failure would be created by the proposed change.

The change to the float voltage does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change in float voltage does not affect any transient or accident sequence requiring the station batteries. No new operating configuration or failure modes are introduced by the change in float voltage.

[3. The proposed change does not involve a significant reduction in a margin of safety.]

The revision to the battery surveillance requirements does not involve a significant reduction in the margin of safety. The revision ensures the batteries maintain sufficient margin to perform their intended safety function. This margin is demonstrated by the various tests performed on the batteries. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The margin of safety associated with the change in float voltage is maintained since the batteries will continue to have sufficient capacity to perform their intended function. Analysis confirms that the batteries can

function for all accidents and design transients, including a loss of offsite power. Since the batteries can function for all designed transient and accident conditions, the change of float voltage does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Loren R. Plisco, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: December 6, 1993

Description of amendment request: Houston Lighting & Power Company (HL&P) has requested a one-time-only modification to the South Texas Project, Unit 1 Technical Specification 3.7.1.2, auxiliary feedwater system. The purpose of the change is to extend the allowed outage time for the turbine driven auxiliary feedwater pump from 72 hours to 168 hours, an increase of 96 hours, to facilitate an augmented test program. This change will allow adequate time to complete testing and evaluation of the turbine driven auxiliary feedwater pump and will allow testing, evaluation, and corrective maintenance, if required, of the pump at a secondary steam supply pressure greater than 1000 psig in Mode 3, as specified by Surveillance Requirement 4.7.1.2.1.a.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the change in core damage frequency, both with and without the proposed Technical Specifications currently being evaluated by the NRC, the change to a 7 day Allowed Outage Time for train D of the Auxiliary Feedwater System has an insignificant effect on core damage frequency.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not create the possibility of a new or different accident from any previously evaluated since there is no new design or operation of the Auxiliary Feedwater system and consequently there are no new accident initiators.

3. The proposed change does not involve a significant reduction in the margin of safety.

The margin of safety does not significantly change since the change in core damage frequency due to extending the Turbine Driven Auxiliary Feedwater pump Allowed Outage Time is negligible.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 12, 1993

Description of amendment requests: The proposed amendments would modify the Technical Specification Action Statements and Surveillance Requirements for the Accumulators to make them more consistent with those contained in the new Standard Technical Specifications for Westinghouse plants. Changes to the Bases are also proposed to reflect the proposed revisions to the action statements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. involve a significant reduction in a margin of safety.

Criterion 1

The limiting conditions for operation involving the accumulator are not altered by this proposed change. The surveillance requirements are lessened somewhat by the proposed changes. The requirement to test the automatic actuation of the accumulator isolation valves was redundant to existing surveillance requirements that required the valves to be verified open and with power removed. The requirement to test the accumulator boron concentration following a 1% or greater solution volume increase was modified to exclude volume additions from the RWST, since, per T/Ss, the RWST boron concentration requirements during operation are identical to those for the accumulator. The proposed changes are consistent with NUREG 1431, and, as such, have already been found acceptable by the NRC. Therefore, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

No changes to the limiting conditions for operation of the accumulators are proposed as part of this amendment request. The proposed changes do not involve any physical changes to the plant or changes to plant operations. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The limiting conditions for operation involving the accumulator are not altered by this proposed change. The surveillance requirements are lessened somewhat by the proposed changes. The requirement to test the automatic actuation of the accumulator isolation valves was redundant to existing surveillance requirements that required the valves to be verified open and with power removed. The requirement to test the accumulator boron concentration following a 1% or greater solution volume increase was modified to exclude volume additions from the RWST, since, per T/Ss, the RWST boron concentration requirements during operation are identical to those for the accumulator. All the proposed changes are consistent with NUREG 1431, and, as such, have already been found acceptable by the NRC. Therefore, it is concluded that the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 12, 1993

Description of amendment requests: The proposed amendments would delete the "Component Cyclic or Transient Limits" in the Technical Specifications consistent with NUREG-1431, "Standard Technical Specifications for Westinghouse Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. involve a significant reduction a margin of safety.

Criterion 1

The proposed change is administrative in nature in that it simply relocates a table containing component cyclic and transient limits from the T/S to the UFSAR. Any change to the requirements of the table would have to be reviewed against the criteria of 10 CFR 50.59 to ensure the change does not create an unreviewed safety question. Additionally, it is noted that the change is consistent with the new Standard T/S, recently issued by the NRC as NUREG 1431. Based on these considerations, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The change only involves relocation of a table containing component cyclic and transient limits from the T/S to the UFSAR. No specific physical changes to the plant or changes in plant operation will result directly from this change. Any change in the limits contained in the current table will undergo a review against the requirements of 10 CFR 50.59 to ensure that the change does not create an unreviewed safety question. Thus, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed change is administrative in nature in that it simply relocates a table containing component cyclic and transient limits from the T/S to the UFSAR. Any change to the requirements of the table would have to be reviewed against the criteria of 10 CFR 50.59 to ensure the change does not create an unreviewed safety question. Additionally, it is noted that the change is consistent with the new Standard T/S, recently issued by the NRC as NUREG 1431. Based on these considerations, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 15, 1993

Description of amendment requests: The proposed amendments would make various administrative and/or editorial changes to the Technical Specifications and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment does not involve a significant hazards consideration if the change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated,

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction a margin of safety.

Criterion 1

The proposed changes are administrative or editorial in nature. The purpose is to correct errors in the TS, or to make the TS more consistent with plant design or operation. No changes in physical design of the plant or changes in the manner in which the plant is operated will result from these changes. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed changes are administrative or editorial in nature. The purpose is to correct errors in the TS, or to make the TS more consistent with plant design or operation. No changes in physical design of the plant or changes in the manner in which the plant is operated will result from these changes. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Criterion 3

The proposed changes are administrative or editorial in nature. The purpose is to correct errors in the TS, or to make the TS more consistent with plant design or operation. No changes in physical design of the plant or changes in the manner in which the plant is operated will result from these changes. Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 15, 1993

Description of amendment requests: The proposed amendments would revise certain Ice Condenser ice bed Surveillance Requirements in the Technical Specifications extending the interval from 9 months to 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed T/Ss exemption and have determined that it should not require a significant hazards consideration based on the criteria established in 10CFR50.92(c). Operation of the Cook Nuclear Plant in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in the surveillance interval does not create a significant increase in the

probability or consequences of an accident previously evaluated. Recent operation experience with the ice condenser indicates that all required boron concentrations, pH levels, ice weights, and frost or ice accumulation criteria established in the T/Ss have been met without any corrective or preventive action being taken during the mid-cycle inspections. This provides confidence that the ice condenser will continue to be able to perform as assumed in the safety analysis. Therefore, we conclude that the proposed T/Ss changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The increase in the surveillance interval for the ice condenser from 9 to 18 months will not affect the functionality or required performance capability of the ice condenser. The above review found no possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety

The proposed T/Ss changes only change the surveillance frequency requirements which we believe will not challenge the ability of the ice condenser to perform its function as defined in the safety analysis. Other T/Ss and plant indications are in place to warn the operator of refrigeration system problems prior to possible ice bed degradation. Therefore, we conclude that the T/S change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: December 3, 1993

Description of amendment request: The proposed amendment would grant extensions for certain 18-month technical specification (TS) surveillances which are required to be performed beginning February 5, 1994. The licensee is requesting relief from these surveillances in order to extend the current cycle for Unit 2 and separate the refueling outages for Units 1 and 2 by approximately 6 months. The December 3, 1993, submittal provides supplemental information on instrument drift and also updates the original submittal dated April 16, 1993 (noticed August 4, 1993; 58 FR 41505). The December 3, 1993, letter revises the list of TS that require an extension by withdrawing the request for three extensions because the surveillances have been performed and adding a request for extension of an additional three surveillances. This notice pertains to the additional three surveillances for which the licensee has requested extensions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

Per 10 CFR 50.92, a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

(1) involve a significant increase in the probability or consequences of an accident previously analyzed,

(2) create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated, or

(3) involve a significant reduction in a margin of safety.

Our evaluation of the proposed change with respect to these criteria is provided below:

Criterion (1)

The first of the three TS surveillance extensions being requested is for TS 4.3.2.1.1, Table 4.3-2, Items 8.a and 8.b, 4Kv bus loss of voltage and degraded voltage time delay relays. The relays are electronic, which are highly reliable and accurate and should not drift outside of their acceptable setpoints. This was demonstrated during the previous three channel calibration surveillances where no adjustments were required on the as-found conditions. Thus, there is no reason to believe that the relays would not perform their intended functions during the extension period. For these reasons, the extension the licensee is requesting should not result in a significant increase in the probability or consequences of a previously evaluated accident, nor should it result in a significant reduction in a margin of safety.

The second surveillance extension is for TS 4.3.3.6, Table 4.3-10, Item 15, calibrations of incore thermocouples. Review of the surveillance data for the last three cycles indicated that drift of the thermocouples is not expected. Also, channel checks are performed on a weekly basis which would provide indication of inoperable thermocouples. Therefore, the licensee believes that the incore thermocouples will be capable of performing their intended function during the extension period. For these reasons, the extension the licensee is requesting should not result in a significant increase in the probability or consequences of a previously evaluated accident, nor should it result in a significant reduction in a margin of safety.

The third surveillance extension is for TS 4.4.6.1.b, calibration of the containment flow monitoring system. Past surveillance history has shown that the pumps have capacities well above the acceptance criteria. During the current cycle, the reactor cavity, lower containment, and pipe tunnel sump pumps have run for a minimal amount of time. Thus, the potential for pump degradation is small. Therefore, there is no reason to believe that the containment flow monitoring system would not perform its intended function during the extension period. For these reasons, the extension the licensee is requesting should not result in a significant increase in the probability or consequences of a previously evaluated accident, nor should it result in a significant reduction in a margin of safety.

Criterion (2)

This extension will not result in a change in plant configuration or operation. Therefore, the extension should not create the possibility of a new or different kind of accident from any previously evaluated or analyzed.

Criterion (3)

For the reasons cited for Criterion (1) above, the proposed changes will not result in a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 18, 1993

Description of amendment request: The proposed amendment would revise the setpoints for degraded voltage relays for the 4.16kV Power Boards 102 and 103 as specified in Technical Specification Table 3.6.2i. The setpoints would be revised from their present values of 3580 volts 18.5 plus/minus 3 seconds to a proposed value of greater than or equal to 3705 volts >3.4 seconds and <60 seconds. The licensee has submitted this proposed change in response to findings of the NRC's Electrical Distribution System Functional Inspection conducted at Nine Mile Point Nuclear Station Unit No. 1 from September 23, 1991, to October 25, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

With a degraded voltage relay dropout setpoint of 3600V (and a corresponding operating time setpoint of "3580V 18.5 +/-3 seconds"), the voltage available at Power Boards 102 and 103 could reach a level that is not able to support acceptable operation of connected loads. Therefore, Niagara Mohawk proposes to revise the degraded voltage relay dropout setpoint to 3705V and the operating time setpoint to >3.4 seconds and <60 seconds to assure adequate voltage is available to the critical loads connected to Power Boards 102 and 103, except the six (6) contactors. Niagara Mohawk will maintain the administrative controls in place to ensure adequate voltage is available to the six (6) contactors and to preclude inadvertent separation from offsite power. Because of the above changes, Note(a) to Table 3.6.2i no longer accurately applies to subpart b of Table 3.6.2i. Note(b) and Note(c) will be added to discuss the operating time for subpart b, degraded voltage. Changes have been made to Table 3.6.2i to indicate that Note(a) and Notes(b) and (c) apply to subpart a and b of Table 3.6.2i, respectively.

Niagara Mohawk also proposes to change Table 3.6.2i subpart a, Loss of Voltage. Specifically, the word "undervolt" will be changed to undervoltage. This change is strictly editorial.

The proposed changes to these settings do not alter any accident initiators or precursors and therefore do not affect the probability of any accident. The changes to the degraded voltage setpoint will assure adequate voltage is available at the motor terminals of the connected loads and therefore, not increase the consequences of any accident. The restrictions to the operating time setpoint are of long enough duration to preclude spurious separation from offsite power during load sequencing, but short enough to preclude load damage or trip device actuation. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no changes to the manner in which plant systems are operated and do not introduce new accident precursors. The performance of the Emergency Power Distribution system, the Diesel Generator initiation system, and connected loads is not adversely affected by these changes. The change will simply assure sufficient voltage is provided to connected loads except for the six(6) contactors. Accordingly, the design capabilities of these systems are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment would revise the degraded voltage relay setpoints as provided in Technical Specification Table 3.6.2i, Diesel Generator Initiation. The setpoint for the 4.16kV Power Boards 102 and 103 degraded voltage relay dropout would be changed from 3600V to 3705V. This is a conservative change in that higher voltages will be normally maintained on Power Boards 102 and 103 to assure acceptable operation of connected loads. The corresponding operating time set point will be changed from '3580V 18.5 +/-3 seconds' to >3.4 seconds and <60 seconds. The 3.4 second time delay is of a long enough duration to preclude spurious separation from offsite power during load sequencing. The 60 second time delay is short enough to preclude load damage or trip device actuation at voltages between the degraded voltage and loss of voltage setpoints. The performance of the Emergency Distribution system, the Diesel Generator initiation system, and connected loads is not adversely affected by this change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: November 22, 1993

Description of amendment request: The proposed changes revise Technical Specifications by clarifying the operability requirements relative to the design function of the scram discharge volume (SDV) - water level high rod block. In addition, NNECO is adding a statement which defines operability and surveillance requirements for the rod block functions while the reactor mode selector switch is in the REFUEL or SHUTDOWN positions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes revise the wording of Technical Specification Table 3.2.3 to more clearly describe the operability requirements of the SDV - water level high rod block instruments. One instrument per instrument volume tank continues to be required to be operable. A rod block is initiated within one hour when either of the instruments is tripped or inoperable. A failure of either level switch or any failure in the circuitry would generate the RB [rod block], which is a conservative condition. There is no change to the function of the equipment, and no new equipment or interlocks are being installed. The SDV - water level high rod block will continue to function and be used as originally designed and installed.

The addition of the surveillance requirement for rod block while the reactor is shutdown or is being refueled ensures that the technical specifications contain the necessary controls to ensure that rod block is operable when the ability to move control rods exists. The rod block would not be required when the plant is in the SHUTDOWN or REFUEL condition and the

control rods are fully inserted and disarmed. Therefore, this proposed technical specification cannot increase the probability or consequence of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not affect the setpoint or operability of the equipment. Moreover, no new equipment is being added, nor is the function of the SDV water level high rod block being changed. The change to the notes of Table 3.2.3 revises the wording to more clearly describe the operability requirements of the SDV - water level high rod block instruments in relation to the existing plant design.

Defining the control rod block surveillance requirements while in SHUTDOWN or REFUEL conditions does not change any setpoint or affect the operability of the rod block circuitry. The rod block would be maintained operable except in the situation when the control rods cannot be moved. Since no new or different equipment or function is being introduced, there is no possibility of creating a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The margin of safety assumed in the design basis is provided by the water level switches which input into the reactor protection system. These switches initiate a scram while the SDV has sufficient capacity to accept the water from the hydraulic control units during a scram. Further margin is provided by the SDV - water level high switches which initiate a rod block if the water level in either tank reaches the high setpoint. In addition to these automatic features, the operator receives an alarm before either the rod block or the trip level is reached. The proposed change only revises the wording to more clearly describe the operability requirements of the SDV rod block instruments in relation to the existing plant design. This proposed change does not significantly impact the margin of safety.

During SHUTDOWN or REFUEL conditions, maximum negative core reactivity would be assured by having all control rods fully inserted and either electrically or hydraulically disarmed. Under these conditions, the rod block function would not provide any safety benefit since the control rods cannot be moved. The additional surveillance requirement assures that these conditions are maintained. Therefore, the proposed change is conservative in relation to the current technical specification requirements, and as such does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 4, 1993

Description of amendment request: The proposed amendment incorporates an additional Emergency Diesel Generator (EDG) Surveillance Requirement (SR), 4.8.1.1.2.C.8, Items a, b, and c, to the Technical Specification Section 3/4.8, "Electrical Power Systems." The proposed change requires starting the EDG, with offsite power available, as a result of a Safety Injection Actuation Signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed change and concluded that it does not involve a significant hazards consideration [SHC]. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

During the conduct of the proposed surveillance, the diesel will run on standby for at least five minutes. The determination from the diesel manufacturer is that fuel oil fouling of the exhaust would not occur under these conditions. This change is simply an additional surveillance to demonstrate operability (starting) of the EDG, with offsite power available, as a result of an SIAS [safety injection actuation signal] signal, therefore it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident than any previously evaluated.

Testing of the EDG is normally performed in the same manner as is being proposed in this license amendment; the only difference is the source of the start signal. This additional surveillance requirement is a routine requirement for some other plants and is included as part of STS [Standard Technical Specifications). Accordingly, the change does not create the possibility of a new or different kind of accident than any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed testing of the EDG will provide additional assurance of reliability to maintain the present margin of safety. Since this proposed license amendment will add a surveillance beyond that currently existing, it would likely add to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: November 24, 1993

Description of amendment request: The amendment would revise

Facility Operating License No. NPF-22 for Susquehanna Steam Electric Station (SES), Unit 2, to uprate the current licensed power level from 3293 MWt to a new limit of 3441 MWt, which represents an approximate increase of 4.5% over the present licensed power level. As discussed subsequently, the proposed amendment also consists of many changes to the Technical Specifications (TSs) to implement uprated power operation.

By letter dated June 15, 1992, Pennsylvania Power and Light Company (PP&L) submitted "Licensing Topical Report NE-092-001, Revision 0, Power Uprate With Increased Core Flow," for Susquehanna Steam Electric Station, Units 1 and 2. The report was submitted to support future amendments to the Units 1 and 2 licenses to permit a 4.5-percent increase in reactor thermal power and an 8-percent increase in core flow for each unit. The initial submittal was revised and supplemented by letters of July 24, September 17, and December 18, 1992, and January 8, January 25, April 2, August 5, August 12, and September 29, 1993. The Commission's safety evaluation on these submittals was issued November 30, 1993 (Letter, Thomas E. Murley, NRC, to Robert G. Byram, PP&L). The Commission concluded that the revised (Revision 2) licensing topical report

adequately supports PP&L's proposed power uprate. The Commission also concluded that SES, Units 1 and 2, can operate safely with the proposed 8-percent increase in core flow, the proposed 4.5-percent increase in reactor thermal power, the corresponding 5-percent increase in main turbine inlet steam flow, and the corresponding increases in flows, temperatures, pressures, and capacities required in supporting systems and components at these uprated conditions.

The subject application submitted the proposed license amendment and changes to the TSs to implement the power uprate for Unit 2. Unit 2 is scheduled to shut down for the sixth refueling outage on March 12, 1994. During the outage, the many changes to instrumentation, controls, equipment, procedures, setpoints, systems, computers, etc., will be made to accommodate power uprate with increased core flow in Cycle 7. Unit 1 is not scheduled for the next refueling outage until 1995. An amendment application supporting power uprate for Unit 1 will be submitted in the future.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The following three questions are addressed for each of the proposed Technical Specification Changes:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

Section 1.0 Definitions, Definition 1.33, Rated Thermal Power

This change redefines Rated Thermal Power as 3441 megawatts thermal.

1. No. Neither the probability (frequency of occurrence) nor consequences of any accident previously evaluated is significantly affected by the increased power level because the design and regulatory criteria established for plant equipment remain imposed for the uprated power level. The PP&L assessment to increase the rated thermal power level at Susquehanna SES Unit 2, followed the guidelines of NEDC-31879P (≥Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," G.E. Nuclear Energy, June 1991). NEDC-31879P provides generic licensing criteria, methodology, and a defined scope of analytical and equipment review to be performed to demonstrate the ability to operate safely at the uprated power level which have been approved by the NRC. NE-092-001 (≥Licensing Topical Report for Power Uprate With Increased Core Flow," Pennsylvania Power & Light Company, December 1992) provides the description of the power uprate licensing analysis methodology and the results of the evaluations performed to support the proposed uprated power operation consistent with the methodology presented in NEDC-31879P. NE-092-001 provides a description of the power uprate licensing analysis methodology which will be used to determine cycle specific thermal limits for Unit 2, Cycle 7 and future cycles and concludes that an uprated power level of 3441 megawatts thermal can be achieved without significant effect on equipment or safety analyses.

2. No. The methodology and results described above do not indicate that a possibility for a new or different kind of accident from any previously evaluated has been created by uprated operation.

3. No. Based on the response to Question 1 above, the methodology and results do not indicate a significant reduction in a margin of safety.

Section 2.1, Safety Limits

The reference to "rated core flow" in Technical Specification 2.1.1 and 2.1.2 has been replaced with a reference to actual core flow. The references to "rated core flow" have been deleted to avoid confusion since allowable core flow is being increased by 8%. 10 Mlbm/hr is being used in these specifications to be consistent with other similar Technical Specification changes (Technical Specifications 3.2.2, 4.4.1.1.1.2, 4.4.1.1.2.5, 3.4.1.3 and Figure 3.4.1.1.1-1).

1. No. The probability and consequences of accidents previously evaluated are not affected by this change. The basis for Technical Specification 2.1.1 is that boiling transition will not occur in bundles if core power is less than 25% of rated thermal power, regardless of pressure or core flow. Consequently, the specification of less than 10% rated core flow is not crucial to the basis and, thus, the use of 10 Mlbm/hr. is acceptable and has no effect on the probability or consequences of a previously evaluated accident.

For Technical Specification 2.1.2, the XN-3 critical power correlation is valid for pressure greater than or equal to 580 psig and bundle flow greater than or equal to 0.25 Mlbm/hr-ft^2. As stated in the basis for Technical Specification 2.1.1, if vessel downcomer water level is above TAF [top of active fuel], and core power > 25%, bundle flows for potentially limiting bundles will be > 0.25 Mlbm/hr-ft^2 due to natural circulation. In addition, Technical Specification 3.4.1.1.1 requires at least one (1) recirculation loop in operation to run in Condition 2, which would produce a core flow in excess of 30 Mlbm/hr. Therefore, core flows below about 30 Mlbm/hr-ft^2 are prohibited when the reactor is at power. Thus, the change from "10%" to "10 million lbm/hr" is acceptable and has no effect on the probability or consequences of a previously evaluated accident.

2. No. The basis for Technical Specification 2.1.1 is that boiling transition will not occur in bundles if core power is less than 25% of rated thermal power, regardless of pressure or core flow. The proposed change is not crucial to this basis. The XN-3 critical power correlation is valid for pressures greater than or equal to 580 psig and bundle flow greater than or equal to 0.25 Mlbm/hr-ft^2. The specification is based upon vessel downcomer water level being above TAF and core power > 25% which yields a bundle flow for potentially limiting bundles > 0.25 Mlbm/hr-ft^2 due to natural circulation. Based on Technical Specification 3.4.1.1.1, core flows below about 30 Mlbm/hr ft^2 are prohibited when the reactor is at power. Therefore, the change to a limit of 10 Mlbm/hr is acceptable and does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. No. As explained above, the margin of safety has not been reduced.

Table 2.2.1-1 (Items 2.a, 2.b, and 2.c) and Specifications 3.2.2, 3.4.1.1.2.a.2, 3.4.1.1.2.a.3, 3.4.1.1.2.a.5.b and 3.3.6-2 (Item 2.a.1, 2.c, and 2.d), APRM Flow Biased Setpoints and Allowable Values

Although the equation for determining these setpoints does not change as a result of the power uprate, because the setpoints in these technical specifications are referenced to rated thermal power, the current limits do change in that the top portion of the operating map (power vs. reactor flow) is raised by 4.5%.

1. No. The safety analyses contained in NE-092-001 evaluated operation at both uprated power with 4.5% higher rod lines and increased core flow. In addition, General Electric Co. has analyzed and received generic approval for their BWR/4 product line operation in the Maximum Extended Operating Domain (MEOD). Operation at the 4.5% higher rod lines is bounded by the MEOD analysis. Additional justification for this small increase in the power flow operating range is contained in Section C.2.3 of NEDC-31984P.

Cycle specific reload analyses will evaluate operation at the increased power vs. flow conditions (100% uprated power vs. 87% core flow to 100% uprate power vs. 108% core flow). These analyses will ensure that the limits established in the Core Operating Limits Report are applicable to rated power operation from 87% to 108% core flow.

Based on the above analyses, increasing the current limits do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The analyses described above in response to Question 1 do not indicate that a possibility for a new or different kind of accident from any previously evaluated has been created by the proposed change.

3. No. Based on the response to Question 1 above, the proposed change does not result in a reduction in the margin of safety.

Table 2.2.1-1, Item 3. Reactor Steam Dome Pressure - High Scram

The reactor steam dome pressure-high scram trip setpoint and allowable values are being changed to less than or equal to 1087 psig and < 1093 psig respectively.

1. No. This scram function is designed to terminate a pressure increase transient not terminated by direct scram or high flux scram. The nominal trip setpoint is maintained above the reactor vessel

maximum operating pressure and the specified analytical limit is used in the transient analyses. The analytical limit of 1105 psig is used in the uprated transient analyses. The results of the overpressure protection analysis indicate that the peak pressure will remain below the 1375 psig ASME [American Society of Mechanical Engineers] limit which meets plant licensing requirements. In accordance with the methodology described in NE-092-001, transient analyses will be performed using the analytic limit and the results will be incorporated into the Core Operating Limits Report. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The purpose of this scram function is to terminate a pressure increase transient not terminated by direct scram or high flux scram. The nominal trip setpoint is maintained above the reactor vessel maximum operating pressure and the specified analytical limit is used in the transient analysis. 1105 psig is being used as the analytical limit in the uprated transient analysis. The results of the overpressure protection analysis indicate peak pressure will remain below the ASME limit of 1375 psig which satisfies plant licensing requirements. Based upon that result, it is concluded that the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. No. The results of the overpressure protection analysis indicate peak pressure will remain below the 1375 psig licensing limit, therefore, it is concluded that the proposed change does not result in a significant reduction in a margin of safety.

Specification 4.1.5.c. Standby Liquid Control System

This specification has been revised to require SLC [Standby Liquid Control] pumps to develop a discharge pressure of greater than or equal to 1224 psig.

1. No. The ability of the SLC system to achieve and maintain safe shutdown is a function of the amount of fuel in the core and is not directly affected by core thermal power. The SLC pump test discharge pressure acceptance criteria are based on the lowest relief valve setpoint. The lowest setpoint is being increased by 30 psi (to 1106) due to power uprate. Operating with increased core flow will result in additional friction losses through the core and a slightly larger core differential pressure (approximately 4 psi). Therefore, increasing the SLC pump test discharge pressure acceptance criteria ensures the capability of SLC injection. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The ability of the SLC system to achieve and maintain safe shutdown is a function of the amount of fuel in the core and is not directly affected by core thermal power. Therefore, the proposed change does not result in a new or different kind of accident from any previously evaluated.

3. No. The ability of the SLC system to achieve and maintain safe shutdown is a function of the amount of fuel in the core and is not directly affected by core thermal power. As stated in the response to question 1 above, the SLC pump discharge pressure acceptance criteria are based upon the lowest relief valve setpoint. The lowest setpoint is being increased by 30 psi. As the SLC pumps are positive displacement pumps, the uprate will not adversely affect the performance of the pumps to achieve proper injection. Based on above, the proposed change does not result in a significant reduction in a margin of safety.

Specifications 3.2.2, 4.4.1.1.1.2, 4.4.1.1.2.5, 3.4.1.3 and Figure 3.4.1.1.1-1, Rated Core Flow References

Technical Specification 3.2.2 contains the definition of "W" for the flow biased APRM scram equation. The word "rated" is being deleted from the definition of "W" since rated core flow is being increased. The definition of "W" is not altered. The change is being made for editorial purposes.

Technical Specifications 4.4.1.1.1.1.2, 4.1.1.1.2.5, 3.4.1.3, and Figure 3.4.1.1.1-1 specify performance requirements and limits for the Reactor Recirculation System. These specifications are referenced to the current rated core flow. The references to "rated core flow" are being replaced with actual equivalent core flows. The specifications are equivalent and unchanged. This change is being made for editorial purposes to avoid confusion since rated core flow is being increased. These changes are also consistent with the changes made in Section 2.1.

1. No. The proposed changes are editorial and do not effect the probability or consequences of an accident previously evaluated.

2. No. The proposed changes are editorial and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. No. The proposed changes are editorial and do not involve a significant reduction in a margin of safety.

Specification Table 3.3.1-1, Note (j) and Action 6, Reactor Protection System Instrumentation, and Table 3.3.4.2-1. Note b, End-of-Cycle Recirculation Pump Trip System Instrumentation

The turbine first stage pressure scram bypass at 30% power in Technical Specification Table 3.3.1-1, Note (j) and Table 3.3.4.2-1, Note (b) is revised to indicate that the uprated equivalent allowable value of first stage turbine pressure is 136 psig. This value ensures that the analytical limit of 147.7 psig, which represented 30% rated thermal power, is not exceeded.

As currently written Note (j), Note (b) and Table 3.3.1-1, ACTION 6 are unclear and could be misinterpreted. They apply only when RPS scram functions and End-of-Cycle Recirculation Pump Trip [EOC-RFT] on turbine main stop valves closure or control valve fast closure are not automatically bypassed. ACTION 6 provides no guidance in the event the bypass fails to lift when thermal power is above 30%. In the worst case, the action statement could be interpreted literally to allow full power operation with the RPS function still bypassed. Such operation would violate the licensing basis analysis for the MCPR operating limit (for the Generator Load Rejection Without Bypass transient), which takes credit for operation of the anticipatory scram on control valve fast closure at greater than 30% of rated thermal power.

1. No. The revisions to Table 3.3.1-1, ACTION 6, Table 3.3.1-1, Note (j), and Table 3.3.4-1 Note (b) clarify the current requirements; they do not change their intent.

FSAR Chapter 15 transient analyses and reload licensing analyses take credit for operation of the anticipatory scram function on turbine stop valve closure and control valve fast closure for power levels greater than 30% of rated thermal power. The proposed revision to Table 3.3.1-1, ACTION 6 provides better assurance of the availability of the anticipatory scram function, since the current specifications could be interpreted literally to allow full power operation with the RPS function bypassed.

The proposed revision to Table 3.3.1-1, Note (j) and Table 3.3.4.2-1, Note (b) does not change the operation of the RPS and EOC-RPT bypasses on turbine stop valve closure and control valve fast closure below 30% power. The turbine first stage pressure switches will still be calibrated in the same manner, and, by procedure, the reactor operator will not exceed 30% power if the trip bypass annunciator does not clear.

The setpoints for the RPS and EOC-RPT bypass functions were selected to allow sufficient operating margin to avoid scrams during low power turbine generator trips. As discussed in NEDC-31894P, Section F4.2(c) and in Section 5.1.2.8 of NEDC 31948P, this small absolute setpoint increase maintains the safety basis for the setpoint.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The changes proposed are clarifications and do not change specification intent. The proposed change to Table 3.3.1-1, Action 6 provides better assurance of the availability of the anticipatory scram function as the specification could currently be interpreted to allow full power operation with the RPS function bypassed. The proposed changes to Table 3.3.1-1, Note (j) and Table 3.3.4-1, Note (b) do not change the operation of the RPS and EOC-RPT bypasses on turbine stop valve closure and control valve fast closure below 30% power. Therefore, the possibility for a new or different kind of accident is not created.

3. No. The proposed changes are clarification and do not change intent. Operation of the RPS and EOC-RPT bypasses on turbine stop valve closure and control valve fast closure below 30% power is not changed. Therefore, there is no reduction in the margin of safety.

Specification Table 3.3.2-2, Item 3.d, Main Steam Line Flow Differential Pressure Setpoint

The main steam line flow high differential pressure setpoint and allowable value are revised to read trip setpoint and allowable values of 113 psid and 121 psid respectively. Footnote ** was added to Table 3.3.2-2 to indicate that these values will be confirmed during the power uprate start-up testing. If

revisions to the setpoint and allowable value are required, they will be forwarded to the Commission for approval within 90 days of completion of the test program.

1. No. The main steam line flow high differential pressure setpoint changes reflect the redefinition of rated main steam line flow that occurs with power uprate. The allowable value is maintained at the same percentage of rated steam flow as the differential pressure changes due to the increased uprate steam flow. The analytical limit of 140% of uprated steam flow is maintained for the uprated analyses. The relationship between the allowable value and the analytical limit was retained to ensure that a trip avoidance margin is maintained for the normal plant testing of MSIV's and turbine stop valves. The increase in the absolute value of the trip setpoint still provides a high assurance of isolation protection for a main steam line break accident which satisfies the original intent of the design. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The increase in the absolute value of the trip setpoint still provides a high assurance of isolation protection for the main steam line break accident which satisfies the original intent of the design and, therefore does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. No. The increase in the absolute value of the trip setpoint still provides a high assurance of isolation protection for a main steam line break accident which satisfies the original intent of the design and, therefore, does not involve a significant reduction in a margin of safety.

Specification Table 3.3.2-2. Item 4.fl, Isolation Actuation Instrumentation Setpoints

The RWCU [Reactor Water Cleanup] system flow-high isolation trip setpoint and allowable value are being changed. System flow is being increased by 10% to maintain reactor coolant water chemistry at a level equal to pre[-]uprate levels. The isolation setpoint change is being made to adequately maintain operating margin between normal process values and the isolation setpoints.

1. No. The basis for the RWCU flow-high isolation is to ensure a RWCU System isolation in case of a pipe break. The high flow setpoint is set high enough to avoid spurious trips from normal operating transients but low enough to ensure an isolation during a pipe break. The proposed Technical Specification limits will result in a negligible reduction in the margin between the RWCU isolation setpoint and the 4350 gpm flow postulated during a RWCU line break and will avoid spurious isolations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. As stated above, the proposed change will result in only a negligible reduction in the margin between the RWCU isolation setpoint while avoiding spurious isolation. Therefore, this change maintains the original design intent and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. No. See 1. above.

Specification Table 3.3.2-2, Items 5.a and 6.1, Isolation Actuation Instrumentation Setpoints

The HPCI and RCIC Steam Line Flow-High Technical Specifications are being changed to account for changes in steam conditions and flows that result from operation at the uprated conditions. The setpoint and allowable value for HPCI Steam Line Flow-High isolation are less than or equal to 387 inches H_2O and less than or equal to 399 inches H_2O respectively. The setpoint and allowable value for the RCIC Steam Line delta Pressure-High isolation are less than or equal to 138 inches H_2O and less than or equal to 143 inches H_2O respectively.

1. No. The bases for these setpoints are contained in the General Electric Design Specification Data Sheets for the HPCI and RCIC systems. The Design Specification Data Sheets specify that the setpoint and allowable value be set so that the isolation occurs at greater than 272% normal steam flow and less than 300% steam flow. General Electric has historically seen start-up transients as high as 272% of normal steam flow. Setting the isolation above this value prevents spurious isolations and ensures availability of the system and its safety function. Setting the isolation at less than or equal to 300% of normal flow insures that the isolation will occur if a steam line should rupture.

The original setpoints were calculated using information obtained during the Susquehanna start-up program. The revised setpoints and allowable values were calculated using the same start-up data and adjusted for uprate conditions in accordance with additional guidance provided in General Electric Information Letter (SIL) No. 475, Revision 2, NEDC-31336, "General Electric Setpoint Methodology," and GE Letter SPU-9378, "HPCI and RCIC Steam Line Break Detection Setpoints".

Based on the above approach, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The setpoint and allowable value are set so that isolation occurs at greater than 272% normal steam flow and less than 300% steam flow. Setting the isolation at less than or equal to 300% of normal flow ensures that the isolation will occur if a steam line rupture should occur. Therefore, no new events are postulated as a result of this change.

3. No. The proposed change does not involve a significant reduction in a margin of safety as the setpoint and allowable value are set to isolate at greater than 272% normal steam flow and less than 300% steam flow which are the setpoints contained in the General Electric Design Specification Data Sheets for the HPCI and RCIC systems.

*Specification Table 4.3.2.1-1, footnote "**"*

The footnote is being changed to delete reference to reactor pressure.

1. No. The original purpose of Footnote "**" to Technical Specification Table 4.3.2.1-1 was to describe the functioning of the permissive circuitry that allowed the MSIV low condenser pressure isolation to be bypassed. The original circuitry required the Mode Switch not be in Run, the Turbine Stop Valves closed, and reactor pressure to be above setpoint. In the start-up phase of the Susquehanna Units, General Electric deleted the reactor pressure setpoint input to the bypass circuitry. Therefore, this change is being made to make the footnote conform to the installed configuration. The revised footnote is the same as found in the BWR/4 Standard Technical Specifications (NUREG 1433). This change is editorial in nature and, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. Based on the response to Question 1 above, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. No. Based on the response to Question 1 above, the proposed change does not involve a significant reduction in a margin of safety.

Specification Table 3.3.6-2, Item 1.a and Specification 3.4.1.1.2.a.5.a, Rod Block Monitor Flow Biased Rod Blocks

The Rod Block Monitor (RBM) flow biased rod blocks are being changed as follows:

a. Technical Specification Table 3.3.6-2, Item 1.a is revised to read trip setpoint and allowable values of less than or equal to 0.63 W + 41% and less than or equal to 0.63 W + 43% respectively.

b. Technical Specification 3.4.1.1.2.a.5.a is being revised to read trip setpoint and allowable values of less than or equal to 0.63 W + 35% and less than or equal to 0.63 W + 37% respectively.

1. No. These Technical Specification changes do not represent a change from current limits. The change reflects the rescaling made necessary by the re-definition of rated thermal power.

The RBM flow biased rod blocks are used in the Rod Withdrawal Error (RWE) analysis. In order to maintain Critical Power Ratio (CPR) margins similar to previous Susquehanna cycles, the flow biased rod blocks were changed in terms of megawatts thermal but the change was not appreciable. The rescaling of the RBM flow biased rod block to reflect the re-definition of Rated Thermal Power maintains the same level of protection as previously provided. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. These changes do not represent a change from current limits but are rather a rescaling made necessary by the re-definition of rated thermal power.

3. No. These changes do not represent a change from current limits but are rather a rescaling made necessary by the redefinition of rated thermal power. The rescaling of the RBM flow biased rod block maintains the same level of protection as previously provided.

Specification Table 3.3.6-2, Item 2.a, Control Rod Block Instrumentation Setpoints

The APRM rod block upscale value has been changed to add a high flow clamp setpoint at 108% with a high flow clamped allowable value at 111%.

1. No. The addition of the high flow clamp to the flow biased APRM rod block function maintains the normal margins between the rod block and the scram power levels in the increased core flow [ICF] regions. When the reactor core flow is greater than 100 million lbm/hr, the APRM clamp provides an alarm to help the operator avoid scrams while operating in the ICF region. This action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The changes maintain the normal margins between the rod block and the scram power levels in ICF regions. The clamp provides an alarm to avoid scrams in the ICF region.

3. No. The changes maintain the normal margins between the rod block and the scram power levels.

Specification Table 3.3.6-2, Item 6.a, Reactor Coolant System Recirculation Flow Upscale Rod Block Setpoint and Allowable Value Change

The reactor coolant system recirculation flow upscale rod block setpoint and allowable value are being increased to 114/125 divisions of full scale and 117/125 divisions of full scale respectively.

1. No. The Reactor Coolant System recirculation flow upscale rod block setpoint and allowable value are being increased to allow operation in the ICF region. The 114/125 divisions setpoint and 117/125 divisions allowable value, specified by General Electric, are based on BWR operating history.

The purpose of the Reactor Coolant System recirculation flow upscale rod block is to prevent rod movement when an abnormally high increase in reactor recirculation flow exists. An increase in reactor recirculation flow causes an increase in neutron flux that results in an increase in reactor power. However, this increase in neutron flux is monitored by the Neutron Monitoring System that can provide a rod block. No design basis accident or transient analysis takes credit for rod block signals initiated by the Reactor Coolant Recirculation System. Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

2. No. Rod block signal initiation by the Reactor Coolant Recirculation System is not taken credit for in the mitigation of a design basis accident or in any transient analysis.

3. No. Rod block signal initiation by the Reactor Coolant Recirculation System is not taken credit for in any transient analysis or in the mitigation of a design basis accident.

Specification 4.4.1.1.1.2 and 4.4.1.1.2.5 Reactor Coolant System

The reactor recirculation pump motor generator set scoop tube electrical and mechanical overspeed stop setpoints are being increased to a core flow of 109.5 million lbm/hr. and 110.5 million lbm/hr., respectively.

1. No. The reactor recirculation pump motor generator set scoop tube stops are being increased to allow operation at core flows in the ICF region of up to 108 million lbm/hr.

The electrical stop is maintained above the maximum operating core flow and below the mechanical stop. The 109.5 million lbm/hr. electrical stop setpoint, specified by General Electric, is based on BWR operating history. The electrical stop is a system design feature and is not used in any safety analyses.

The 110.5 million lbm/hr. mechanical stop setpoint is used in transient analysis to limit core flow during a recirculation pump controller failure. The 110.5 million lbm/hr. mechanical stop setpoint, specified by General Electric, is also based on BWR operating history. The cycle specific analyses, performed for power uprate, used the 110.5 million lbm/hr. mechanical stop setpoint.

Based on the above, this change does not involve a significant increase of the probability or consequences of an accident previously evaluated.

2. No. Increasing the reactor recirculation motor generator set scoop tube electrical and mechanical overspeed stop setpoints is being done to allow operation at core flows in the ICF region up to 108 Mlbm/hr. The electrical stop setpoint is a design feature and is not used in any safety analysis. The mechanical stop setpoint is used in transient analysis to limit core flow during a recirculation pump controller failure. Changing of this setpoint was considered in appropriate transient analyses, and will not create the possibility of a new or different kind of accident from any previously evaluated.

3. No. See 1. above. This change does not significantly reduce the margin of safety.

Specification Figure 3.4.1.1.1-1, Thermal Power Restrictions

This figure has been redrawn to reflect the new definition of Rated Thermal Power to retain the same stability operating restrictions in terms of megawatts thermal as were previously described by this graph.

1. No. The core thermal hydraulic stability curve and associated bases are maintained at the current rod lines and power levels. Those values are redefined to reflect the redefinition of rated thermal power. Since the current operating restrictions are maintained, power uprate has no detrimental effect on the level of protection provided by these Technical Specifications. This position is consistent with NEDC-31894P, Section 5.3.3 and with NEDC-31984P, Section 3.2.

2. No. The core thermal hydraulic stability curve and associated bases are maintained at the current rod lines and power levels. Those values are changed to reflect the redefinition of rated thermal power. Since the current operating restrictions are maintained, power uprate has no detrimental effect on the level of protection provided and does not create the possibility for a new or different kind of accident.

3. No. The core thermal hydraulic stability curve and associated bases are maintained at the current rod lines and power levels. Those values are redefined to reflect the redefinition of rated thermal power. Since the current operating restrictions are maintained, there is no detrimental effect on the level of protection provided, and therefore no significant decrease in any margin of safety.

Specifications 3.4.1.1.2.5, 3.4.1.1.2.6, Reactor Coolant System, Recirculation Loops -Single Loop Operation

Specification 3.4.1.1.2.5 is being renumbered to 3.4.1.1.2.6. A new specification 3.4.1.1.2.5 is being added to specify that a 0.70 LHGR [Linear Heat Generation Rate] multiplier has been added to Specification 3.2.4 when in single recirculation loop operation.

1. No. Operation with one recirculation loop out of service is allowed, but it is not considered a normal mode of operation. Single loop operation (SLO) is a special operational condition when only one of the two recirculation loops is operable. In this operating condition, the reactor power will be limited to less than 80% of rated by the maximum achievable core flow, which is typically less than 60% of rated core flow. A postulated LOCA [Loss of Coolant Accident] occurring in the active recirculation loop during SLO would cause a more rapid coastdown of the recirculation flow than would occur in two loop operation, where one active loop would remain intact. This rapid coastdown causes an earlier boiling transition and deeper penetration of boiling transition into the bundle, which tends to increase the calculated PCT [Peak Clad Temperature]. However, the PCT effects of early boiling transition are substantially offset by the mitigating effect of the lower power level achievable at the start of such an event. The SAFER/GESTR-LOCA analysis results for Susquehanna for SLO and two loop operation are well below 2200°F and are documented in NEDC-32064P-1, Revision 1, "Power Uprate with Increased Core Flow Safety Analysis for Susquehanna 1 and 2", GE Nuclear Energy, July 1993.

The ECCS [Emergency Core Cooling System] performance for Susquehanna under SLO was evaluated using SAFER/GESTR LOCA. Calculations for the DBA [Design Basis Accident] were performed using both nominal and Appendix K inputs. The SLO SAFER/GESTR-LOCA analysis for the DBA assumes that there is essentially no period of recirculation pump coastdown. Thus, dryout is assumed to occur simultaneously at all axial locations of the hot bundle shortly after initiation of the event. Dryout is assumed to occur in one second for the nominal case and 0.1 second for the Appendix K case. These assumptions are very conservative and provide bounding results for the DBA under SLO.

The two-loop Appendix K break spectrum documented in NEDC-32064P-1 is representative of SLO because the two-loop spectrum was analyzed assuming a one second dryout time for all axial locations of the hot bundle. As shown by the two-loop break spectrum, the DBA is the limiting case for SLO. With breaks smaller than the DBA, there is a longer period of nucleate and/or film boiling prior to fuel uncovery to remove the fuel stored energy.

An LHGR reduction (multiplier) of 0.70 will be imposed when the plant is in SLO. As shown in Table 5-6 of NEDC-32064P-1, the SLO results are less limiting (i.e., lower PCT's) than the results for the two loop DBA LOCA.

Thus, the licensing PCT is based appropriately on two loop operation rather than SLO.

2. No. The licensing PCT is based upon two loop operation rather than SLO, thus the proposed change does not create the

possibility of a new or different kind of accident from any previously evaluated.

3. No. Based on the response to Question 1 above, the proposed change does not involve a significant reduction in a margin of safety.

Specification 4.4.1.1.2.3 Reactor Coolant System

Footnote **** to this Specification is being changed to reference the power uprate startup test program.

1. No. This footnote provided a mechanism for changing the power limits specified if the results of the initial startup test program determined that it was necessary. The footnote is being modified to allow operation at uprated power with the present power limits. Should the power uprate startup test program determine a need to change the power limits they will be submitted to the Commission within 90 days as required by the revised footnote. This is consistent with the original BWR startup test program philosophy and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. See 1. above; this change is administrative in nature and does not create the possibility of a new or different kind of accident from any previously evaluated.

3. No. See 1. above; this change is administrative in nature and does not involve a significant reduction in a margin of safety.

Specification 3.4.2, Reactor Coolant System, Safety Relief Valves [SRV]

The safety relief valve specification is being changed to reduce the number of setpoint groups from 5 to 3. Two valves will be set at 1175 psig plus or minus 1%, 6 will be set at 1195 psig plus or minus 1%. Also, the number of Operable safety valves is being increased from 10 to 12.

1. No. This change does not increase the probability of occurrence of an accident previously evaluated as, with one exception, the accidents described in FSAR Sections 5.2.2, 7.2.3, 15.1, 15.2 and 15.3 do not document any cases where the SRV's are designated as the cause or initiator of an accident. The exception is inadvertent safety relief valve opening which results in a decrease in reactor coolant inventory and/or reactor coolant temperature. The revised setpoints and proposed groupings will not increase the probability of occurrence of this type of accident.

The change does not increase the probability of occurrence of a malfunction of equipment important to safety as previously evaluated in the FSAR. The margin between peak allowable pressure and the maximum safety setpoint is unchanged. The reactor vessel and components were evaluated for the setpoint change to assure continued compliance with the structural requirements of the ASME Code. Analysis was performed on the effects of the setpoint change for the design conditions, the normal and upset conditions and the emergency and faulted conditions. The increasing RPV dome pressure does not affect the design condition and, therefore, stresses remain unchanged.

The proposed change will also not adversely affect HPCI [High Pressure Coolant Injection] and RCIC [Reactor Core Isolation Cooling] system performance.

There is no indication that changed setpoints contribute to an increase in probability of SRV malfunction. Reduction in the simmer margin will be compensated for by more stringent leak test requirements during valve refurbishment.

2. No. This change does not involve any hardware changes or changes in system function. Relief and safety setpoints are only slightly increased and the maximum safety setpoint remains unchanged, thus the margin between peak allowable pressure and the setpoint remains unchanged.

3. No. The technical specifications were reviewed for margins of safety applicable to the components and systems affected by the change. Analysis has been performed that demonstrates that reactor pressure will be limited to within ASME Section III allowable values for the worst case upset transient. The margin of safety is inherent in the ASME Section III allowable pressure values.

Specification 3.4.3.2.d, Reactor Coolant System. Operational Leakage

This specification is being revised to indicate that the 1 gpm leakage rate limit currently applicable applies at the uprated maximum allowable pressure of 1035 psig.

1. No. The steam dome pressure for leakage is being increased by 35 psig to 1035 psig (reactor design pressure). This pressure is chosen on the basis of steam line pressure drop characteristics and excess steam flow capability of the turbine observed during plant operation up to the current rated power level. Increasing the leakage rate pressure to 1035 psig is consistent with the expected uprated operating pressure. Increasing the reactor steam dome pressure has been analyzed and found to be within allowable limits. Maintaining the leakage rate limit at 1 gpm does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. This change does not involve any hardware changes or change in safety function. The reactor steam dome pressure has been analyzed and found to be within allowable limits.

3. No. Maintaining [the] leakage the rate limit at 1 gpm is conservative and does not involve a reduction in the margin of safety.

Specifications 3.4.6.2 and 4.4.6.2 Reactor Coolant System, Reactor Steam Dome

The reactor steam dome pressure limits have been changed to 1050 psig.

1. No. Operating pressure for uprated power is increased by a minimum amount necessary to assure that satisfactory reactor pressure control is maintained. The operating pressure was chosen on the basis of steam line pressure drop characteristics and excess steam flow capability of the turbine observed during plant operation up to the current rated power level. Satisfactory reactor pressure control requires an adequate flow margin between the uprated operating condition and the steam flow capability of the turbine control valves at their maximum stroke. An operating dome pressure of 1032 psig is expected and is being assumed in the transient analyses. The 1050 psig limit was chosen to maintain an adequate level of operating flexibility while maintaining an adequate distance from the high pressure scram for trip avoidance. This limit is the initial pressure value used in the overpressure protection safety analysis for power uprate, for which all licensing criteria have been met. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. Based on the response to Question 1. above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. No. As described in [Question] 1. above, the 1050 psig limit was chosen to maintain an adequate level of operating flexibility while maintaining an adequate distance from the high pressure scram. This limit is the initial pressure value used in the over pressure protection safety analysis for power uprate, for which all licensing criteria have been met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Specification 4.5.1.b.3, Emergency Core Cooling Systems

This specification has been revised to permit a test line pressure for the flow surveillance of greater than or equal to 1140 psig at nominal reactor operating conditions.

1. No. Currently, the HPCI pump test acceptance criteria discharge pressure is greater than or equal to 1266 psig. This is based, in part, on the lowest SRV setpoint of 1146 psig plus a 1% tolerance and line flow losses. For this test, the HPCI turbine is supplied with steam at the nominal operating reactor pressure of 920 +140/-20 psig. Therefore, the test requires the HPCI pump/turbine to produce an output that exceeds that which would be commensurate with the input conditions. Stated differently, HPCI would be required to develop a pump discharge pressure associated with a steam dome pressure of 1187 psig (1175 plus or minus 1% psig), while being supplied with a steam dome pressure as low as 900 psig.

The purpose of this specification is to demonstrate that the system is capable of producing the required flow at the required pressure. The concern with this approach is that while it demonstrates the required capability by achieving the actual Technical Specification value, it requires the pump turbine to "over perform". It also reduces the margin available to compensate for normal wear and tear [that] occurs and is monitored under the ASME Section XI Pump and Valve Test Program. Power uprate will be further increasing the demand because of the increase in reactor steam dome pressure.

The intent of Surveillance 4.5.1[.]b.3 is to demonstrate that the HPCI System will produce its design flow rate at an expected reactor pressure during a LOCA. Confirmation of the capability to achieve the required flow and pressure can be satisfactorily demonstrated without requiring the pump/turbine to "over perform". This can be done by producing the nominal operating design pressure from the pump with steam supplied to the turbine at nominal reactor operating pressure. From these conditions extrapolation via pump affinity laws will show the pump discharge pressure that would be developed at emergency reactor operation conditions (i.e. lowest SRV setpoint). This value could then

be compared to the calculated value required for assuring adequate core cooling in both SSES [Susquehanna Steam Electric Station] specific and generic evaluations. The HPCI System has been evaluated and shown to be capable of achieving the required pressure and flow conditions for power uprate.

Applying the method of pump affinity laws, the new Technical Specification pump discharge pressure would become greater than or equal to 1140 psig. This value is determined based on the maximum allowable test steam dome pressure of 920 + 140 = 1060 psig, plus head losses. Through the use of pump affinity laws it has been shown by calculation that achieving a value of 1140 psig at nominal reactor operating conditions will produce the required flow and pressure during emergency conditions.

Therefore, the Technical Specification HPCI pump discharge pressure at power uprate conditions is changed to greater than or equal to 1140 psig.

2. No. The methodology and the supporting change described above in the response to Question 1 above do not alter the function nor the operation of the HPCI system. Therefore, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. No. The methodology and the supporting change described above in response to Question 1 do not involve a significant reduction in a margin of safety.

Specification 5.4.2, Design Features, Reactor Coolant System, Volume

This specification is being changed to show that the nominal T_{ave} is being changed from 528°F to 532°F. This change is being made to reflect the higher average saturation temperature that results from a 30 psi increase in reactor design pressure.

1. No. The effects of power uprate have been evaluated to ensure that the increase in system temperatures causes minor increases in thermal loadings on pipe supports, equipment nozzles, and in-line components. The results of analyses show that at uprated conditions all ASME components will satisfy design specification requirements and code limits when evaluated to the rules of Subsection NB-3600 of the ASME Boiler and Pressure Vessel Code Section III. The effects of thermal expansion as a result of power uprate were found to be insignificant. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. Increases in system temperatures as a result of power uprate have been evaluated to show that increase in thermal loadings on pipe supports, equipment nozzles and in-line components are minor. Analysis shows that at all uprated conditions all ASME components will satisfy design specification requirements and code limits when evaluated to the rules of subsection NB-3600 of Section IV to the Boiler and Pressure Vessel Code. The effects of power uprate with respect to thermal expansion were found to be insignificant and, therefore, not found to create the possibility of a new or different kind of accident.

3. No. As stated above, the effects of thermal expansion as a result of power uprate were found to be insignificant. Consequently, the nominal increase in T_{ave} does not involve a significant reduction in a margin of safety.

Specification Table 5.7.1-1, Component Cyclic or Transient Limits

This specification is being changed to raise the upper limit for a heat cycle from 546°F to 551°F. This change is being made to reflect the higher average saturation temperature that results from a 30 psi increase in reactor design pressure.

1. No. The purpose of this specification is to limit the number of heatup and cooldown cycles. The effects of power uprate have been evaluated to ensure that the reactor vessel components continue to comply with the existing structural requirements of the ASME Boiler and Pressure Vessel Code. The analyses were performed for the design, normal, upset, emergency and faulted conditions. The increase in the temperature limitation is not significant with respect to the affect it has upon the RPV and associated components.

2. No. The effects of uprating power have been evaluated for the design, normal, upset, emergency and faulted conditions to ensure that the reactor vessel components continue to comply with the existing structural requirements of the ASME Boiler and Pressure Vessel Code. The increase in the temperature limitation has been found not to be significant and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. No. This specification is intended to limit the number of heatup/cooldown cycles. The increase in the temperature limitation has not been found to be significant with respect to its effects upon the RPV and its associated components and, therefore, does not significantly reduce the margin of safety.

Specification 6.9.3.2, Core Operating Limits Report

Administrative Control Section 6.9.3.2 describes and lists topical reports that are used to determine core operating limits. Topical reports 15 through 19 are LOCA methodology reports and are being deleted. These reports describe Siemens LOCA methodology. As stated in Reference 1 [See application reference list], the GE SAFER/GESTR LOCA methodology is being used for this uprated cycle. In addition, other minor methodology changes were made for power uprate transient analysis. GE topical report NEDC-32071P, PP&L topical report NE-092-001 (when approved), and the NRC Safety Evaluation Report on the PP&L power uprate licensing topical (when issued) are proposed to be added as Topical Reports No. 15, 16, and 17, respectively.

1. No. These changes are editorial in nature in that only the references to documents are being changed. The methodology used to determine core limits have been previously reviewed and approved by the NRC.

2. No. See the response to Question 1 above.

3. No. See the response to Question 1 above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 30, 1993

Description of amendment request: The amendment would allow a one-time 15-month extension of the 40 +/- 10-month interval between the Unit 1 second and third Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) required by TS Surveillance Requirement 4.6.1.2.a (i.e., the proposed total interval would be 65 months). This proposed TS change and exemption would allow the third Type A test to be performed during the sixth Unit 1 refueling outage scheduled to begin in January 1996, thereby coinciding with the 10 year plant inservice inspection (ISI) refueling outage, instead of requiring the performance of a Type A test during both the fifth and sixth Unit 1 refueling outages. This one-time extension of the Type A test interval would also result in the third Type A test being performed 20 months after the end of the Unit 1 first 10-year service period specified in 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Reactors" (i.e., August, 1994). In this way the third Type A test would be performed during the sixth Unit 1 refueling outage which would align the start of the second 10 CFR Part 50, Appendix J, 10-year service period with the start of the second 10-year ISI period.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents which are potentially negatively impacted by the proposed change are any Loss of Coolant Accident (LOCA)

inside primary containment as described in the Limerick Generating Station (LGS) Updated Final Safety Analysis Report (UFSAR), section 15.6.5, with or without offsite power available.

The proposed change increases the surveillance interval of the 10 CFR 50, Appendix J Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) from a maximum of 50 months currently allowed by TS Surveillance Requirement 4.6.1.2.a to 65 months. This test is performed to determine that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate (i.e., designated La) at a calculated peak containment internal pressure (Pa), as defined in 10CFR50, Appendix J. The primary containment limits the leakage of radioactive material during and following design bases accidents in order to comply with the offsite dose limits specified in 10CFR100. Accordingly, the primary containment is not an accident initiator, it is an accident mitigator. No physical or operational changes to the containment structure, plant systems, or components would be made as a result of the proposed change. Therefore, the probability of occurrence of an accident previously evaluated is not increased.

The failure effects that are potentially created by the proposed ont-time TS change have been considered. The relevant components important to safety which are potentially affected are the containment structure, plant systems, and containment penetrations. There are no physical or operational changes to any plant equipment associated with the proposed TS change. Therefore, the probability or consequences of a malfunction of equipment important to safety is not increased.

The proposed change introduces the possibility that primary containment leakage in excess of the allowable value (i.e., La) would remain undetected during the proposed 15 month extension of the interval between the second and third Type A test. The types of mechanisms which could cause degradation of the primary containment can be categorized into two types. These are degradation due to work which is performed as part of a modification or maintenance activity (i.e., activity-based), or degradation resulting form a time-based failure mechanism.

To address the potential for degradation due to an activity-based mechanism, we have performed a review of all Unit 1 modifications since the last time the Unit 1 CILRT was performed (i.e., during the third Unit 1 refueling outage) and determined that no modifications were performed which could adversely impact the CILRT boundary. Furthermore, strict administrative controls on maintenance activities are in place at LGS, such as the controls on post maintenance testing (PMT) that ensures that nay maintenance activity which affects a primary containment penetration is local leak rate tested after the activity. Finally, we have performed a review of all modifications that are scheduled to be performed during the upcoming fifth Unit 1 refueling outage, and determined that either these modifications will either not impact the boundaries which would be tested during a CILRT, or the as-modified configuration will be adequately tested to ensure there is no degradation of the primary containment. Based on a review of the plant modifications performed and the administrative controls at LGS, we have concluded that there has not been and will be no work performed on the primary containment that would potentially result in the degradation of the primary containment.

To address the potential for primary containment degradation due to a time-based mechanism, the information obtained from additional testing programs was considered. We have concluded that the LGS Local Leak Rate Test (LLRT) program would identify most types of penetration leakage. The LLRT program involves measurement of leakage from Type B and Type C primary containment penetrations as defined in 10CFR50, Appendix J.

The 10CFR50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage-limiting boundaries other than valves, such as containment penetrations incorporating resilient seals, gaskets, expansion bellows, flexible seal assemblies, door operating mechanism penetrations that are part of the containment system, doors, and hatches. 10CFR50, Appendix J, Type C testing is intended to measure reactor system primary containment isolation valve leakage rates. The frequency of the Type B and Type C testing is not being altered by the proposed TS change. The acceptance criterion for Type B and Type C leakage is 0.6 La (i.e., 0.3%wt/day) which, when compared to the Type A test acceptance criterion of 0.75 La (i.e., 0.375% wt/day), is a significant portion of the Type A test allowable leakage.

The proposed TS change only extends the interval between two consecutive Type A tests. The Type B and Type C tests will be performed as required. The Type B and Type C tests will continue to be used to confirm that the containment isolation valves and penetrations have not degraded. The CILRT boundary includes the containment structure and the piping from the containment penetration to the first isolation valve. This piping includes some flanged connections which are not tested as part of the LLRT program. The piping system with flanged connections is part of the Containment Atmosphere Control (CAC) system and is not included in the LLRT program. The risk of gasket degradation in these flanged connections is judged to be negligible based on the fact that they are mechanical joints which are seismically supported and operate at low pressure and temperature conditions. Under these service conditions, gaskets are not found to degrade, and are considered to last the life of the plant unless the joint is subjected to maintenance activities. The other containment system components that would not be tested are the containment structure itself and small diameter instrumentation lines. Time-based degradation of any of the instrumentation lines would most likely be identified by faulty instrument indication or during instrument calibrations that will be performed during the fifth Unit 1 refueling outage. In examining the potential for a time-based failure mechanism that could cause significant degradation of the containment structure, we concluded that the risk, if any, of such a mechanism is small since the design requirements and fabrication specifications established for the containment structure are in themselves adequate to ensure containment leak tight integrity.

Based on the above evaluation, we have concluded that the proposed TS change will have a negligible impact on the consequences of any accident previously evaluated. To support this conclusion, a review of the Unit 1 CILRT history was performed. As summarized below, this review identified that the only failure mechanisms that have been detected during the past CILRTs are activity-based, and that there is no indication of any time-based degradation that would not be identified during performance of Type B and Type C tests.

The Unit 1 pre-operational CILRT performed in August 1984 resulted in a total time leakage rate of 0.255% wt/day compared to an acceptance criterion of 0.375% wt/day. The first post-operational Unit 1 CILRT was performed in August 1987. During this CILRT, the leakage rate stabilized at approximately 1.0% wt/day which failed to meet the TS acceptance criterion of 0.375% wt/day. Investigation revealed packing gland leaks on nine CAC system valves and that this CILRT failure was attributed to these packing gland leaks. The leaks were found to be the result of a modification that replaced bearings on containment purge and vent valves. Local leak rate testing did not reveal these leaks since the packing glands were not included in the test boundary. The CAC valves were repaired and the CILRT was performed again and successfully passed with a measured leakage rate of 0.178% wt/day compared to the TS acceptance criterion of 0.375% wt/day. Accordingly, the failure of the initial CILRT was an activity-based failure and not a time-based failure. The configuration of the CAC valves was subsequently modified so that the LLRT would identify any packing leaks in the future. In addition, all containment inboard isolation valves that are located outside containment (i.e., the same configuration as the CAC valves) were reviewed and modified as necessary to ensure that the packing would be subject to LLRT pressure.

The results of the second CILRT performed in November 1990 was 0.334% wt/day compared to the acceptance criterion of 0.375% wt/day. We attribute the majority of the measured leakage to Type B and Type C containment boundaries since the containment structure was not altered in any fashion. This conclusion is consistent with the industry data presented by the Nuclear Management and Resources Council (NUMARC) at the NRC Workshop Session on Appendix J Containment Integrated Testing held April 27, 1993.

Although this review concluded that the risk of undetected primary containment degradation is not increased, the Individual Plant Examination (IPE) for LGS, Units 1 and 2, was also reviewed in order to assess the impact of exceeding the primary containment allowable leakage rate, if a non-mechanistic

activity type (i.e., time-based) failure were to occur. The IPE included an evaluation of the effect of various containment leakage sizes under different scenarios. The IPE results showed that a containment leakage rate of 35% wt/day would represent less than a 5% increase in risk to the public of being exposed to radiation. This evaluation was based on a study performed by Oak Ridge National Laboratory that evaluated the impact of leakage rates on public risk. As stated earlier, the current value of La for LGS, Unit 1, is 0.5% wt/day, which is significantly less than the 35% wt/day used in the IPE evaluation.

Therefore, the proposed TS change involving a one-time extension of the Type A test interval and performing the third Type A test after the first 10 year service period will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is an increase of a surveillance test interval and does not make any physical or operational changes to existing plant systems or components. Primary containment acts as an accident mitigator not initiator. Therefore, the possibility of a different type of accident than any previously evaluated or the possibility of a different type of equipment malfunction is not introduced.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The total primary containment leakage rate ensures that the total containment leakage volume will not exceed the value assumed in the safety analyses at the peak accident pressure. As an added conservatism, the measured overall leakage rate is further limited to less than or equal to 0.75 La during performance of periodic tests to account for possible degradation of the containment leakage barriers between leakage tests. There is the potential that containment degradation could remain undetected during the proposed 15 month surveillance interval extension and result in the containment leakage exceeding the allowable value assumed in safety analysis. However, the potential primary containment degradation mechanisms due to activity-based and time-based causes has been reviewed as described above. This review concluded that there has not been any alterations or challenges to primary containment since the last Type A test, nor will there be any future maintenance activities during the proposed extended test interval which will adversely affect primary containment leakage rates without implementation of strict administrative controls that require the performance of individual local leak rate testing. Also, scheduled modifications during the proposed extended test interval were reviewed and we have concluded that these modifications do not have the potential to adversely affect the primary containment boundary. This review found that the risk of a non-detectable increase of primary containment leakage is considered to be negligible due to the conclusion that 10CFR50, Appendix J, Type B and Type C testing will identify most of the containment leakage and the LGS Type B and Type C testing program will continue to be conducted through-out the proposed extended test interval. Finally, this review assessed the results of previous Unit 1 CILRT results and concluded that the only failure mechanisms which have been detected during the past CILRTs are activity-based and that there is no indication of time-based failures that would not be identified during the performance of Type B and Type C tests. Therefore, we have concluded that the proposed extended test interval would not result in a non-detectable Unit 1 primary containment leakage rate in excess of the allowable value (i.e., 0.5% wt/day) established by the TS and 10CFR50, Appendix J.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 17, 1993

Description of amendment request: The licensee requested an amendment to the Technical Specifications (TSs) to revise the instrument settings and associated requirements listed below:

(1) The licensee proposed changing the overpressure protection system (OPS) actuation curve (TS Figure 3.1.A-3) to make the curve based on instrument calibration "allowable values" instead of the current "setting limits."

(2) The licensee proposed changing the minimum refueling water storage tank (RWST) water volume and low level alarm settings (specified in TS Section 3.3.A) to make the indicated volume and alarm settings based on instrument calibration "allowable values" instead of the current "setting limits."

(3) The licensee proposed increasing the RWST level indicating switch calibration frequency (specified in TS Table 4.1-1) from once every 18 months to once every 6 months.

(4) The licensee proposed changing the control room ammonia and chlorine toxic gas instrument settings (specified in TS Section 3.3.H) to make the instrument settings based on instrument calibration "allowable values" instead of the current "setting limits."

(5) The licensee proposed changing the containment pressure high and high-high engineered safety features instrument settings (specified in TS Table 3.5.1) to make the instrument settings based on instrument calibration "allowable values" instead of the current "setting limits."

(6) The licensee proposed changing the main steam flow engineered safety features instrument settings (specified in TS Table 3.5.1) to make the instrument settings based on instrument calibration "allowable values" instead of the current "setting limits."

In addition, the licensee is revising the Bases for protective instrumentation limiting safety system settings (specified in TS Section 2.3) to clarify the description on constants K_1 through K_6, which are used in the overtemperature delta-temperature and overpower delta-temperature settings.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The changes proposed include altering the minimum required volume and low level alarm "allowable values" for the RWST (and associated basis), and the calibration requirements for the low level alarms. The RWST changes do not involve any hardware changes to the plant (although the field settings of the low level alarms will be changed), nor do they alter the way the emergency core cooling system (ECCS) equipment functions; therefore, these changes will not increase the possibility of an accident. The injection of borated refueling water into the reactor coolant system and

containment post-accident is a safety-related function designed to mitigate the consequences of an accident. Analyses have shown that all necessary RWST volume requirements continue to be met, so the consequences of a postulated LOCA [loss-of-coolant accident] are not affected. The decrease in the alarm calibration frequency for the indicating switch is intended to ensure that the switch can maintain the required alarm setpoint range.

The new "allowable values" for high and high-high containment pressure, high steam flow, and the OPS [overpressure protection system] actuation curve do not necessitate any physical changes to the plant. The system functions are not being altered. The proposed Tech. Specs. are "allowable values," based on loop accuracy calculations. The "allowable values" meet the assumptions made in the safety analysis.

Consistent with the other changes, the Tech. Spec. values for the ammonia and chlorine toxic gas monitors are being made the limiting "as-found" conditions ("allowable values"), to allow the field settings to be lower than the Tech. Spec. values. The system functions are not being altered.

The title changes for [TS] Table 3.5-1, and [TS] section 3.5 basis changes, are consistent with the Tech. Spec. changes, clarifying that the numbers in the table are "allowable values." The change to the basis of [TS] section 2.3 is an administrative change only. The basis is being changed to clarify that some of the constants used to determine overtemperature delta-temperature and overpower delta-temperature are trip setpoints, some are analytical limits, and historical statements are being deleted.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The changes propose to alter the RWST minimum required volume and low level alarm "allowable values" (and basis), the calibration requirements for the low level alarm, and the Tech. Spec. "allowable values" for containment pressure (high and high-high), high steam flow, and the OPS actuation curve. The changes do not necessitate any hardware changes to the plant (although the field settings of the RWST low level alarms will be changed), nor do they alter the way the ECCS functions. The RWST will continue to serve its safety-related purposes. All RWST volume requirements will continue to be met, so the changes will not cause the initiation of any new accident nor create any new credible limiting single failure. For containment pressure, steam flow, and the OPS curve, the proposed settings are "allowable values," based on loop accuracy calculations. The proposed "allowable values" meet the assumptions made in the safety analysis. Specifying "allowable values" for the ammonia and chlorine toxic gas monitors is consistent with the other changes, and will allow the field settings to be lower than the Tech. Spec. values; the system function is not being altered. The title changes for [TS] Table 3.5-1, and the [TS] section 3.5 basis changes, are consistent with the Tech. Spec. changes, clarifying that the numbers in the table are "allowable values." The change to the basis of [TS] section 2.3 is an administrative change only. The basis is being changed to clarify that some of the constants used to determine overtemperature delta-temperature and overpower delta-temperature are trip setpoints, and some are analytical limits, and historical statements are being deleted.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The changes for the RWST level and low level alarm "allowable values" will ensure that the alarm settings can be maintained by the currently installed instruments. (The alarm associated with the indicating switch will be required to be calibrated every 6 months.) Analyses have show that all applicable RWST volume requirements (for CS [containment spray] pump protection, and the injection and recirculation phases of a LOCA, including the largest channel uncertainties) will continue to be met. The apparent reduction in the margin cited in the current Tech. Spec. basis (13,370 gals.) reflects the change in methodology used to calculate the required volumes and account for instrument uncertainties. Using current setpoint calculation methods, the new calculations are more conservative than the original calculations because the largest total channel uncertainty (26,000 gals.) is included twice (once in conjunction with the CS pump cavitation prevention volume and once in conjunction with the minimum volume for recirculation), and uncertainty is also added in determining the Tech. Spec. minimum required RWST volume of 342,200. In total, the current calculation includes approximately 55,700 gals. of instrument uncertainty. The current calculation includes a margin of about 1,129 gallons.

The changes to the "allowable values" for high and high-high containment pressure, high steam flow, and the OPS actuation curve will ensure that adequate operational margin is maintained between the field trip setting and the Tech. Spec. "allowable value," while also ensuring adequate margin between the "allowable value" and the assumptions made in the safety analysis. The change for the toxic gas monitors will allow adequate margin between the Tech. Spec. "allowable values" and the field settings.

The title changes for [TS] Table 3.5-1, and the [TS] section 3.5 basis changes, are consistent with the Tech. Spec. changes, clarifying that the numbers in the table are "allowable values." The change to the basis of [TS] section 2.3 is an administrative change only. The basis is being changed to clarify that some of the constants used to determine overtemperature delta-temperature and overpower delta-temperature are trip setpoints, some are analytical limits, and historical statements are being deleted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 26, 1993

Description of amendment request: The amendment request would revise Hope Creek Generating Station Technical Specifications Table 3.3.7.5-1, Accident Monitoring Instrumentation, and Section 3/4.6.2.1, Suppression Chamber.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change for any structure, component, or system that affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change will, in agreement with the Improved GE BWR/4 Standard TS, require a minimum of one (1) channel operable for the suppression pool water temperature instrumentation in TS Table 3.3.7.5-1 and remove duplicative and unnecessary ACTIONs and Surveillances from TS 3.6.2.1. Additionally, in the event that the minimum channel requirement is not met (for accident monitoring instruments which correspond to accident monitoring instruments in the GE BWR/4 STS) the changes would require that at least the minimum number of required channels be restored to OPERABLE conditions in a reasonable time, as defined by the improved STS. These changes would eliminate the present disparity between the subject TS sections and make the ACTIONs for other accident monitoring instruments agree with the Improved BWR/4 STS - thereby ensuring clarity and consistency between the specifications. Since these proposed revisions will neither significantly modify, nor degrade, accident monitoring capabilities, they will not affect the

consequences or probability of occurence of any accident or malfunction of equipment important to safety.

2. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical changes to the plant or to the manner in which the plant is operated involved in the proposed revision. Therefore, no new or different kind of accident is created by the proposed change.

3. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revision will, by making the affected TS agree with the Improved BWR/4 STS, add clarity and consistency to the specifications and will have no significant impact upon margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Larry E. Nicholson, Acting

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 29, 1993 (TS 341)

Description of amendment request: The proposed amendment would apply the latest ASTM standards to requirements for laboratory analysis of charcoal adsorbers used to remove radioactive iodine from the Standby Gas Treatment, Control Room Emergency Ventilation, and Primary Containment Purge systems air streams.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed deletion of the test conditions for carbon sample analysis does not reflect any significant change to any precursor for the design basis events or operational transients that are analyzed in the Browns Ferry Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is not significantly increased.

The proposed removal of the test conditions for carbon sample analysis will allow a more realistic test to be performed on the adsorber trays. This will result in a more realistic estimate of the charcoal removal efficiency. [The licensee claims that the current prescribed conditions can yield erroneously high removal efficiency measurements.] Therefore, the proposed changes will not significantly increase the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of the adsorber trays is to remove radioactive iodine from the air streams. The adsorber trays are used to mitigate the consequences of an accident or to reduce the quantity of process effluents being released to the environment. The proposed removal of the test conditions for carbon sample analysis of the charcoal in the adsorber trays does not require new system alignment, modification, or changes in operating procedures. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed removal of the test conditions for carbon sample analysis of the charcoal in the adsorber trays does not represent a change in the licensing or design basis removal efficiency for the trays. The proposed removal of the test conditions for carbon sample analysis will allow a more realistic test to be performed on the adsorber trays. This will result in a more realistic estimate of the charcoal removal efficiency. [As noted above, the licensee claims the current prescribed method can yield erroneously high removal efficiency measurements.] Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 336)

Description of amendment request: The proposed amendment would revise and clarify the spent fuel pool water level, temperature, sampling, and analysis surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed revisions to the spent fuel pool water level, temperature, and sampling and analysis Surveillance Requirements do not change operations over the spent fuel pool or any other precursor to fuel damage in the spent fuel pool. The proposed amendment does not reflect any significant change to any precursor for any other design basis events or operational transients that are analyzed in the Browns Ferry Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is not significantly increased.

The proposed revisions to the spent fuel pool water level, temperature, and sampling and analysis Surveillance Requirements do not reflect the modification of equipment or change the operation of equipment used to mitigate the consequences of design basis events or operational transients analyzed in the Browns Ferry Final Safety Analysis Report. Therefore, the proposed changes will not significantly increase the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions to the spent fuel pool water level, temperature, and sampling and analysis Surveillance Requirements do not require new system alignments, modifications, or changes in operating procedures. Therefore, no new external threats, system interactions, release pathways, equipment failure modes, or types of operator errors are created. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed revisions to the spent fuel pool water level, temperature, and sampling and analysis Surveillance Requirements do not change the licensing or design basis limits for the spent fuel pool water level, temperature, or chemical composition. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: October 7, 1993 (TS 313)

Description of amendment request: The proposed amendments would incorporate the high range primary containment radiation monitors and recorders and the wide range gaseous effluent radiation monitor and recorder, which were installed at the Browns Ferry facility in response to requirements specified in NUREG 0737, "Clarification of TMI Action Plan Requirements," into the Technical Specifications (TS) for Units 1 and 3. Similar changes to the Unit 2 TS were issued previously (Amendment Nos. 125 and 171). Additionally, the proposed amendments clarify the Unit 2 TS to show that the high range primary containment radiation monitoring instrument loops contain both monitors and recorders. Currently, only the recorders in these instrument loops are listed in the Unit 2 TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed addition of the high range primary containment radiation monitors and recorders represents an additional control not presently included in the BFN Units 1 and 3 TSs. The proposed change [sic] are made in order to meet a TVA commitment to install this instrumentation prior to restart of each BFN unit. This new instrumentation will help to monitor post-accident conditions and will not result in any new modes of plant operation. The addition of this instrumentation for BFN Units 1 and 3 does not affect the probability of occurrence of any accident previously evaluated. In addition, Unit 3 specific calculations support the high range primary containment radiation monitors [sic] calibration frequency of once [per] 18 months. Unit 1 calculations will be performed prior to its restart to confirm its calibration frequency.

The proposed addition of the wide range gaseous effluent radiation monitor and recorder to the TS does not involve any physical plant modifications, since it only adds appropriate operability, surveillance and reporting requirements for the existing instrumentation. The proposed technical specifications meet the intent of recommendations in Generic Letter 83-36, "NUREG-0737 Technical Specifications." The proposed change for Unit 2 is an administrative change which adds/corrects instrument type and instrument numbers. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed addition to the plant of the high range primary containment radiation monitors and recorders will enhance the post-accident monitoring capability in the primary containment. This new instrumentation does not initiate trips of safety systems or equipment. There are no new modes of plant operation added as a result of this change. In addition, Unit 3 specific calculations support the high range primary containment radiation monitors [sic] calibration frequency of once [per] 18 months. The proposed addition of the wide range gaseous effluent radiation monitor and recorder to the TS does not involve any physical plant modification since it only adds appropriate operability, surveillance and reporting requirements for the existing instrumentation. The proposed change for Unit 2 is an administrative change which adds/corrects instrument type and instrument numbers. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change adds controls that are not presently in the technical specifications for BFN Units 1 and 3. These same controls were implemented in the Unit 2 TS prior to restart of that unit. The changes enhance the capability for monitoring and recording post-accident radiation levels in the primary containment and noble gas effluent releases. In addition, Unit 3 specific calculations support the high range primary containment radiation monitors [sic] calibration frequency of once [per] 18 months. Unit 1 calculations will be performed prior to its restart to confirm its calibration frequency. The proposed change for Unit 2 is an administrative change which adds/corrects instrument type and instrument numbers. Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 19, 1993

Description of amendment request: The proposed changes would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). Specifically, the changes would allow the use of solid rods of zirconium alloy or stainless steel filler rods to replace fuel rods which have been identified as failed. Also, the changes would delete the individual fuel rod uranium weight limit.

On occasion, failure of individual fuel rods within the assemblies of the core may occur. These fuel rod failures may occur during routine operation of the plant or during movement of fuel assemblies. The current practice at NA-1&2 is to not reload fuel assemblies which are known to contain failed fuel rods, as the cladding defects of such rods allow fission products to be released to the primary coolant. However, by replacing failed fuel rods with solid filler rods made from stainless steel or zirconium alloy, fuel assemblies which have been prematurely discharged because of the presence of the failed rods can safely be reused.

Because the Design Features section of the TS currently precludes the use of fuel assemblies containing solid filler rods, changes to the Design Features section of the TS are being requested. The changes would allow the use of solid stainless steel or zirconium alloy filler rods in place of fuel rods which are known to be failed, and also remove the current fuel rod uranium weight limit of 1780 grams.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, the operation of North Anna Power Station in accordance with the Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. All North Anna fuel assemblies will continue to meet the same fuel assembly and fuel rod design bases as the current fuel assemblies. In addition, the 10 CFR 50.46 criteria (acceptance criteria for emergency core cooling systems) will continue to be satisfied for all fuel assemblies. Neither the use of reconstituted fuel assemblies nor the removal of the fuel rod uranium weight limit will result in a change to the North Anna Units 1 and 2 reload design and safety analysis limits. Since the dose predictions in the safety analyses are not sensitive to the presence of solid stainless steel or zirconium alloy filler rods in the fuel assemblies, or to variations in individual fuel rod uranium weights, the radiological consequences of accidents previously evaluated in the safety analyses remain valid. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. Create the possibility of a new or different kind of accident from any previously identified, since all North Anna Units 1 and 2 fuel assemblies will continue to satisfy the same design bases used for previous fuel regions. Since the original design criteria are being met, initiators for any new accident have not been introduced. All design and performance criteria will continue to be met for both the use of reconstituted assemblies containing solid stainless steel or zirconium alloy filler rods, and for removal of the individual rod uranium weight limit. No new single failure mechanisms have been created, and the use of this fuel does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The North Anna Units 1 and 2 reload design and safety analysis limits are unchanged either by the removal of the individual fuel rod uranium weight limit, or by the use of fuel assemblies containing solid stainless steel or zirconium alloy filler rods. The use of all fuel assemblies will continue to be limited by the normal core operating conditions defined in the Technical Specifications. Reconstituted fuel assemblies will be specifically evaluated for each cycle reload core in which they are inserted using approved reload design methods and approved fuel rod design models and methods. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects, as well as evaluation of the impact on safety and LOCA [loss-of-coolant accident] analyses, and on core thermal hydraulics (DNB). The 10 CFR 50.46 criteria will continue to be applied each cycle and analyses or evaluations will be performed each cycle to confirm that 10 CFR 50.46 will be met. Therefore, the margin of safety as defined in the Bases to the Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 19, 1993

Description of amendment request: The proposed changes will add operability requirements, action statements, and surveillance requirements for the recirculation spray heat exchangers service water outlet radiation monitors. Also, surveillance requirements for several post accident instruments are being reinstated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specification changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The RSHX[s] [recirculation spray heat exchangers] service water outlet radiation monitors and the post-accident radiation monitors are not involved in the initiation of any previously evaluated accidents. The probability of occurrence of such accidents is, therefore, not increased. The RSHX[s] service water outlet radiation monitors will be required to be operable as accident monitoring instruments and will be available following a LOCA [loss-of-coolant accident] to detect radioactive leakage into the Service Water System. During a design basis event, heat is removed from the containment by the recirculation spray heat exchangers (RSHXs). The RSHXs are cooled by the Service Water System. The service water outlet of each RSHX is provided with a radiation monitor to detect leakage of radioactive containment sump fluid into the Service Water System if there is a breach in RSHX integrity. Operation of these monitors is not required for the Recirculation Spray System or the Service Water System to accomplish their safety-related functional requirements. The RSHXs will mitigate the consequences of a LOCA in the same manner as before the change. Post-accident radiation monitors will be operated in the same manner as before the change and will be available for monitoring and assessment purposes. The consequences of previously evaluated accidents are, therefore, not increased by the proposed changes.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modifications to the plant. The RSHX service water outlet radiation monitors provide indication only. This output is displayed on the individual ratemeters and recorded on the radiation monitoring panel recorders in the Main Control Room. The ratemeter output is also provided to the Emergency Response Facility computer. These radiation monitors do not provide a protection or control function. Reinstating the surveillance requirements for the accident monitoring instruments is administrative in nature. New failure modes or accident precursors are not introduced by the changes. Therefore, a new or different type of accident is not made possible.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. Operation of the RSHX service water outlet radiation monitors is not required to directly support the safety-related functional requirements of the Recirculation Spray System or the Service Water System. Since the function of the RSHX service water outlet radiation monitors is not required to satisfy the safety function of the Recirculation Spray System or the Service Water System, the operability of these monitors is not required for recirculation spray heat exchanger operability. The RSHX service water outlet radiation monitors and the post-accident radiation monitors will be available for their monitoring functions in the same manner as before this change. Since the availability of equipment required to mitigate or assess the consequences of an accident is not reduced, safety margins are not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza East Tower, 451 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 16, 1993

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 4.4.a.7 to delete the requirement that couples the performance of the Type A leakage tests to the 10-year inservice inspection program requirements. This requirement is contained in Section III.D.a.(a) of Appendix J to 10 CFR Part 50. A request for exemption from this requirement was submitted in conjunction with the subject amendment request and is being reviewed separately. In addition, administrative changes to KNPP TS Section 4.4 and its associated bases have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

In accordance with 10 CFR 50.92, a proposed change to the Operating License (Technical Specifications) involves no significant hazards considerations if operation of the facility in accordance with the proposed change would not: (1) involve a significant increase in the probability or consequences of any accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposed change is evaluated against each of these criteria below.

(1) The proposed TS change involves a deletion of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections. The change only involves containment leak rate testing requirements and is based on a partial exemption from Appendix J to 10 CFR 50. There is no significant benefit in coupling these two surveillances (i.e., the Type A test and the 10-year ISI program). Each of the two surveillances is independent of the other and provides assurance of different plant characteristics. The Type A test assures the required leak-tightness for the reactor containment building be less than Appendix J acceptance criteria. This demonstrates compliance with the guidelines of 10 CFR Part 100 based on the assumptions used in the USAR which conform to NRC Safety Guide 4. The 10-year ISI program provides assurance of the integrity of the plant structures, systems, and components in compliance with 10 CFR 50.55(a). There is no safety-related concern necessitating their coupling to the same refueling outage. As a result, this change cannot increase the consequences (i.e., offsite dose) of any accident previously evaluated. Furthermore, since the decoupling of the test schedules has no affect on the test's effectiveness, decoupling their schedules will not increase the probability of an accident.

(2) The proposed change does not involve any change to the plant design or operation. As discussed above, this change cannot increase the consequences of any accident previously evaluated. As a result, no new failure modes are created. Therefore, this proposed change cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not change the acceptance criteria that must be met for inservice inspections, does not relax the condition of containment that must be met prior to plant restart, and does not change the requirements that must be met between plant refueling outages. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

Based on the foregoing, Kewaunee has concluded that the proposed change does not involve a significant hazards consideration.

The proposed administrative changes have been reviewed in accordance with the provisions of 10 CFR 50.92 to show that no significant hazards exist. The proposed change will not:

(1) involve a significant increase in the probability or consequence of an accident previously evaluated, or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendments request: September 10, 1993, as supplemented on November 17, 1993

Description of amendments request: The proposed amendments would approve a revision to the LaSalle County Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), Section 11.5.2.1.4, which specifies that currently, operator action is required to trip the mechanical vacuum pump upon receipt of a main steam line high radiation alarm rather than the automatic trip currently described in the UFSAR. NRC approval is required because this existing condition, contrary to that described in the UFSAR and the NRC's Safety Evaluation Report (SER) related to the operation of LaSalle County Station (NUREG-0519), involves an unreviewed safety question.

Date of publication of individual notice in **Federal Register:** December 1, 1993 (58 FR 63403)

Expiration date of individual notice: January 3, 1994

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was

published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket No. 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of application for amendment: November 5, 1993; as supplemented by letter dated November 24, 1993.

Brief description of amendment: The amendment provides for a one-time extension of up to 72 hours to be applied to the existing Technical Specification (TS) Limiting Conditions for Operation for a single train inoperability for the following systems: Emergency Core Cooling System, TS 3.5.2; Containment Spray System, TS 3.6.2.1; Auxiliary Feedwater System, TS 3.7.1.2; Essential Cooling Water System, TS 3.7.3; Essential Chilled Water System, TS 3.7.6; and Shutdown Cooling System, TS 3.7.11.

Date of issuance: December 3, 1993

Effective date: December 3, 1993

Amendment No.: 58

Facility Operating License No. NPF-51: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (58 FR 60223 dated November 15, 1993 as corrected November 24, 1993, 58 FR 62166)

The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination within 15 days. No comments have been received. The notice also provided an opportunity to request a hearing by November 30, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated December 3, 1993.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 8, 1992

Brief description of amendments: The amendments revise the Technical Specifications to address the concerns of Generic Letter (GL) 90-06 relative to power operated relief valves and low temperature overpressure protection. Editorial changes were also made.

Date of issuance: November 29, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 151 and 139

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40209)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: July 28, 1993

Brief description of amendments: The amendments revised the Arkansas Nuclear One, Units No. 1 and 2 (ANO-1&2), Technical Specifications (TSs) for the Emergency Cooling Pond (ECP) to achieve consistency between the ANO-1 and ANO-2 TSs and clarify the point at which the water temperature is verified for the ECP. The applicable Bases are also revised to reflect the changes and clarify the TSs.

Date of issuance: November 24, 1993

Effective date: November 24, 1993

Amendment Nos.: 170 and 153

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46228)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: October 7, 1993

Brief description of amendment: The amendment modifies Operating License Condition 2.C(3), "Fire Protection," by deleting the existing wording of the license condition and replacing it with the standard wording provided in Generic Letter (GL) 86-10, "Implementation of Fire Protection Requirements."

Date of issuance: December 1, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 70

Facility Operating License No. DPR-21: Amendment revised the license.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57854)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 4, 1993, as supplemented November 4, 1993.

Brief description of amendment: The proposed amendment increases the required supplementary leak collection and release system (SLCRS) drawdown time from 60 seconds to 120 seconds and increases the required vacuum to 0.4 inches, based on compensating reductions in containment leak rate. A

requested revision to replace requirements for use of "a halogenated hydrocarbon test gas" with "an acceptable test gas" is not acted upon at this time pending the licensee's submittal of an acceptable justification.

Date of issuance: December 8, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 87

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comment requested as to proposed no significant hazards consideration: Yes. (58 FR 60072, November 12, 1993). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 13, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 8, 1993.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: July 29, 1993

Brief description of amendments: The amendments incorporate a reference to the revised methodologies described in WCAP-13677-A, "10 CFR 50.46 Evaluation Model Report: WCOBRA/TRAC 2-Loop Upper Plenum Injection Model Updates to Support Zirlo$_{TM}$ Cladding Option (April 1993)," and NSPNAD-93003-A, "Prairie Island Units 1 and 2, Transient Power Distribution Methodology," into section 6.7.A.6.b of the Prairie Island TS.

Date of issuance: December 3, 1993

Effective date: December 3, 1993

Amendment Nos.: 109 and 102

Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43929).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 17, 1986, as supplemented by letters dated April 30, May 15, and December 21, 1987, May 18, 1989, December 16, 1991, March 17, May 15, July 6, 1992, and June 23, August 12, September 17, October 15, and October 27, 1993.

Brief description of amendment: The amendment changed the expiration date for the Fort Calhoun Station, Unit No. 1 Operating License DPR-40 from June 7, 2008 to August 9, 2013.

Date of issuance: December 3, 1993

Effective date: December 3, 1993

Amendment No.: 158

Facility Operating License No. DPR-40. Amendment revised the license.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29007) The additional information contained in the supplemental letters dated April 30, May 15, and December 21, 1987, May 18, 1989, December 16, 1991, March 17, May 15, July 6, 1992, and June 23, August 12, September 17, October 15, and October 27, 1993, was clarifying in nature and, thus within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: September 15, 1993

Brief description of amendment: This amendment revised the safety limit minimum critical power ratio for two-recirculation loop and single-recirculation loop operation to 1.07 and 1.08, respectively. The change was requested to accommodate use of a new fuel type, GE-11 fuel, during Unit 2, Cycle 10 operation.

Date of issuance: November 30, 1993

Effective date: November 30, 1993

Amendment No.: 182

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57856)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: February 18, 1993

Brief description of amendment: The amendment revised the Technical Specifications (TS) to incorporate the following changes:

(1) The reactor coolant loop temperature channel calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(2) The reactor coolant loop flow instrumentation calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(3) The 6.9 kV underfrequency relay calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle. In addition, the minimum reactor coolant pump low frequency trip setting (specified in TS Section 2.3.1.B(6)(b)) was increased from 55 Hz to 57.2 Hz.

(4) The steam generator level instrumentation calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(5) The reactor trip and bypass breaker testing frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04,

"Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: December 1, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 140

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16230)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado

Date of amendment request: May 7, 1993

Brief description of amendment: The amendment revised the FSV Decommissioning Technical Specifications to facilitate removal of core outlet coolant thermocouple assemblies.

Date of issuance: November 29, 1993

Effective date: November 29, 1993

Amendment No.: 87

Possession-Only License No. DPR-34: Amendment revised the Decommissioning Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57856)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado

Date of amendment request: May 18, 1993

Brief description of amendment: The amendment revised the FSV Decommissioning Technical Specifications by imposing more stringent High-Efficiency Particulate Air (HEPA) filter requirements; requiring more stringent leak test acceptance criteria to demonstrate the efficiency of the Reactor Building ventilation system HEPA filters; and extending the applicability of the requirements for the Reactor Building confinement integrity and ventilation system operability by expanding the definition of activated graphite blocks.

Date of issuance: November 29, 1993

Effective date: November 29, 1993

Amendment No.: 86

Possession-Only License No. DPR-34: Amendment revised the Decommissioning Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57857)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 18, 1993, and supplemented on October 6, 1993

Brief description of amendment: The amendment revises TS 4.4.1.2 surveillance requirements for the reactor coolant system jet pumps.

Date of issuance: December 9, 1993

Effective date: As of its date of issuance and shall be implemented within 60 days of the date of issuance

Amendment No.: 61

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34090)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 7, 1993

Brief description of amendment: The amendment changes Appendix B of the Facility Operating License for the Hope Creek Generating Station. The requested change would remove pages from Section 4.2.1, "Aquatic Monitoring," in the Environmental Protection Plan.

Date of issuance: November 29, 1993

Effective date: November 29, 1993

Amendment No.: 60

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46239)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 6, 1991, and supplemented by letters dated September 20, 1991, December 19, 1991, January 31, 1992, August 19, 1992, April 28, 1993, and September 30, 1993

Brief description of amendments: These amendments modify the action statements and surveillance requirements associated with the emergency diesel generators and AC power sources.

Date of issuance: November 30, 1993

Effective date: November 30, 1993Amendment Nos. 148 and 126

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57858)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 17, 1992, as supplemented April 8, 1993.

Brief description of amendment: The amendment requests a revision to the

Technical Specification (TS) Sections 1.21, 3.2, 3.3, 3.2 Bases, 3.3 Bases, Table 3.2-1 (added), Table 4.1-1, and Table 4.1-2 to eliminate the provision of high concentration basic acid (20,000 ppm) to the safety injection system. Currently, this high concentration is maintained in the boric acid storage tanks (BASTs) requiring heat tracing to prevent boron precipitation. The proposed change would eliminate the need for heat tracing and the associated maintenance activities if the boric acid concentration in the BASTs could be reduced from 20,000 ppm to 2000 ppm. The proposed change includes a requirement to allow borating the reactor to a shutdown margin equivalent of at least 2.45% delta k/k at cold shutdown conditions with no xenon.

Date of issuance: December 7, 1993

Effective date: December 7, 1993

Amendment No.: 57

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52994)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 27, 1993 (TS 335)

Brief description of amendments: The amendments revise the Technical Specifications to include wording which is consistent with the revised 10 CFR 20, "Standards for Protection Against Radiation". Additionally the amendments incorporate guidance contained in Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants" and include minor editorial changes.

Date of issuance: December 2, 1993

Effective date: January 1, 1994

Amendment Nos.: Unit 1 - 201, Unit 2 - 220, Unit 3 - 174

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68:

Date of initial notice in **Federal Register:** October 29, 1993 (58 FR 58203)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 16, 1993 (TS 93-06)

Brief description of amendments: The amendments implement the new requirements of 10 CFR Part 20.

Date of issuance: December 9, 1993

Effective date: December 9, 1993

Amendment Nos.: Unit 1 - No. 174; Unit 2 - No. 165

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41514)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 27, 1993 (TS 93-13)

Brief description of amendments: The amendments revise the technical specification loading requirements specified for the emergency diesel generator surveillance tests.

Date of issuance: November 29, 1993

Effective date: November 29, 1993

Amendment Nos.: 173 - Unit 1 and 164 - Unit 2

Facility Operating License Nos. DPR-77 and 79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (57 FR 57858)

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated November 29, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 3, 1992, as clarified on December 1, 1992

Brief description of amendment: The amendment revises the Technical Specification 3.3.2 and 3/4.8.1 to add Mode 5 and 6 applicability for the load shedder emergency load sequencer and its supplying 4 KV Bus undervoltage circuit.

Date of issuance: December 9, 1993

Effective date: December 9, 1993

Amendment No.: 85

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 600)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 4, 1993

Brief description of amendment: The amendment removes the Radiological Effluent Technical Specifications (RETS) from the KNPP Technical Specifications in accordance with Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program," dated January 31, 1989.

Date of issuance: December 9, 1993

Effective date: December 9, 1993

Amendment No.: 104

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39062)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin

Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks Manitowoc County, Wisconsin

Date of application for amendments: February 21, 1992, as supplemented on April 16, 1992 and March 4, 1993

Brief description of amendments: The amendments revised Technical Specification 15.3.4, "Steam and Power Conversion System," to include limiting conditions for operation (LCOs) for the main steam stop valves (MSSVs) and the main steam non-return check valves (NRCVs). They also revise Technical Specification 15.4.7, "Main Steam Stop Valves," which specifies how the main steam stop valve tests are performed. This section is retitled, "Main Steam System Valves."

Date of issuance: December 6, 1993

Effective date: December 6, 1993

Amendment Nos.: 143 and 147

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18181)

The April 16, 1992 and March 4, 1993, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 21, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: November 22, 1993

Brief description of amendment: The amendment changed the Technical Specifications to revise TS 3.3.B.1.a to refer to control rod 54-35, for the remainder of the cycle 10 (to be completed before 10/30/95). The amendment permits operation of the facility with the control rod uncoupled for the remainder of the operating cycle. Neutron monitoring by means of either the Local Power Range Monitor or Transversing Incore Probe Systems will be used to verify the control rod movement. This amendment request is similar to the licensee's June 14, 1991 request for control rod 38-23. The staff granted that request by Amendment No. 166, dated July 10, 1991.

Date of issuance: November 29, 1993

Effective date: November 29, 1993

Amendment No: 187

Facility Operating License No. DPR-56: This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated November 29, 1993.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

NRC Project Director: Larry E. Nicholson, Acting

Dated at Rockville, Maryland, this 15th day of December 1993.

For the Nuclear Regulatory Commission

Walter R. Butler,

Acting Division Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-31056 Filed 12-21-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50-003]

Consolidated Edison Co. of New York, Inc., Indian Point Station Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.120. This exemption would be granted to the Consolidated Edison Company of New York, Inc., the licensee for Indian Point Station, Unit 1 (IP-1) located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The NRC, on its own motion, is considering granting an exemption from the training program establishment, implementation, and maintenance

requirements of 10 CFR 50.120. The licensee in its letter dated July 31, 1993, provided supplemental information supporting this action.

The Need for the Proposed Action

IP–1 permanently ceased operation on October 31, 1978, all fuel has been moved from the reactor to the spent fuel pool, and the licensee has developed detailed plans to decommission the facility. The proposed exemption would relieve the licensee from the requirements of 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee stated in their submittal of July 31, 1993, that the level of personnel activity at IP–1 is low compared to an operating reactor facility and the existing training programs are deemed acceptable, given the low level of activity at the site and the shutdown and defueled status of the plant.

Based on our review of the July 31, 1993 submittal, and on a 1980 NRC staff and licensee analyses of a spent fuel pool loss of water which determined that the spent fuel would cool in air, the staff concludes that potential accidents would not result in radiological releases that would require offsite protective actions.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant activities and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for IP–1.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of New York regarding the environmental impact of the proposed action. The State representative had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letter dated July 31, 1993, which is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Municipal Reference Library, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland this 15th day of December 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–31186 Filed 12–21–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on January 13–14, 1994. The location of the meeting will be the Versailles 4 Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purposes of this meeting are to deliberate on the reports of the three NSRRC subcommittees and to consider the Committee's response to questions concerning which the Commission requested NSRRC advice, documented in a Staff Requirements Memorandum (SRM) from the Secretary of the Commission to the Executive Director of Operations, dated July 21, 1993, resulting from the Committee's July 8, 1993 meeting with the Commission.

The three subcommittee reports to be considered are those of the Advanced Reactor Subcommittee, the Advanced Instrumentation and Control and Human Factors Subcommittee, and the Waste Subcommittee.

The questions in the SRM relate to broad issues of management of the Nuclear Regulatory Commission's research function. They address research program issues and Committee skill needs (SRM Item 1), code maintenance (Item 2), whether there are any continuing programs that lack significant usefulness ("sacred cows") (Item 3), and retention of skills in technical disciplines (Item 4).

The planned schedule is as follows:

Thursday, January 13

8:30–9:00 Introductory remarks; Committee operations
9:00–11:00 Advanced Reactor Subcommittee report
11:00–2:00 Advanced I&C and Human Factors Subcommittee report (Lunch break 12:00–1:15)
2:00–4:00 Waste Subcommittee report
4:00–6:00 Committee discussion of approach to responding to July 21, 1993 Staff Requirements Memorandum (SRM) resulting from the Committee's July 8, 1993 meeting with the Commission.

Friday, January 14

7:45–9:15 SRM Item 2: Code maintenance: including thermal-hydraulic codes, severe accident codes, structural codes.
9:15–12:00 SRM Item 1, first 4 questions: Research program issues
1:15–2:45 SRM Item 4: Retention of skills in technical disciplines
2:45–3:15 SRM Item 3: "Sacred cows"
3:15–3:45 SRM Item 1, last question: Committee skill needs
3:45–4:15 Recapitulation; follow-up plans

Participants in the presentation to and discussions with the Committee will include representatives of the NRC staff, and may include other invited participants from research organizations.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492-3904), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 16th day of December 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93-31190 Filed 12-21-93; 8:45 am]

BILLING CODE 7590-01-M

Office of Nuclear Reactor Regulation

[SECY-93-331]

Availability of Commission Paper Forwarding License Renewal Workshop Results and Staff Proposals for Revision to 10 CFR Part 54 "Requirements for Renewal of Operating Licenses for Nuclear Power Plants"

The U.S. Nuclear Regulatory Commission has released to the public SECY-93-331, "License Renewal Workshop Results and Staff Proposals for Revision to 10 CFR part 54, 'Requirements For Renewal of Operating Licenses For Nuclear Power Plants.'" This paper is in response to a staff requirements memorandum (SRM) dated June 28, 1993. In this SRM, the Commission directed the staff to convene a public workshop to evaluate alternative approaches to how best to take advantage of existing licensee programs in the license renewal process. Additionally, the SRM directed the staff to provide a summary of the workshop results and draft proposed rulemaking no later than 60 days from the conclusion of the workshop. The workshop was held on September 30, 1993. SECY-93-331 contains a summary of the workshop, a discussion of the areas of the current rule that could be revised to take better advantage of existing licensee programs, and preliminary revisions of the current rule.

Copies of SECY-93-331 and the June 28, 1993, SRM have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, for review by interested persons.

Dated at Rockville, Maryland, this 15th day of December 1993.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, License Renewal and Environmental Review Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31185 Filed 12-21-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-324 and 50-325]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Units 1 and 2, Operating License Nos. DPR-71 and DPR-62; 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 request (Petition), dated April 28, 1993, filed pursuant to 10 CFR 2.206 by Stephen M. Kohn on behalf of the National Whistleblower Center (Petitioner). The Petitioner requested the U.S. Nuclear Regulatory Commission (NRC) to immediately shut down the Brunswick Steam Electric Plant, Units 1 and 2 (Brunswick). As basis for this request, the Petitioner asserted receipt of allegations from a Brunswick employee that (1) There has been a complete breakdown in the quality assurance (QA) program overseeing the integrity of the plant's vendor manuals; (2) there has been a breakdown in the plant's security system, which may leave the facility open to a terrorist attack; (3) there has been harassment and intimidation of employees who raise safety concerns to their management; (4) there has been a failure of Carolina Power & Light Company to train the contractors it has employed in the proper QA procedures and to implement a QA program in the work assignments of the contractors; and (5) there has been a breakdown in the Brunswick preventive maintenance program.

The Director of the Office of Nuclear Reactor Regulation (NRR) has determined that the concerns raised in the Petition are sufficiently well understood by the NRC as a result of NRC inspections and other reviews and are capable of resolution. Therefore, the Director of NRR has determined that issuance of a Director's Decision, with regard to this matter, is appropriate.

On the basis of review of the issues in the allegations, the Director of NRR has determined that certain of the concerns raised by the Petitioner are partially substantiated in that the conditions addressed had existed. However, the licensee and NRC knew about these conditions previously, and the licensee had taken appropriate corrective actions before the receipt of the Petition. The remaining concerns raised by the Petitioner are not substantiated by this Director's Decision.

As a result of the NRC review, the Director of NRR denied the Petitioner's request. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206," (DD-93-21), which is available for public inspection and copying in the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555-0001, and at the local public document room at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, NC 28403-3297.

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 provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes a 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. 93-31187 Filed 12-21-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Co.; Consideration of Issuance of an Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License No. NPF-11, issued to the Commonwealth Edison Company (the licensee), for operation of the LaSalle County Station, Unit 1, located in LaSalle County, Illinois.

The licensee submitted in a letter dated December 10, 1993, a request for an exigent license amendment which would revise Technical Specification (TS) 3.4.2 on a one-time only basis and which would be in effect for a limited time period until Unit 1 enters cold shutdown at the end of the present fuel cycle (scheduled for March 1994) or the next cold shutdown, whichever comes first. The proposed revision consists of adding a two-part footnote to TS 3.4.2. The first part would require that for the Limiting Condition for Operation (LCO) of TS 3.4.2, 18 of the LaSalle, Unit 1, SRVs must be operable for the time frame cited above except as modified by the second part of the footnote. The present LCO requires that 17 of the 18 SRVs be operational; the interim, more restrictive LCO is proposed as a compensatory measure. The second part of the footnote would exempt two of the 18 SRVs (i.e., 1B21-F013B and 1B21-F013J) from the provisions of TS 4.0.3 with respect to the reactor pressure lift setpoint test frequency as specified in Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code).

Technical Specification 4.0.5 specifies that the surveillance test intervals for inservice inspection and testing of ASME Code Class 1, 2, and 3 components such as SRVs shall be those contained in Table IWV-3510-1, Section XI of the ASME Code and applicable Addenda as required by 10 CFR 50.55a(g). TS 4.0.3 states, in part, that failure to perform a surveillance test within the specified time interval shall constitute a failure to meet the operability requirements for an LCO.

This exigent license amendment was submitted to fulfill a prior commitment made by the licensee when it was granted a Notice of Enforcement Discretion (NOED) on December 4, 1993. The NOED was issued to permit continued operation of Unit 1 at power after the licensee discovered on December 4, 1993, that it had not setpoint tested the two subject SRVs within the time frame required by the ASME Code and was thereby required by TS 4.0.3 and TS 4.0.5 to declare the subject SRVs inoperable. Had the NOED not been issued, Action a of TS 3.4.2 would have required Unit 1 to be in hot shutdown within 12 hours and to be in cold shutdown within the next 24 hours following the initial determination of inoperability.

LaSalle, Unit 2, is presently shut down for refueling and is scheduled to restart about mid-December 1993. All eighteen SRVs in LaSalle, Unit 2, have been setpoint tested in compliance with the surveillance test interval required by Section XI of the ASME Code.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. There is no affect on accident initiators so there is no change in probability of an accident. The probability of a failed open Safety/Relief Valve (SRV) is not affected based on observed performance of setpoint drift.

b. There is no effect or minimal affect on the consequences of analyzed accidents based on an evaluation that the highest reactor vessel pressure that will occur is still less than the Safety Limit of 1325 psig steam dome pressure, for the bounding vessel pressurization event. This evaluation assumed that both SRVs 1B21-F013B and 1B21-F013J fail to open.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because: The SRVs are not being used in any other mode than original design. The only affect is from the safety mode setpoint drift. This issue does not involve any plant modifications or changes to operating procedures. Therefore, this issue does not create the possibility of a new or different kind of accident from any previously evaluated accident.

(3) Involve a significant reduction in the margin of safety because: The review of previous sensitivity analyses for peak accident pressure indicates that in the worst case postulated (both SRVs fail to open), the peak vessel pressure will not exceed approximately 1276 psig in the reactor bottom head, (1226 psig in the RPV steam dome). The 1276 psig value retains a margin of greater than 50 psig to the ASME limit of 1375 psig for Upset conditions, and will not result in exceeding the Safety Limit reactor pressure of 1325 psig steam dome pressure. Therefore, this issue does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 6, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to J. Dyer: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 10, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 16th day of December 1993.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31188 Filed 12-21-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33341; File No. SR-BSE-93-16]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to its Specialist Performance Evaluation Program

December 15, 1993.

I. Introduction

On August 30, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and

Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend its Specialist Performance Evaluation Program ("SPEP" or "Evaluation Program"), as amended to incorporate objective measures of specialist performance, for an additional twelve-month period.[3] On September 13, the BSE submitted Amendment No. 1 to the proposed rule change in order to correct certain typographical errors.[4]

The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No. 33027 (October 6, 1993), 58 FR 53595 (October 15, 1993). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to extend its Specialist Performance Evaluation Program for an additional twelve-month period, expiring on December 31, 1994. By way of background, the BSE recently amended its Evaluation Program to incorporate objective measures of specialist performance.[5] The current pilot program uses the BEACON system[6] to assess how well a specialist handles market and marketable limit orders routed to him for execution. For each specialist, a record of all action taken on relevant BEACON orders is accumulated in a special file, from which the four calculations described below are run.

First, Turnaround Time measures the average number of seconds from the receipt of a guaranteed market or marketable limit order (i.e., for 1299 shares or less) in BEACON until it is executed (in whole or in part), stopped or cancelled.[7] Time continues to accumulate if the specialist just moves an order from the auto-ex screen to the manual one, until that order is executed (in whole or in part), stopped or cancelled.

Second, Holding Orders Without Action measures the number of market and marketable limit orders which are neither executed, stopped nor cancelled within twenty-five seconds. This measure differs from Turnaround Time in that orders of all sizes (including those already counted towards Turnaround Time) are analyzed.[8]

Third, Trading Between the Quote measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than 1/8th.

Fourth, Executions in Size Greater than Best Bid and Offer ("BBO") measures the number of market and marketable limit orders which exceed, and are executed in a size larger than, BBO size.

For each of the above measures, including the revised questionnaire, the specialist receives a raw score. A ten point grading scale is then applied to ranges of raw scores. In computing the overall program score, the measures are assigned the following weights: Turnaround Time, 15%; Holding Orders Without Action, 15%; Trading Between the Quote, 25%; Executions in Size Greater than BBO, 25%; Questionnaire, 20%.

At the same time as it incorporated the objective measures described above, the Exchange also revised the conditions for performance review. For each measure, the Evaluation Program states at what score specialist performance is deemed to be adequate.[9] A specialist who is deficient in the same one objective measure, for two out of three consecutive review periods, is required to appear before the Performance Improvement Action Committee.[10] The purpose of this meeting is to discuss, informally, possible methods of improving the specialist's performance.

If the specialist does not improve in the next review period, he is referred to the Market Performance Committee. The Market Performance Committee is directed to take such actions as it deems necessary and appropriate to address the deficient score. These actions include suspending a specialist's trading account, suspending his alternate specialist account privilege,[11] or reallocating his specialty stocks.[12]

Finally, the BSE also incorporated modified relative rankings into its Evaluation Program. A specialist who is deficient on the overall program score, for two out of the three consecutive review periods, is required to appear before the Market Performance Committee, with the same possible consequences as above.[13] In addition, the Exchange staff reviews the performance of any other specialists whose scores place them in the bottom ten percent of all BSE units.[14]

The BSE has requested a twelve-month extension of the current pilot program to enable the Exchange to evaluate further the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program. The BSE believes that the proposed rule change

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR–BSE–84–04). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR–BSE–92–04) ("February 1993 Approval Order"), at which point the initial pilot program ceased to exist as a separate program. Commission approval of the BSE's current SPEP pilot program expires on December 31, 1993.

[4] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 8, 1993 ("Amendment No. 1").

[5] See February 1993 Approval Order, *supra*, note 3. In addition to the substantive changes discussed below, SPEP was moved to Ch. XV, ¶2156 of the BSE Rules.

[6] BEACON is the BSE's automated order-routing and execution system. Of all incoming BEACON orders, SPEP collects data for regular buy and sell market and marketable limit orders only. Thus BEACON orders with qualifiers (e.g., buy minus or sell plus, market-on-close, stop, stop limit, all or none, etc.) and crosses are excluded from analysis.

[7] Data collection starts when the stock opens on the primary market. Blocks of time are excluded in the event of trading halts, BEACON system failure, etc.

[8] The same exclusions apply for Holding Orders Without Action as for Turnaround Time. See supra, note 7.

[9] A specialist is deficient in any individual objective measure or the overall program if he scores below certain minimum performance levels, as set forth below. Thus for his performance to be deemed adequate, a specialist must receive the following scores: Overall Evaluation Score—at or above weighted score of 5.80 Turnaround Time—below 21.0 seconds (8 points) Holding Orders Without Action—below 21% (7 points) Trading Between the Quote-at or above 26% (5 points) Executions Greater than BBO—at or above 76% (6 points) Questionnaire—at or above weighted score of 50 (4 points)

[10] In the event a specialist receives a deficient score on the questionnaire alone, the Exchange staff reviews the deficient questionnaire to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems.

[11] Alternate specialists provide added liquidity to the market, by promising to trade up to a certain amount of shares, on the request of the primary specialist. A specialist must apply for the privilege of being an alternate.

[12] The possible performance improvement actions are described in the BSE Rules under SPEP's Supplemental Material. This Supplemental Material is intended to provide specialists with adequate notice of the consequences of poor performance. It does not articulate any new substantive standards.

[13] See *supra*, text accompanying notes 11–12.

[14] In the event a specialist ranked in the bottom ten percent does not fall below the threshold for the overall program score, the Exchange staff reviews the performance of the specialist to determine if there is sufficient reason to warrant informing the Performance Improvement Action Committee of potential performance problems.

will promote just and equitable principles of trade and aid in the perfection of a free and open market and a national market system. The Exchange states that the SPEP results weigh heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties.

III. Discussion

The Commission believes that specialists play a crucial role in providing stability, liquidity and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[15] To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The BSE's Specialist Performance Evaluation Program is critical to this oversight.

In its order approving the incorporation of objective measures of performance,[16] the Commission asked the Exchange to monitor the effectiveness of the amended Evaluation Program. Specifically, the Commission requested information about the number of specialists who fell below acceptable levels of performance for each objective measure, the questionnaire and the overall program; and about the specific measures in which each such specialist was deficient. The Commission also requested information about the number of specialists who, as a result of each condition for review,[17] were referred to the Performance Improvement Action Committee and/or the Market Performance Committee; and about the type of action taken against each such deficient specialist.

On September 27, 1993,[18] the BSE submitted to the Commission a monitoring report regarding its amended Evaluation Program. The report describes the BSE's experience with the pilot program during the first two review periods of 1993 only. The Commission notes that, although the monitoring report provides certain useful information, neither the Exchange nor the Commission, has to date, had the opportunity to study the entire performance evaluation process.[19] To allow such information to be gathered and reviewed, without compromising the benefits the Evaluation Program may provide to investors, the Commission believes that it is reasonable to extend the pilot program until December 31, 1994.

With that qualification in mind, the Commission has analyzed the BSE's monitoring report.[20] In terms of the overall scope of the evaluation Program, the Commission continues to believe that the objective measures, together with the floor broker questionnaire, should generate sufficiently detailed information to enable the Exchange to make accurate assessments of specialist performance. Based on the results from the first two review periods, the BSE appears to have implemented its BEACON criteria successfully, and to have generated the data necessary to assess, in a quantitative way, how well specialists are carrying out their job responsibilities. However, as specialists and Exchange staff become more comfortable with the pilot program, the Commission expects the BSE to consider incorporating additional objective criteria, so that the Exchange could conduct an even more thorough analysis of specialist performance. At the same time, the BSE should ensure that each measure is assigned an appropriate weight.

The Commission also has reviewed the BSE's experience with its minimum adequate performance thresholds. Based on the number of specialists who surpassed acceptable levels of performance for each measure (and on an informal comparison of the floor-wide average to the minimum threshold), for the moment, it appears that these standards are sufficiently rigorous to identify specialists with potential performance problems, as well as to provide an incentive for superior market making performance. Depending on the results from the third review period, the Exchange has represented to the Commission that it intends to reexamine its minimum adequate performance thresholds, in order to ensure that they are set at appropriate levels.[21]

Finally, based on the information provided in the BSE's monitoring report, the Commission finds that the Exchange applied its conditions for review fairly and consistently. Specifically, it does not appear that any specialist whose performance may have warranted an improvement action escaped review entirely. Thus the Commission continues to believe that, taking the Evaluation Program as a whole, all potential performance problems should be brought to the attention of the appropriate committee. In terms of the BSE's response to the deficiencies it identified, the Commission notes that this monitoring report only covers two review periods.[22] While the Commission agrees that the initial results are encouraging, it is too soon for the Commission to reach any definitive conclusions about the effectiveness of the performance improvement actions themselves. The Commission expects the BSE to address this issue more fully in its next monitoring report.

In conclusion, the Commission believes that the recent amendments represent a good first step for the BSE in developing a more effective Specialist Performance Evaluation Program. Accordingly, the Commission believes that it is appropriate to extend the current pilot program for an additional twelve-month period, expiring December 31, 1994. This twelve-month period will enable the Exchange to determine the appropriateness of the objective measures, their respective weights and the acceptable levels of performance; as well as to review the effectiveness of the overall Evaluation Program.

The Commission therefore requests that the BSE submit a report to the Commission, by October 1, 1994, describing its experience with the pilot. At a minimum, this report should contain data, for the last review period of 1993 and the first two review periods of 1994, on (1) The number of specialists who fell below acceptable levels of performance for each objective

[15] Rule 11b–1, 17 CFR 240.11b–1 (1991); Ch. XV, ¶2155.01 of the BSE Rules.

[16] For a description of the Commission's rationale for approving the incorporation of objective measures of performance into the BSE's SPEP on a pilot basis, see February 1993 Approval Order, *supra*, note 3. The discussion in the aforementioned order is incorporated by reference into this order.

[17] See *supra*, notes 9–14 and accompanying text.

[18] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 22, 1993. On November 29, 1993, the BSE submitted a supplement to its monitoring report describing the outcome of each deficient specialist's meeting with the appropriate committee. See letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated November 19, 1993.

[19] For instance, there have not been a sufficient number of review periods to study how the informal discussions with the Performance Improvement Action Committee affect specialist performance, or to analyze under what circumstances the Market Performance Committee takes formal action, and what type of action it takes, against a specialist whose performance does not improve in the subsequent review period.

[20] See *supra*, note 18.

[21] Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 29, 1993. Any request to modify the minimum adequate performance thresholds should be submitted to the Commission as a proposed rule change pursuant to section 19(b) of the Act.

[22] See *supra*, note 19 and accompanying text.

measure, the questionnaire and the overall program, and the specific measures in which each such specialist was deficient; (2) the number of specialists who, as a result of the objective measures, appeared before the Performance Improvement Action Committee for informal counseling; (3) the number of such specialists then referred to the Market Performance Committee and the type of action taken against them; (4) the number of specialists who, as a result of the overall program, appeared before the Market Performance Committee and the type of action taken against them; (5) the number of specialists who, as a result of the questionnaire or falling in the bottom ten percent, were referred by the Exchange staff to the Performance Improvement Action Committee and the type of action taken against them (this should include the number of specialists then referred to the Market Performance Committee and the type of action taken by that Committee); and (6) a list of stocks reallocated due to substandard performance and the particular unit involved. Any requests to modify this pilot, to extend its effectiveness or to seek permanent approval for the Evaluation Program also should be submitted to the Commission by October 1, 1994, as a proposed rule change pursuant to section 19(b) of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the section 6(b)(5)[23] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,[24] and Rule 11b-1 thereunder,[25] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR-BSE-93-16) is approved on a pilot basis until December 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31162 File 12-21-93; 8:45 am]

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[23] 15 U.S.C. 78f(b)(5) (1988).

[24] 15 U.S.C. 78k(b) (1988).

[25] 17 CFR 240.11b-1 (1991).

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30-3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

December 16, 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 security:

Smith Barney High Income Opportunity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-11742)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 10, 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. 93-31209 Filed 12-21-93; 8:45 am]

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Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 16, 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 security:

PacTel Corp.
Common Stock, $.01 Par Value (File No. 7-11718)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 10, 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. 93-31207 Filed 12-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33327; File No. SR-DTC-90-06]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by The Depository Trust Co. Relating to the Eligibility of Rule 144A Securities at the Depository Trust Co.

December 13, 1993.

On May 9, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-90-06) under section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act").[1]

[1] 15 U.S.C. 78s(b)(1).

The proposal would authorize DTC to establish a policy under which it could make eligible for its book-entry delivery and other depository services securities that are eligible for transfer pursuant to Rule 144A[2] under the Securities Act of 1933 ("Securities Act"),[3] including under this classification, legally or contractually restricted securities ("Rule 144A Securities").[4] On May 25, 1990, the Commission published notice of the proposal in the **Federal Register**.[5] The Commission received ten comment letters from eight commentators ("May 1990 Comments").[6] DTC amended the proposal on June 14, 1990,[7] and April 8, 1992,[8] to provide additional representations to be required of issuers and transfer agents; notice appeared in the **Federal Register** on April 16, 1992.[9] The Commission received three comment letters ("April 1992 Comments") in response to this notice.[10] On March 31, 1993, DTC filed an additional amendment expanding the definition of Rule 144A Securities to include contractually restricted securities,[11] notice of which appeared in the **Federal Register** on April 13, 1993.[12] The Commission received fifteen comment letters ("April 1993 Comments") in response to this notice.[13] On July 1, 1993, DTC revised its last amendment, removing one of the required representations.[14] The original proposal and the amendments are discussed in detail below. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

I. Description

A. Background

On April 23, 1990, the Commission adopted Rule 144A[15] under the Securities Act. This Rule provides a safe-harbor from the registration requirements of the Securities Act for resales to qualified institutional buyers ("QIB")[16] of certain restricted securities[17] that, when issued, were not of the same class as securities[18] listed on a national securities exchange, registered under the Exchange Act or quoted in an automated inter-dealer quotation system (e.g., the National Association of Securities Dealers

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[2] 17 CFR 230.144A (1992).

[3] 15 U.S.C. 77a.

[4] A legally restricted security is a security that is a restricted security as defined in Rule 144(a)(3) under the Securities Act. 17 CFR 230.144(a)(3). A contractually restricted security is a security that upon issuance and continually thereafter can only be sold pursuant to Regulation S (17 CFR 230.901), Rule 144 (17 CFR 230.144), Rule 144A (17 CFR 230.144A), or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 of the Securities Act (15 U.S.C. 77d), and not involving any public offering; provided, however, that once the security is sold pursuant to the provisions of Rule 144, including Rule 144(k) (17 CFR 230.144(k)), it will thereafter cease to be a contractually restricted security. For purposes of this definition, in order for a depositary receipt to be considered a legally or contractually restricted security, the underlying security also must be a legally or contractually restricted security.

[5] Securities Exchange Act Release No. 28028 (May 18, 1990), 55 FR 21666.

[6] Letter from Lynn Nellius, Secretary, National Association of Securities Dealers, Inc. ("NASD"), to Jonathan G. Katz, Secretary, Commission, dated June 18, 1990; letter from Curtis R. Welling, Managing Director, The First Boston Corporation, to Jonathan G. Katz, Secretary, Commission, dated July 12, 1990; letter from Pamela P. Root, Vice President-Associate General Counsel, Goldman, Sachs & Co., to Brandon Becker, Associate Director, Division of Market Regulation ("Division"), Commission, dated July 13, 1990; letter from John T. Shinkle, Chairman, Federal Regulation Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated July 23, 1990; letter from Rachel F. Robbins, Managing Director and General Counsel, J.P. Morgan Securities Inc., to Jonathan G. Katz, Secretary, Commission, dated July 23, 1990; letter from Mark A. Bach, Vice President, ADR Department, Citibank, N.A., to Jonathan G. Katz, Secretary, Commission, dated July 31, 1990; letter from James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, American Stock Exchange ("AMEX"), to Jonathan G. Katz, Secretary, Commission, dated August 24, 1990; letters from Francis R. Driscoll, Vice President, The Northern Trust Company, to Jonathan G. Katz, Secretary, Commission, dated August 31, 1990 and September 6, 1990; letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1990.

[7] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Jonathan Kallman, Assistant Director, Division, Commission, dated June 14, 1990.

[8] Letter from Jack R. Wiener, Associate Counsel, DTC, to Ester Saverson, Jr., Branch Chief, Division, Commission, dated April 8, 1992.

[9] Securities Exchange Act Release No. 30568 (April 10, 1992), 57 FR 13395.

[10] Letter from Sullivan & Cromwell, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 18, 1992; letter from Pamela P. Root, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated May 18, 1992; letter from Robin Shelby, Director-Legal Affairs and Assistant General Counsel, The First Boston Corporation, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 19, 1992.

[11] Letter from Jack R. Wiener, Associate Counsel, DTC, to Ester Saverson, Jr., Branch Chief, Division, Commission, dated March 31, 1993. This amendment also provided an additional representation that was the subject of all comment letters received in response to the amendment.

[12] Securities Exchange Act Release No. 32114 (April 7, 1993), 58 FR 19283.

[13] Letter from James F. Conlan, Vice President, Bankers Trust Company, to Ester Saverson, Jr., Division, Commission, dated May 3, 1993; letter from Michele D. Ross, Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, to Ester Saverson, Jr., Division, Commission, dated May 3, 1993; letter from Laura L. Inman, Vice President and Senior Counsel, Debt Markets Group, Office of General Counsel, Merrill Lynch, to Ester Saverson, Jr., Division, Commission, dated May 3, 1993; letter from Sullivan & Cromwell, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 3, 1993; letter from Terence J. Hassett, Senior Manager, Corporate Trust Division, Bank of Boston, to Margaret H. McFarland, Deputy Secretary, dated May 4, 1993; letter from Rogers & Wells, to The Secretary, Commission, dated May 4, 1993; letter from Robert S. Appel, Christy & Viener, to Secretary, Commission, dated May 4, 1993; letter from G.K. Burke, Vice President, Corporate Trust Group, Chemical Bank, to Ester Saverson, Jr., Division, Commission, dated May 6, 1993; letter from Kevin W. Kelley, Clifford Chance, to Margaret H. McFarland, Deputy Secretary, dated May 7, 1993; letter from Caroline F. Marks, Vice President & Senior Securities Counsel, Citibank, N.A., to Jonathan G. Katz, Secretary, Commission, dated May 10, 1993; letter from Simpson Thatcher & Bartlett, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 10, 1993; letter from Joseph M. Velli, Executive Vice President, Corporate Trust and Agency Services, The Bank of New York, to Margaret H. McFarland, Deputy Secretary, Commission, dated May 13, 1993; letter from Robert O. McCabe, Vice President and Assistant General Counsel, J.P. Morgan & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission, dated May 13, 1993; letter from Maureen Scannell Bateman, Senior Vice President and General Counsel, United States Trust Company of New York, to Ester Saverson, Jr., Division, Commission, dated May 21, 1993; Letter from Warren L. Tischler, Administrative Vice President, and Carmela Ehret, Vice President, Marine Midland Bank, N.A., to Margaret H. McFarland, Deputy Secretary, Commission, dated June 7, 1993.

[14] Letter from Jack R. Wiener, Associate Counsel, DTC, to Ester Saverson, Jr., Division, Commission, dated July 1, 1993.

[15] Securities Act Release No. 6862 (April 30, 1990), 55 FR 17933.

[16] *See* Rule 144A(a)(1) (defining the term QIB).

[17] As defined in Rule 144 under the Securities Act, "restricted securities" are:

(i) Securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering; or

(ii) Securities acquired from the issuer that are subject to the resale limitations of Regulation D (§ 230.501 through § 230.506 of this chapter [17 CFR 230.501–230.506]) or Rule 701(c) (§ 230.701(c) of this chapter [17 CFR 230.701]) under the Act; or

(iii) Securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering; or

(iv) Securities that are acquired in a transaction or chain of transactions meeting the requirements of Rule 144A.

Rule 144(a)(3).

[18] In order to determine whether common equity securities are of the same class, the Commission will apply a definition of "class" that is the same as that set forth in section 12(g)(5) of the Exchange Act, 15 U.S.C. 781(g)(5). Securities Act Release No. 6862, *supra* note 15, at 17935 n. 23. Common equity securities of the same class include securities of substantially similar character the holders thereof enjoy substantially similar rights and privileges. *Id* at 17935 text accompanying n. 23. In addition:

Preferred equity securities will be deemed to be of the same class if their terms relating to dividend rate, cumulation, participation, liquidation preference, voting rights, convertibility, call, redemption and other similar material matters are substantially identical. Debt securities will be deemed to be of the same class if their terms relating to interest rate, maturity, subordination, security, convertibility, call, redemption and similar material matters are substantially identical

Id. at 17935.

The Director of the Commission's Division of Corporation Finance may designate, by delegated authority, additional securities and classes of securities that will not be deemed of the same class as an underlying security. 17b CFR 200.30–1, Securities Act Release No. 6862, *supra* note 15, at 17935 n. 27

Automated Quotation ("Nasdaq") system). Rule 144A(d)(2) requires that the seller or any person acting on its behalf take reasonable steps to ensure that the purchaser is aware that the seller may rely on the safe-harbor provided by Rule 144A.[19]

On April 27, 1990, the Commission approved a rule proposal authorizing the NASD to establish a system for primary placement and secondary trading of Rule 144A Securities ("PORTAL Market System").[20] Since then, the NASD has proposed several amendments to the rules governing the operation of the PORTAL Market System. Concurrent with this approval order, today, the Commission is approving the NASD's proposals.[21]

B. Description

DTC's proposal would authorize DTC to make 144A Securities eligible for deposit, book-entry delivery, and other depository services, provided that any such Rule 144A Securities are designated for inclusion in a system of a Self-Regulatory Organization ("SRO") approved by the Commission for the reporting of quotation and trade information of Rule 144A transactions ("SRO Rule 144A System"). Pursuant to DTC's proposal, however, nonconvertible debt securities and nonconvertible preferred stock which are rated in one of the top four categories by a nationally recognized statistical rating organization ("Investment Grade Securities") need not be designated for inclusion in an SRO Rule 144A System in order to be eligible for deposit, book-entry delivery, and other depository services at DTC.

Current depository rules require that prior to making 144A securities eligible for deposit, DTC must determine whether, in light of the Federal securities laws, particularly the provisions of Rules 144, 144A, and 145, the securities, when deposited with DTC, may be lawfully transferred by book-entry.[22] In addition, pursuant to DTC's Rules, in order to make an issue of securities eligible for deposit, DTC must determine that it has the operational capability and can obtain information regarding the securities necessary to permit it to provide its services to participants and pledgees.[23] The proposed rule change does not affect these initial steps taken by DTC prior to making securities eligible for deposit.

Under the proposal, DTC will require issuers and transfer agents to make certain representations before DTC will make specific issues eligible for deposit and book-entry transfers.[24] First, the issuer must represent that at the time of initial registration with DTC's nominee, the securities were legally or contractually restricted securities eligible for transfer pursuant to Rule 144A, and identified by a CUSIP[25] (or a CUSIP International Numbering System ("CINS") number different from that assigned to any securities of the same class that were not legally or contractually restricted securities.[26] Second, the issuer must represent that the securities are either Investment Grade Securities, or are included within an SRO Rule 144A System. Third, the issuer and agent must represent that if non-Investment Grade Securities cease to be included in an SRO Rule 144A System during any period in which such securities are legally or contractually restricted securities, such securities shall no longer be eligible for DTC's services.

C. Comments

(i) May 1990 Comments

As noted above, in response to the initial release, six commentators supported and two opposed the proposal. The NASD and Amex urged that DTC should not be permitted to make Rule 144A Securities eligible for book-entry transfer outside of supervised trading systems, such as the PORTAL Market System, without the type of monitoring and control restrictions associated with such systems. Both commentators argued that without such controls the potential for leakage into the public market would increase.

The six commentators supporting the proposed rule change noted that DTC's proposal would streamline clearance and settlement of transactions that traditionally have cleared and settled physically. They asserted that DTC's proposal to immobilize 144A securities would attract a larger universe of buyers to the private placement market thereby enhancing secondary market liquidity for these securities. With regard to the concerns about private placement control procedures, these commentators emphasized that nothing in Rule 144A requires clearing organizations to assume the primary responsibility for monitoring compliance with either Rule 144A or any exemption from registration under the Securities Act.[27]

(ii) April 1992 Comments

As noted above, amendments to DTC's proposal were published on April 16, 1992.[28] The amendments proposed to require that at the time of initial deposit, non-Investment Grade Securities must be included in an SRO Rule 144A System approved by the Commission, and continue to be included in such a system in order to remain DTC eligible. The amendments also proposed to require that Rule 144A Securities deposited at DTC be assigned a CUSIP or CINS number that is different from any CUSIP or CINS number assigned to any unrestricted securities of the same class.[29]

Commentators addressing these amendments endorsed the use of different CUSIP and CINS numbers to distinguish unrestricted securities from

[19] Rule 144A(d)(2). See Rule 144A(d)(4)(i).

[20] Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781. On the date of approval of the PORTAL Market System, the Commission approved a proposed rule filing by DTC enabling it to establish procedures to settle PORTAL Market System's transactions. Securities Exchange Act Release No. 27958 (April 27, 1990), 55 FR 18777. Pursuant to the order, DTC participants desiring to settle transactions effected in the PORTAL Market System could use DTC services to settle such transactions in compliance with certain rules of the PORTAL Market System.

[21] Securities Exchange Act Release No. 33326 (December 13, 1993).

[22] See DTC Rules, R. 5 § 1 (1990). This Rule requires that DTC determine whether the securities may be legally transferred by book-entry based on "advice of legal counsel satisfactory to * * * [DTC] * * *" *Id.*

This Order does not extend DTC's authority to make eligible for deposit at DTC additional securities and classes of securities designated by the Director of the Commission's Division of Corporation Finance pursuant to the grant of delegated authority contained in 17 CFR 200.30–1. Under section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), DTC must file with the Commission pursuant to Exchange Act Rule 19b–4, 17 CFR 240.19b–4, in order to make such additional securities and classes of securities eligible for deposit at DTC.

[23] DTC Rules, R. 5 § 1. DTC Rules also require that "[t]he timing of additions of such issues shall be on a nondiscriminatory basis consistent with * * * [DTC's] objective to provide the maximum practical degree of service in facilitating the prompt and orderly settlement of securities transactions." *Id.*

[24] See *Supra* notes 9, 12 & 14.

[25] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association to identify specific securities issues.

[26] In this regard, each issuer also must represent that it will ensure that a CUSIP or CINS identification number is obtained for all unrestricted securities of the same class that is different from any CUSIP or CINS identification number assigned to Rule 144A Securities of the same class, and shall notify DTC promptly in the event that it is unable to do so.

[27] The commentators also noted that the rules of the PORTAL Market System impose restrictions more stringent than those imposed by Rule 144A. As a result of these additional restrictions, some commentators noted that many market participants may not favor the PORTAL Market System as a means of executing transactions, especially for 144A debt securities.

[28] Securities Exchange Act Release No. 30568, *supra* note 9.

[29] *Id.*

other securities. Two commentators, however, challenged the decision to make DTC eligibility for securities other than Investment Grade Securities contingent upon inclusion in an SRO Rule 144A System. Instead, these two commentators thought that DTC's proposal should be modified to permit book-entry clearance and settlement for all Rule 144a Securities.[30]

(iii) April 1993 Comments

As noted above, fifteen commentators addressed the amendment published in April 1993.[31] The amendment proposed to expand eligible Rule 144A Securities to include contractually restricted securities, and to require additional representations from issuers.[32]

All of these commentators objected to that aspect of the amendment which would have required issuers and transfer agents to represent that the issuer had instructed the agent, and that the agent had agreed, to effect all transfers of securities in compliance with the Federal securities laws. The commentators asserted that determining whether each transfer has been effected in accordance with the Federal securities laws has never been within the scope of a transfer agent's duties. Instead, they noted that accepted practice is for transfer agents to refer transfers involving restricted securities to the issuer (or issuer's counsel) for further instructions. DTC has since withdrawn the requirement that issuers and transfer agents make this representation.[33]

II. Discussion

The Commission must examine DTC's proposal in light of section 17A of the Exchange Act[34] and Rule 144A's objective of "achieving a more liquid and efficient institutional resale market for unregistered securities."[35] This balancing approach should enable the Commission to ensure that the procedures designed for the clearance and settlement of Rule 144A Securities will protect investors while not imposing unnecessary burdens that could undermine the liquidity and efficiency of a secondary market for Rule 144A Securities.

The Commission has examined DTC's proposal in light of these considerations and believers that the proposal is consistent with the public interest and provides for the protection of investors. DTC's proposed rule filing contains safeguards designed to detect and deter the sale of securities in contravention of the Securities Act, the provisions of Rule 144A and the contractual restrictions imposed by issuers to prevent the public offering of their privately placed securities. The Commission believes, moreover, that DTC's proposal to make Rule 144A Securities eligible for deposit will bolster investor confidence in the Rule 144A Securities market and will promote the prompt and accurate clearance and settlement of Rule 144A Securities, consistent with sections 17A(b)(3)(A) and (F) of the Exchange Act.[36]

Section 17A(b) (3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to protect investors and the public interest. DTC is a clearing agency whose participants include both QIBs and non-QIBs [DTC's participants, in turn, act for millions of individual and institutional investors). Because under the proposal DTC's facilities would allow for the transfer of restricted securities among any participants (subject only to operational and credit limitations), DTC has the obligation to ensure that its facilities are not used systematically to violate the Federal securities laws.[37]

The Commission is satisfied that the proposal incorporates adequate safeguards to reduce the potential for transfers in violation of the Federal securities laws, even though Rule 144A Securities will not be segregated and DTC will not monitor individual movements among participants' accounts. Among other safeguards, DTC already has established eligibility requirements to reduce the potential for the unlawful transfer of restricted securities that, as a result of the proposal, will now be DTC eligible.

Pursuant to the proposed rule change, DTC will require issuers to represent that at the time Rule 144A Securities are initially registered in DTC's nominee name, they are identified by a CUSIP or CINS number different from that assigned to unrestricted securities of the same class.[38] In addition, with regard to future transactions, issuers will be required to represent to DTC that they will ensure that a CUSIP or CINS identification number is obtained for all unrestricted securities of the same class that is different from any CUSIP or CINS identification number assigned to Rule 144A Securities of the same class, and will notify DTC promptly in the event they are unable to do so.[39] These measures will enable DTC and its participants to distinguish between restricted and unrestricted securities of the same issuer and to prevent the commingling of otherwise identical securities.[40]

Moreover, DTC will condition the eligibility of Rule 144A Securities (other than Investment Grade Securities) on initial and continued inclusion of those securities in an SRO Rule 144A System, such as the NASD's PORTAL Market System. A crucial feature of such a system is that the SRO's members must report trades involving system-designated securities on a routine basis to the SRO (whether or not those trades were executed in the system, based on system price, or outside the system entirely), together with information that will facilitate detection of securities law violations. DTC will request SROs operating SRO Rule 144A Systems to notify DTC promptly if any DTC-eligible Rule 144A Security is exited from such a system, so that DTC can instruct DTC participants to remove their positions in that security from DTC.[41]

The Commission believes that the implementation of these safeguards coupled with periodic reviews to monitor their effectiveness should be sufficient to satisfy DTC's obligations. Accordingly, the Commission believes that this aspect of the proposed rule filing is consistent with the

[30] Two commentators also questioned whether the proposed amendments would prevent DTC eligibility for an unrestricted security or a security that subsequently becomes unrestricted which is of the same class as a security in a 144A reporting system. According to the commentators, this is of particular relevance in the context of global depositary receipts ("GRD") and one commentator sought clarification that Rule 144A GDRs need not be restricted securities under Rule 144 (a)(3), provided that, during any period when they are owned by a beneficial owner located in the U.S., they are, by their terms, subject to appropriate restrictions on transfer and, at all times, bear a CUSIP number that is different from the CUSIP number assigned to any unrestricted GDRs representing underlying securities of the same class and underlying securities that are unrestricted. DTC addressed this concern in the March 1993 amendment.

[31] See *supra* note 13.

[32] Securities Exchange Act Release No. 32114, *supra* note 12.

[33] Letter from Jack R. Wiener, dated July 1, 1993, *supra* note 14.

[34] 15 U.S C. 78q–1.

[35] Securities Exchange Act Release No. 6862, *supra* note 15, at 17934.

[36] 15 U.S.C. 78q–1(b)(3)(A) & (F).

[37] This requirement is consistent with DTC's obligation to comply with the Federal securities laws. As an organization subject to Federal securities laws, as well as an SRO charged with acting in a manner consistent with the public interest and investor protection, DTC must not facilitate violations of the Federal securities laws.

[38] Securities Exchange Act Release No. 32114, *supra* note 12.

[39] *Id.*

[40] The requirement to have different CUSIP or CINS numbers for restricted and unrestricted securities will assist market participants in their efforts to comply with the requirements of the Securities Act and avoid the danger of leakage of restricted securities into the retail market.

[41] Securities Exchange Act Release No. 32114, *supra* note 12.

requirements of section 17A(b)(3)(F) of the Exchange Act as it is designed to protect investors and the public interest.

Commentors expressed concern about the representation which required that all transfers of securities be effected in accordance with Federal securities laws,[42] and DTC subsequently withdrew this representation.[43] The Commission understands that generally accepted practice is for transfer agents to refer transfers involving restricted securities to the issuer (or issuer's counsel) for further instructions. This does not absolve transfer agents from compliance with the Federal securities laws, who, like DTC, have independent obligations to comply with those laws.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and in particular with the requirements of section 17A of the Exchange Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Exchange Act,[44] that the proposed rule change, SR-DTC-90-06, be and hereby is, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[42] As described above, the commentators believe that determining whether each transfer has been effected in accordance with Federal securities laws, has never been within the scope of a transfer agent's duties. See *supra* text accompanying note 33.

[43] See letter from Jack Wiener, dated July 1, 1993, *supra* note 14.

[44] 15 U.S.C. 78s(b)(2).

[Release No. 34-33323; File No. SR-MSRB-93-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Filing of Proposed Rule Change Relating to Automated Confirmation/ Acknowledgement of Delivery vs. Payment and Receipt vs. Payment Customer Transactions

December 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 2, 1993, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSRB-93-11) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends MSRB Rule G-15(d)(ii), relating to automated confirmation/ acknowledgement of customer transactions.[2] The proposed rule change would eliminate the exemption in Rule G-15(d)(ii) which currently does not require use of the automated confirmation/acknowledgement system if one or both of the parties to the transaction are not members of a registered clearing agency performing automated confirmation/ acknowledgement services. The MSRB requests that the Commission delay the effectiveness of the proposed rule change until July 1, 1994, to allow dealers sufficient time to make any changes that may be necessary in their clearance practices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to require the use of an automated confirmation/ acknowledgment system for all delivery vs. payment and receipt vs. payment ("DVP/RVP") customer transactions that are eligible for processing in such systems. The proposed rule change is the third and final phase of the MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and settlement.[3] Due to various difficulties that have been reported by dealers in using automated confirmation/ acknowledgement systems and in obtaining the full co-operation from institutional customers and their clearing agents in acknowledging transactions, the proposed rule change was selected by the MSRB to be the final phase of the implementation plan.

(1) Background

The clearance of institutional customer transactions in municipal securities is accomplished in large part through the use of automated confirmation/acknowledgement systems operated by clearing corporations registered with the Commission. The automated confirmation/ acknowledgement process allows a dealer to send a confirmation to an institutional customer electronically. The customer (or the customer's clearing agent) then can electronically acknowledge the transaction after it receives the confirmation. This process provides substantial efficiencies and cost savings to the municipal securities market by ensuring timely settlement of the transaction, and eliminates much of the time consuming and expensive manual processing associated with paper confirmations by providing an electronic record of the transaction.

Currently, MSRB Rule G-15(d)(ii) requires that DVP/RVP customer transactions eligible for automated confirmation/acknowledgement systems be confirmed/acknowledged through such a system if each party to the transaction is a member of a registered clearing agency offering confirmation/ acknowledgement services or uses a clearing agent for the transaction that is a member of such a clearing agency. The current rule does not require use of the automated confirmation/ acknowledgement system if one or both of the parties are not members of the registered clearing agency performing automated confirmation/ acknowledgement services. The current exemption in the rule was provided to allow dealers to make DVP/RVP settlements with customers that have not made arrangements to use the automated confirmation/ acknowledgement systems. The exemption was intended to exist only during the transition period to full use of automated clearance and settlement

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The term "confirmation/affirmation" has been used in lieu of "confirmation/acknowledgement" in previous MSRB documents and rules. The word affirmation is being changed to "acknowledgement" in the proposed rule change at the request of The Depository Trust Company ("DTC"). DTC's planned changes to its Institutional Delivery system incorporate the term "matching" along with "affirming" to achieve "acknowledgement" of a transaction.

[3] For further details concerning the MSRB's overall plan, see Securities Exchange Act Release Nos. 32640 (July 22, 1993), 58 FR 39260 and 33275 (December 2, 1993), 58 FR 64992.

systems in the municipal securities market.

(2) Terms of the Proposed Rule Change

The proposed rule change would require that all DVP/RVP customer transactions that are eligible for confirmation/acknowledgement in a system operated by a registered clearing agency be processed in such a system. As a practical matter, therefore, all dealers with institutional customers would have to have access to a confirmation/acknowledgement system and would have to ensure that all of their customers receiving DVP/RVP privileges have access to an automated confirmation/acknowledgement system operated by a registered clearing agency. This would eliminate the time consuming and expensive exception processing which is sometimes now required for DVP/RVP customer transactions that fall within the current exemption in MSRB Rule G-15(d)(ii).

As set forth in section 15B of the Act, the MSRB's rules should be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[4] The MSRB's role in this area is given additional direction by section 17A of the Act, which mandates the creation of a national system of automated clearance and settlement of securities transactions.[5] Section 17A expressly includes municipal securities within its stated objectives.

The MSRB believes that the proposed rule change will facilitate clearance and settlement of municipal securities as required by section 15B of the Act and also serves one of the explicit purposes of section 17A of the Act, to implement new data processing and communications techniques to create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. In addition, in October 1993, Commission Chairman Levitt requested that the MSRB develop a plan to compress the current fifth day after trade date ("T+5") regular-way settlement cycle in the municipal securities market to a third day after trade date ("T+3") settlement by June 1, 1995.[6] The MSRB believes that the proposed rule change will facilitate T+3 settlement by increasing the efficiency of the clearance process through the use of automated confirmation/acknowledgement systems which are capable of providing transaction and settlement information much faster than mailed confirmations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

(1) Comments on Proposed Draft Amendments

In August 1991, the MSRB published for comment the proposed rule change as well as other draft amendments to MSRB Rules G-12(f) and G-15(d). Sixteen comment letters were received.[7]

Twelve commenters generally supported the August 1991 draft amendments,[8] two were opposed,[9] and two commenters addressed a possible modification without specifically supporting or opposing the draft amendments.[10] The commenters who supported the draft amendments, including the proposed rule change, stated that they generally believed that the amendments would increase the efficiency of transaction settlement through the more universal use of automated confirmation/acknowledgement systems and book-entry deliveries. The primary reason cited for this increased efficiency was the elimination of exemptions which allow for the clearance and settlement process to occur outside of automated systems. These commenters indicated that a primary benefit of the draft amendments would be the elimination of the time consuming exception processing necessary when a transaction is confirmed, cleared, and settled outside of the automated systems.

One commenter stated that there are a substantial number of institutional customer transactions that currently are settled by book-entry, but which are not confirmed/acknowledged in an automated system.[11] Some institutional customers do not participate in an automated confirmation/acknowledgement system and have little incentive to use such a system since their transactions normally settle on time. Of the several amendments which were part of the August 1991 draft amendments, the MSRB made the proposed ruled change the last for implementation so that dealers would have time to make DVP/RVP settlement arrangements with customers that have not previously made arrangements to use automated confirmation/acknowledgement systems. There were

[4] 15 U.S.C. 78o-4 (1988).

[5] 15 U.S.C. 78q-1 (1988).

[6] See letter from Arthur Levitt, Chairman, Commission, to David Clapp, Chairman, MSRB (October 7, 1993).

[7] See letter from Philip Lanz, Managing Director, Bear, Stearns Securities Corp., to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Jan Fenty, President, The Cashiers' Association of Wall Street, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from William J. Winter, Vice President, Cashiers' Department, A.G. Edwards and Sons, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Kathleen Graffam, First Chicago Capital Markets, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (October 7, 1991); letter from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield and Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from John F. Lee, President, New York Clearing House Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 18, 1991); letter from Harold Durk, Duke McElroy & Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from Lawrence Morillo, Senior Vice President, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing"), to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from James H. Pyle, Managing Partner, Terry L. McCullough, Partner, Richard E. Whalen, Partner, and Benita I. Simon, Partner, Elmer E. Powell and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (November 27, 1991); letter from George Brakatselos, Vice President, Public Securities Association, to Harold L. Johnson, Deputy General Counsel, MSRB (November 19, 1991); letter from Bruce L. Vernon, President and Thomas Sargant, Vice President, The Regional Municipal Operations Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 12, 1991); letter from George J. Miusnig, Chairman, Regulatory and Clearance Committee, Securities Operation Division, Securities Industry Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from Jerome Clair, Managing Director, and Robert Mattei, Assistant Manager, Smith Barney, Harris Upham & Co., Inc. ("Smith Barney"), to Harold L. Johnson, Deputy General Counsel, MSRB (December 9, 1991); letter from Roger Springate, Jr., Springate and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); and letter from Rick Farrell, Assistant Vice President, United Missouri Bank, N.A., to Harold L. Johnson, Deputy General Counsel, MSRB (November 5, 1991).

[8] See *supra*, note 7, letters from Bear, Stearns Securities Corp.; The Cashiers' Association of Wall Street, Inc.; A.G. Edwards and Sons, Inc.; First Chicago Capital Markets, Inc.; J.F. Hartfield and Co., Inc.; New York Clearing House Association; Pershing; Public Securities Association; The Regional Municipal Operations Association; Securities Industry Association; Smith Barney; and United Missouri Bank, N.A.

[9] See *supra*, note 7, letters from Elmer E. Powell and Company and Springate and Company.

[10] See *supra*, note 7, letters from Golden Harris Capital Group, Inc. and Duke McElroy & Company.

[11] See *supra*, note 7, letters from First Chicago Capital Markets, Inc.

no opposing comments relating specifically to the proposed rule change.

(2) Comments on Proposed Implementation Timetable

The MSRB's proposed implementation timetable for the August 1991 draft amendment was published for comment in April 1992. Two comment letters were received.[12] The commenters generally supported the implementation plan as it related to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to the File No. SR–MSRB–93–11 and should be submitted by January 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] See letter from Margaret Sullivan, Assistant Vice President, The First National Bank of Chicago, to Harold L. Johnson, Deputy General Counsel, MSRB (May 26, 1992) and letter from Mario P. DeAngelo, Vice President, Alex. Brown & Sons, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (April 29, 1992).

[13] 17 CFR 200.30–3(a)(12).

[Release No. 34–33352; File No. SR–NASD–93–42]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Asset Based Sales Charge Disclosures by Money Market Mutual Funds

December 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change[2] as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 26 of the Rules of Fair Practice to exempt money market funds from the requirement to make the prospectus disclosure in Subsection 26(d)(4) that long-term shareholders may pay more than the economic equivalent of the permitted maximum front-end sales charges. The proposed rule was approved by the NASD membership.[3] Below is the text of the proposed rule change. Proposed new language is italicized.

Text of Proposed Amendments to Article III, Section 26 of the Rules of Fair Practice

Investment Companies

Sec. 26

* * *

(d)

(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section. Such disclosure shall be adjacent to the fee table in the front section of a prospectus. *This subsection shall not apply to money market mutual funds which have asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 7, 1993, new rules governing investment company sales charges became effective.[4] On or near the effective date of the new rules the NASD received several applications for exemption from Section 26(d)(4), which requires that the prospectus for an investment company with an asset based sales charge disclose that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section." The applications noted that the rule is specific in its language and requires the disclosure, even if the statement may not be true for a particular mutual fund.

The applicants pointed out that in the case of a money market mutual fund, there is a high probability that the statement will be inaccurate because such funds generally have very low asset based sales charges, and an investor would have to be a shareholder for an extremely long time before the disclosure would be true. According to one applicant, a shareholder of its fund,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The NASD amended the proposed rule change once subsequent to its original filing on August 3, 1993; this amendment was substantive and limited the scope of the proposed exemption in this filing.

[3] Out of 2045 ballots received, 1645 were in favor, 250 opposed, 10 did not vote and 140 ballots were unsigned.

[4] See Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (July 13, 1992); NASD Manual, Rules of Fair Practice, Art. III, Sec. 26(d), (CCH) ¶ 2176.

which has an asset based charge of 15 basis points, would have to remain in the fund for over 55 years before he would pay more than the maximum front-end charge. The applicants suggest that, since money market mutual funds are traditionally short-term investments or cash management vehicles, it is unlikely that investors will stay in such funds for lengthy periods. As a result, they believe that the disclosure may be misleading, or at least confusing, to investors in money market mutual funds.

The NASD agrees with the arguments of the applicants and, accordingly, has determined to amend Subsection 26(d)(4) to exempt money market mutual funds from the disclosure requirement. Requiring funds to include disclosure statements in such situations serves no identifiable purpose and does not advance any recognizable regulatory interest.

The NASD is also proposing, however, to limit the availability of the proposed rule change to money market mutual funds with asset-based sales charges equal to or less than .25 of 1% (25 basis points) of average net assets per annum. After publishing the proposed rule change for member vote in Notice to Members 93-52 (September 1993) without the limitation, members of the Commission staff notified the NASD that for certain money market funds with high asset-based sales charges (50 basis points or more), the disclosure statement would be accurate. For example, a fund with an asset-based sales charge of 50 basis points and a 3 percent return on investment would reach the economic equivalent of the maximum front-end sales charge permitted by Subsection 26(d) in approximately 14 years. The NASD agreed with the SEC's comments and, accordingly, has agreed to limit the proposed rule change in response to the SEC's comments.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act in that it advances the protection of investors and the public interest by eliminating an unnecessary and potentially misleading disclosure requirement that serves no regulatory or investor protection interest in the context of money market mutual funds. The NASD's intent in adopting Subsection 26(d)(4) was to alert purchasers of the effect of asset based sales charges in the event they held their shares for a long period; however, because of the unique characteristics of money market mutual funds (i.e., low asset-based sales charges and low asset growth) such disclosure in the context of money market funds is potentially misleading and contrary to the regulatory purpose of the rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-93-42 and should be submitted by January 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31206 Filed 12-21-93; 8:45 am]

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[Release No. 34-33342; File Nos. SR-OCC-93-07 and SR-ICC-93-04]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Order Approving Proposed Rule Changes To Restructure the Cross-Margining Program Between The Options Clearing Corporation and The Intermarket Clearing Corporation

December 15, 1993.

On May 24, 1993, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") filed proposed rule changes (File Nos. SR-OCC-93-07 and SR-ICC-93-04) with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals were published in the **Federal Register** on July 16, 1993, to solicit comments from interested persons.[2] On July 26, 1993, OCC and ICC filed amendments to the proposals.[3] No comments were received. As discussed below, this order approves the proposals.

I. Description

The OCC and ICC proposals restructure the current OCC/ICC cross-margining program[4] so that it parallels the cross-margining programs between OCC and other commodity clearing organizations. Specifically, the restructured OCC/ICC program is modeled on and operates in basically the same way as the existing cross-margining program between OCC and

[5] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 32646 (July 23, 1993), 58 FR 39587 [File Nos. SR-OCC-93-04 and SR-ICC-93-04].

[3] The amendments made technical changes to the proposals. Letter from Jean M. Cawley, Special Counsel, OCC, to Jerry W. Carpenter, Chief, Branch of Clearing Agency Regulation, Division of Market Regulation ("Division"), Commission (July 16, 1993) and letter from Jean M. Cawley, Special Counsel, ICC, to Jerry W. Carpenter, Branch Chief, Division, Commission (July 19, 1993).

[4] Securities Exchange Act Release Nos. 26153 (October 3, 1988), 53 FR 39567 [File Nos. SR-OCC-86-17] (order approving OCC/ICC proprietary cross-margining program) and 30041 (December 5, 1991), 56 FR 64824 [File Nos. SR-OCC-90-04 and SR-ICC-90-03] (order approving OCC/ICC non-proprietary, market profession cross-margining program).

the Chicago Mercantile Exchange ("CME").[5] OCC and ICC have entered into a new cross-margining agreement ("OCC/ICC Agreement") with respect to the restructured program which is based on the cross-margining agreement among OCC, ICC, and CME ("OCC/ICC/CME Agreement")[6] The OCC/ICC Agreement is substantially similar to the OCC/ICC/CME Agreement except for the following differences.

Because neither OCC nor ICC conduct settlements on Good Friday, that day is not to be included in the definition of the term "business day."[7] The term "carrying clearing organization" is not included in the OCC/ICC Agreement because the OCC/ICC Agreement establishes a bilateral cross-margining program between OCC and ICC and not a trilateral cross-margining program such as the OCC/ICC/CME program. Conforming changes are made to other terms defined in the OCC/ICC Agreement.

OCC and ICC have determined that it is unnecessary to provide that certain oral agreements must have been made over a recorded telephone line and later confirmed in writing.[8] Accordingly, references to using recorded telephone lines to make oral agreements and to confirming such agreements in writing, as most notably found in Sections 5, 6, 7, and 14 of the OCC/ICC/CME Agreement, are not included in the OCC/ICC Agreement.

As is the case in their current program, OCC and ICC do not impose super margins with respect to cross-margin accounts in the restructured program. As the clearing organizations have stated in the past, neither believes that super margins are essential to a cross-margining program. Therefore, references to super margins, as found in Section 5 of the OCC/ICC/CME Agreement, are not included in the OCC/ICC Agreement.[9]

In the OCC/ICC Agreement, unlike in the OCC/ICC/CME Agreement, ICC does not appoint OCC as its agent for receiving and for approving or disapproving settlement instructions issued pursuant to Section 7, "Daily Settlement Procedures."[10] Settlement times and procedures in Section 7 are those of OCC and ICC. Because the OCC/ICC cross-margin program is a bilateral program, OCC and ICC are always carrying clearing organizations. Therefore, there are no provisions in the OCC/ICC Agreement relating to the effects of actions taken by a clearing organization that is not a carrying clearing organization. In order to conform the terms of Section 7 to the practice in the OCC/CME program, paragraph (i) provides that settlements with respect to proprietary and non-proprietary cross-margin accounts are paid once a clearing member has completed its settlement obligations with respect to all other accounts with the clearing organizations.

Pursuant to Section 8 of the OCC/ICC Agreement, which describes the liquidation procedures for the OCC/ICC cross-margining program, OCC and ICC are each entitled to retain (bear) 50% of any surplus (shortfall) resulting from the liquidation of the cross-margin accounts of a defaulting clearing member. OCC and ICC have determined that it is unnecessary to provide in the OCC/ICC Agreement that each is required to adhere to its respective rules governing assessments against the clearing fund deposits of other clearing members in the event of a default of a cross-margining clearing member or its affiliated clearing member. OCC and ICC also have determined that it is unnecessary to require an annual evaluation of the above-described surplus/loss sharing formulas. Accordingly, the provisions for sharing any surplus (shortfall) parallel those that are in effect in the existing OCC/CME cross-margining program.

The indemnification provisions, which are set forth in Section 10 of the OCC/ICC Agreement, and the termination provisions, which are set forth in Section 12, were drafted to accommodate the bilateral OCC/ICC cross-margining program. Section 12 does not contain a provision prohibiting the termination without cause of the cross-margining program until one year after the effective date because OCC and ICC do not believe that such a provision is necessary.

OCC and ICC have determined that it is unnecessary to advise one another of the total size of and aggregate contributions to their respective clearing funds and that it is unnecessary to advise one another if a cross-margin clearing bank is experiencing operational difficulties.[11] Accordingly, Section 14 of the OCC/ICC Agreement, "Information Sharing," does not contain provisions requiring the exchange of such information.[12]

Pursuant to Section 16 of the OCC/ICC Agreement, which sets forth the arbitration procedures, controversies and claims arising out of the OCC/ICC Agreement will be settled by arbitration before a three member panel of the American Arbitration Association. OCC and ICC no longer appoint arbitrators.

The list of contracts eligible for inclusion in the OCC/ICC cross-margining program is set forth as Exhibit A to the OCC/ICC Agreement. Eligible OCC-cleared contracts include put and call options on (1) S&P 100 Index, (2) S&P 500 Index, (3) Major Market Index, (4) New York Stock Exchange Composite Index, (5) Financial News Composite Index, (6) Institutional Index, and (7) foreign currencies. Eligible ICC-cleared contracts include (1) New York Stock Exchange Composite Index futures, (2) put and call options on the New York Stock Exchange Composite Index futures, and (3) foreign currency futures.

The various forms of agreements used in connection with the OCC/ICC cross-margining program are substantially identical to those used in the OCC/ICC/CME cross-margining program except that the agreements for the OCC/ICC cross-margining program accommodate only a bilateral cross-margining program.

Because the rule changes restructure the OCC/ICC cross-margining program so that it parallels the cross-margining programs in which OCC and ICC participate, specific references to the OCC/ICC cross-margining program are

[5] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27296 (September 28, 1989), 54 FR 41195 [File No. SR-OCC-89-01] (order approving the OCC/CME proprietary cross-margining program) and 29991 (November 26, 1991), 56 FR 61458 [File No. SR-OCC-90-1] (order approving the OCC/CME non-proprietary, market professional cross-margining program).

[6] Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 [File Nos. SR-OCC-92-28 and SR-ICC-92-05] (order approving the OCC/ICC/CME cross-margining program). The OCC/ICC/CME Agreement provides for the establishment of a trilateral and two bilateral cross-margining programs.

[7] No settlements are conducted on Good Friday in the current OCC/ICC cross-margining program. Therefore, it is not a business day for purposes of the current OCC/ICC cross-margining program.

[8] Such a requirement is not a part of the current OCC/ICC cross-margining program.

[9] Previously, the Commission approved the proprietary cross-margining program between OCC and the Comex Clearing Association, Inc. which did not impose super margins. Securities Exchange Act Release No. 31414 (November 6, 1992), 57 FR 53943 (File No. SR-OCC-92-22).

[10] ICC, however, will appoint OCC as its agent for such purposes in a letter agreement between the parties.

[11] In other cross-margining programs, the Commission has emphasized the importance of information sharing between the participant clearing corporations, but because ICC is a wholly-owned subsidiary of OCC, the Commission believes there is no need for specific information sharing procedures between the parties. Should the relationship between ICC and OCC change, the Commission may wish to revisit the issue of information sharing between the ICC and OCC.

[12] OCC and ICC do not exchange such information in the current OCC/ICC cross-margining program.

no longer required to be included in the OCC's and ICC's rules. Accordingly, the provisions of OCC's By-Laws, Article VI, Section 23, "Cross-Margining with ICC," and the provisions of ICC Rule 513, "Bilateral Cross-Margining with OCC," both of which describes the current structure, are deleted. OCC's By-Laws, Article VI, Section number 23 and ICC Rule number 513 are reserved for future use. Conforming amendments also are made to other OCC By-Laws and Rules and to other ICC Rules and to the ICC Margin Resolution.

Thus, under OCC's By-Laws and Rules, ICC is considered a carrying commodity clearing organization, and the OCC/ICC cross-margining program is governed by the terms of OCC's By-Laws, Article VI, Section 24, "Cross-Margining with Participating CCOs" and the appropriate provisions of OCC's Rules. Under ICC's Rules, OCC is considered a carrying clearing organization, and the OCC/ICC cross-margining program is governed by ICC's Rules 514 through 520.

II. Discussion

The Commission believes that the proposals are consistent with the purposes and requirements of Section 17A of the Act.[13] Sections 17A(b)(3) (A) and (F) require that a clearing agency be structured and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities in its custody and control of for which it is responsible.[14] Furthermore, in Section 17A(a)(2)(A)(ii) Congress called for the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures contracts, and options on futures and commodities.[15] For the reasons set forth below, the Commission finds that the OCC/ICC proposal is consistent with these statutory directives.[16]

Since it granted approval of the first cross-margining program in 1988,[17] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act. As the Commission has previously noted, cross-margining programs, among other things, tend to enhance clearing member and systemic liquidity both in times of normal trading and in times of stress.[18] Under routine trading, clearing members who participate in a cross-margining program have lower initial margin requirements, and reduced margin requirements help clearing member manage their cash flow by increasing cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of clearing members and thus would enhance liquidity in the market as a whole.

In addition, the Commission consistently has indicated that by more accurately reflecting a clearing member's portfolio risk, cross-margining arrangements enhance clearing member liquidity and thereby reduce the risk that clearing members will become insolvent in times of extreme market stress.[19] Enhancing clearing member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

The Commission believes that the interrelationships between the financial markets and the need for a system of margining which reflects the true risk of combined portfolios justifies cross-margining of futures and options positions. OCC and ICC have restructured their cross-margining program in order to make the OCC/ICC cross-margining program substantially similar to other cross-margining programs previously approved by the Commission.[20] In conjunction with OCC's usual safeguards which are employed to protect against the risks of clearing member insolvency,[21] the Commission believes that the restructured OCC/ICC cross-margining program is fully consistent with the statutory requirements of Section 17A of the Act. Therefore, the Commission is approving OCC's and ICC's proposed rule change.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's and ICC's proposals are consistent with Section 17A of the Act.[22]

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[23] that the proposed rule changes (File Nos. SR-OCC-93-07 and SR-ICC-93-04) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31164 Filed 12-21-93; 8:45 am]

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[13] 15 U.S.C. 78q-1 (1988).

[14] 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

[15] 15 U.S.C. 78q-1(a)(2)(A)(ii) (1990). Congress added this section to Section 17A of the Act when it enacted the Market Reform Act of 1990. Pub. L. No. 101-432, 104 Stat. 963 (1990). For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, *Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures* (March 5, 1993).

[16] For a general discussion of the benefits of cross-margining refer to Securities Exchange Act Release Nos. 27296 and 29991, *supra* note 5.

[17] Securities Exchange Act Release No. 26153, *supra* note 4.

[18] *E.g.*, Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation proprietary cross-margining program); 29991 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary, market professional cross-margining program); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC//Board of Trade Clearing Corporation proprietary cross-margining program) 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME proprietary cross-margining).

[19] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross-margining arrangements, would "help ensure that a securities market failure does not become a credit market failure." *The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs*, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[20] *Supra* notes 5, 6, 9, and 17.

[21] Among other things, these safeguards include required clearing fund contributions, the Theoretical Intermarket Margining System, the Concentration Monitoring System, and the Risk Management System.

[22] 15 U.S.C. 78q-1 (1988).

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33340; File No. SR-PSE-93-26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Size of Orders Eligible for Entry in Auto-Ex System

December 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1993, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules relating to the operation of its Automatic Execution System ("Auto-Ex") in equity options. Specifically, proposed Commentary .01 to Exchange Rule 6.87 will permit the PSE to increase, in one or more classes of multiply-traded equity options, the size of orders eligible for entry into Auto-Ex to the extent necessary to match the size of orders eligible for entry into any other exchanges' automated execution system.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange states that the purpose of the proposed rule change is to make the Exchange's Auto-Ex system more competitive in its application to multiply-traded equity options in anticipation of the expansion of multiple trading. To accomplish this, the proposed rule change would modify Exchange rules governing the operation of Auto-Ex with respect to multiply-traded equity options. Proposed Commentary .01 to Rule 6.87 would permit the Exchange's Options Floor Trading Committee ("OFTC") to expand the size eligibility for Auto-Ex orders in multiply-traded equity options to the extent necessary to match other options markets.

Specifically, the proposed commentary would authorize the OFTC to increase the size of Auto-Ex eligible orders in one or more classes of multiply-traded equity options to the extent that other options exchanges permit such larger-size orders in multiply-traded equity options of the same class or classes to be entered into their own automated execution systems. The proposed rule change is intended to permit the Exchange to compete for order flow in multiply-traded equity options on an equal basis with other exchanges.

If the Exchange intends to increase the Auto-Ex order size eligibility pursuant to the proposed rule, the Exchange will notify the Commission pursuant to section 19(b)(3)(A) of the Act. Such notification will include representations that the Auto-Ex system has the capacity to accommodate such an increase and will also include representations regarding the market-making capacity of market makers participating in Auto-Ex. However, if the Exchange intends to increase the Auto-Ex order size eligibility and such increase is initiated by the Exchange and not initiated in response to matching an increase effectuated by another market, the Exchange will seek authorization for such an increase pursuant to section 19(b)(1) of the Act.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31165 Filed 12-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33347; File No. SR-PSE-93-21]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to the Adoption of Charges for the Late Filing of SIPC Reports

December 15, 1993.

I. Introduction

On August 16, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4

[1] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

thereunder,[2] a proposed rule change to adopt charges for the late filing of SIPC reports. On December 1, 1993, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32889 (September 14, 1993), 58 FR 48920 (September 20, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The PSE is amending PSE Rule 2.12(b) to establish a graduated charge schedule for the late filing with the Exchange of SIPC–6 and SIPC–7 reports by member organizations for which the Exchange is the Designated Examining Authority ("DEA").[4] Currently, PSE Rule 2.12(a) requires every member organization which is not a member of another exchange or registered national securities association which is the DEA for that member organization to file with the Exchange answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Exchange. Currently, PSE Rule 2.12(b) imposes charges on member organizations for the late filing of Reports of Financial Condition (X–17A–5) with the Exchange.

The PSE is amending Rule 2.12(b) to require each member organization to file SIPC–6 and SIPC–7 forms with the Exchange, and is adopting the following schedule of charges for the late filing of such SIPC forms: $200 if the report is filed 1–30 calendar days after SIPC's prescribed deadline; $400 if 31–60 calendar days; and $800 if 61–90 calendar days. In addition, the PSE is amending Rule 2.12(b) to adopt the following four qualifications: First, a member organization that files its Form SIPC–6 and SIPC–7 more than 90 days late, but before its receipt of SIPC's final late notice, would be subject to a late charge of $800.[5] Second, if a member organization files its SIPC–6 and SIPC–7 after its receipt of SIPC's final late notice, but within five business days after its receipt of SIPC's final late notice, such member organization would be subject to a fine pursuant to PSE Rule 10.13.[6] Third, if a member organization fails to file the SIPC Forms within five business days after its receipt of SIPC's final late notice, such member organization would be subject to the full panoply of formal disciplinary actions pursuant to PSE Rule 10.3 and 10.4.[7] Finally, a member organization's repeated or aggravated failure to file a Form SIPC–6 and/or SIPC–7 will be referred to the Ethics and Business Conduct Committee[8] for appropriate disciplinary action.[9]

The Exchange states that the ability to charge member organizations for the late filing of SIPC forms is necessary to defray the administrative costs relating to late SPIC reporting and to encourage applicable member organizations to comply with the requirements of the Securities Investor Protection Act of 1970[10] in a timely manner.

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (1), (4), (5) and (6) of the Act.[11]

The Commission believes that the new charges are consistent with section 6(b)(4) of the Act, which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable charges among its members. The Commission believes that the new charges are reasonable in relation to the late filing of SIPC forms because of the Exchange's interest in receiving SIPC forms in a timely manner.

The Commission believes that the Exchange's ability to impose charges and disciplinary action for the late filing of SIPC forms is consistent with section 6(b)(1) of the Act, which requires, in part, that the Exchange have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the Exchange. Specifically, the ability to impose charges and disciplinary action on member organizations for the late filing of SIPC forms is consistent with section 6(b)(1) in that it provides an appropriate deterrent and sanction for the late filing of SIPC–6 and SIPC–7 forms. In addition, new Rule 2.12(b)(2) provides fair and reasonable procedures for discouraging the late filing of SIPC forms in that it defines the scope of the charges, provides notice to members,[12]

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[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Commission, dated November 23, 1993. Amendment No. 1 clarified certain language in Rule 2.12(b)(2).

[4] The Exchange stated that "filing," for the purpose of this Rule, is considered satisfied when the member organization submits to the Exchange both the SIPC forms and the appropriate amount of assessment that is due to the Securities Investor Protection Corporation ("SIPC"). The Exchange, in turn, remits the assessment and forms to the SIPC. See 15 U.S.C. 78hhh (Examining Authority Functions); see also 15 U.S.C. 78iii(a) (Functions of Self-Regulatory Organizations—Collection Agent).

[5] This qualification is codified in Commentary .01 to Rule 2.12(b)(2).

[6] On June 24, 1993, the Commission approved a proposed rule change by the PSE that included the late filing of SIPC reports filed no later than five business days after the receipt of SIPC's final late notice in the Exchange's Minor Rule Plan. See Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993) (order approving File No. SR–PSE–92–15). PSE Rule 10.13 contains the Exchange's Minor Rule Plan. Rule 10.13 states, in part, that in lieu of initiating a formal disciplinary action or proceeding, the Exchange may impose a fine not to exceed $5,000 on any member, member organization or person associated with a member or member organization, for any violation of an Exchange Rule that has been determined to be minor in nature.

[7] Pursuant to PSE Rule 10.9(a), disciplinary action includes expulsion, suspension, limitation of activities, functions and operations, suspension or bar from association with a member, or member organization, fine, censure, or any other fitting sanction.

PSE Rule 10.3 and 10.4 contain the Exchange's formal disciplinary procedures. Rule 10.3 provides, in part, that whenever it appears to the Board of Governors ("Board"), the Executive Committee or any standing committee designated by the Board to review disciplinary proceedings, that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange, and that further proceedings are warranted, the Exchange shall initiate a disciplinary action by preparing a statement of charges against the person or organization alleged to have committed a violation, specifying the acts in which the person or organization is charged to have engaged in or omitted. In addition, Rule 10.3 states that the person or organization shall have 15 business days after service of the charges to file a written answer thereto. Rule 10.4 provides, in part, that upon filing an answer pursuant to Rule 10.3, a person or organization may request a hearing before an Exchange Hearing Panel appointed by the Exchange Hearing Committee. In addition, Rule 10.4 provides that parties will be given at least 15 calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

[8] The members of the Ethics and Business Conduct Committee are appointed by the Chief Executive Officer and Vice chairman of the Board, subject to approval of the Board of Governors. The members of the Board of Governors shall be *ex officio* members of the Committee. See Article IV, Section 4, Constitution of the PSE.

[9] This qualification is codified in Commentary .02 to Rule 2.12(b)(2).

[10] 15 U.S.C. §§ 78aaa–78lll (1988).

[11] 15 U.S.C. 78f(b) (1), (4), (5) and (6) (1988).

[12] The Exchange stated that following Commission approval of the proposal, it would publish a Rule Adoption Notice advising all member organizations that they are subject to charges for the late filing of SIPC forms. In addition, the Exchange intends to remit a yearly notice to member organizations that provides notice that the

Continued

provides member organizations with the ability to contest any charges,[13] and is tailored to serve a legitimate Exchange regulatory interest.

The Commission believes that the Exchange's ability to bring disciplinary action pursuant to Rules 10.3, 10.4 and 10.13 is consistent with section 6(b)(6) of the Act, which requires that the rules of an exchange ensure that its members will be appropriately disciplined for violations of the Act, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The Exchange's ability to bring disciplinary action pursuant to Rules 10.3 and 10.4 for failure to file within five business days after the member organization receives SIPC's final late notice, and Rule 10.13 if the member organization files after its receipt of SIPC's final late notice (but within five business days after its receipt of SIPC's late notice), should serve to assist the Exchange in fulfilling its obligations under the Securities Investor Protection Act of 1970 ("SIPA"),[14] which among other things, requires the Exchange to act as collection agent for SIPC and collect and remit the assessments payable by all members of SIPC for whom the Exchange is the DEA.[15] Additionally, the Commission believes that the Exchange's ability to refer repeated or aggravated failures to file to the Ethics and Business Conduct Committee is consistent with the section 6(b)(6) requirements in that it would enable the Exchange to seek stiffer sanctions where warranted by the scope and nature of the failure to file.

The Commission also believes that the adoption of Rule 2.12(b)(2) and Commentaries .01 and .02 is consistent with the requirements of section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and protect investors and the public interest. The Commission believes that the Exchange's ability to impose charges and disciplinary action for the late filing of SIPC forms should help ensure that the SIPC receives all member assessments payable to the SIPC in an expedient fashion.

The Commission finds good cause for accelerated approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The PSE's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[16] Amendment No. 1 modifies the proposal to make certain technical and clarifying adjustments to the proposed rule change but leaves its overall structure unchanged.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-93-21 and should be submitted by January 12, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change, including Amendment No. 1 on an accelerated basis, (SR-PSE-03-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-31166 Filed 12-21-93; 8:45 am]

BILLING CODE 8010-01-M

failure to file their SIPC forms within a specified time period will subject them to late charges. Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulation, PSE, and Louis A. Randazzo, Attorney, Commission, on November 15, 1993.

[13] The Exchange stated that any disagreement regarding the SIPC late charges would be brought to PSE staff. Specifically, the matter would be raised initially with the Financial Compliance Department, and if the matter is not resolved at that level, further appeals could be made to increasingly senior staff levels until the matter reached the Chairman of the Exchange. The Chairman, in his or her discretion, may request either the Executive Committee or the Ethics and Business Conduct Committee to conduct an independent review of the claim. The Exchange also stated that as a matter of Exchange policy, the PSE generally defers the collection of charges until a dispute has been resolved. In addition, according to the Exchange, the above mentioned procedure assumes that the member submits or resubmits a copy of a SIPC report while the dispute is pending. However, pursuant to the new Rule, if the Exchange has no record of receiving a member's SIPC report, and the member does not furnish a new SIPC report (or a copy of a report that the member alleges was already submitted in a timely manner) before the member receives SIPC's final late notice, the matter will become subject to committee review and appeal as provided in PSE Rule 10. See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Commission, dated November 22, 1993.

[14] See *supra* note 10.

[15] See Securities Investor Protection Act of 1970, 15 U.S.C. 78iii(a) (1988).

[16] See Securities Exchange Act Release No. 32889 (September 14, 1993), 58 FR 48920 (September 20, 1993) (notice of filing of File No. SR-PSE-93-21).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30-3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 16, 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:

Center Point Properties Corporation
Common Stock, $.001 Par Value (File No. 7-11727)

AM International, Inc.
Common Stock, $.01 Par Value (File No. 7-11728)

PacTel Corporation
Common Stock, $.01 Par Value (File No. 7-11729)

Maxus Energy Corp.
$2.50 Cum. Pfd. Stock (File No. 7-11730)

Camco International, Inc.
Common Stock, $.01 Par Value (File No. 7-11731)

UTI Energy Corporation
Common Stock, $.01 Par Value (File No. 7-11732)

Trans World Airlines, Inc.
When Issued, Common Stock, $.01 Par Value (File No. 7-11733)

Continental Homes Holding Corp.
Common Stock, $.01 Par Value (File No. 7-11734)

G&L Realty Corporation
Common Stock, $.01 Par Value (File No. 7-11735)

Grupo Financiero Serfin S.A. de C.V.
American Depositary Shares, Each representing 4 Series L Shares, No Par Value (File No. 7-11736)

Irvine Apartment Communities, Inc.
Common Stock, $.001 Par Value (File No. 7-11737)

Banco Frances del Rio de la Plata S.A.
American Depositary Shares, each representing three Ordinary Shares, $1.00 Par Value (File No. 7-11738)

Marcus Corporation

Common Stock, $.01 Par Value (File No. 7–11739)
Tanger Factory Outlet Centers, Inc.
Depositary Shares (File No. 7–11740)
Eastman Chemical Company
When Issued, Common Stock, $.01 Par Value (File No. 7–11741)

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 10, 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. 93–31208 Filed 12–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—19956; 811–146]

Niagara Share Corp.; Application for Deregistration

December 15, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Niagara Share Corporation.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on May 20, 1993, and amended on August 20, 1993 and 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 10, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the 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 5th Street, NW., Washington, DC 20549. Applicant, 817 Washington Street, Buffalo, New York 14203.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is a diversified closed-end management investment company. On or about August 15, 1941, applicant registered under the Act. Because applicant's outstanding securities predate application of the Securities Act of 1933, such securities are not registered under that Act.

2. On May 11, 1992, applicant's board of directors (the "Directors"), adopted an Agreement and Plan of Reorganization and Liquidation (the "Plan") between applicant and Scudder Investment Trust (File No. 811–43), a Massachusetts business trust, on behalf of its Growth and Income Fund ("G&I"). The Plan provides for the acquisition by G&I of substantially all the assets of applicant in exchange for shares of G&I and the assumption by G&I of $1.3 million of applicant's liabilities.

3. In approving the Plan, the Directors considered various factors, including (a) the relative investment performance and past growth in assets of applicant and G&I and other investment companies and advisers that had submitted proposals to applicant ("Bidders"); (b) the compatibility of the objectives and investment policies of applicant and G&I and other Bidders; (c) the depth and quality of management of G&I's investment adviser and of the other Bidders; (d) whether any savings in liquidation expenses could be achieved by combining applicant and G&I; (e) the tax-free nature of the reorganization; and (f) other alternatives to the reorganization. In the Directors' view, the reorganization would benefit applicant's shareholders because they would have a continual participation in the equity markets through investment in G&I, and the expense ratio of G&I after reorganization would be lower than the expense ratio of applicant alone.

4. On or about June 18, 1992, a prospectus and proxy materials were mailed to applicant's shareholders. Applicant's shareholders approved the Plan at a special meeting held on July 23, 1992.

5. As of July 27, 1992 (the "Closing Date"), applicant had 14,100,897 shares of common stock outstanding with an aggregate net asset value of $209,460,485, and per share net asset value of $14.85. On the Closing Date, applicant liquidated and distributed G&I shares to its shareholders in exchange for their shares of applicant on the basis of net asset value.

6. In accordance with the Plan, applicant retained cash and cash equivalents (the "Expense Reserve") in an amount estimated to be sufficient to discharge in full all of its liabilities not assumed by G&I and the expense of its liquidation, dissolution, and deregistration.

7. Applicant also is a party to a lease agreement for office space previously used by applicant in the conduct of its business as an investment company. In addition, applicant has retained tangible assets consisting of furniture, equipment, and leasehold improvements. Subsequent to the Closing Date, applicant entered into a sub-lease agreement with an unaffiliated third party for the office space and applicant's remaining furniture and equipment. All amounts received by applicant, such as rental income or proceeds from equipment sales, if any, will be added to the Expense Reserve.

8. Applicant's officers are authorized to withdraw and disburse funds from the Expense Reserve in connection with the discharge of applicant's liabilities and its remaining expenses. As of October 31, 1993, the value of the assets comprising the Expense Reserve was approximately $255,000. Any amounts in the Expense Reserve remaining unexpended after all liabilities and expenses have been paid will be liquidated and distributed *pro rata* to shareholders of record on the Closing Date, unless the Directors determine that the amount remaining is too small to warrant the expense of distribution. In the latter case, the amount remaining shall be distributed as the Directors determine in accordance with the relevant provisions of Maryland law.

9. As of the date of the application, applicant had incurred approximately $2,560,000 in expenses in connection with the transaction, consisting primarily of pension, medical, and other employee benefit expenses; legal and accounting fees; and expenses relating to the proxy solicitation. Each of applicant and G&I was responsible for its own expenses incurred in connection with the Plan.

10. As of October 31, 1993, applicant had outstanding and anticipated liabilities of approximately $130,000, consisting of taxes, legal, accounting, administrative, and other costs in connection with its liquidation, dissolution, and deregistration, including the termination of its tax-qualified retirement plans.

11. As of the date of the application, applicant had no shareholders. Applicant is not a party to any litigation or administrative proceedings. 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.

12. On January 22, 1993, applicant filed Articles of Dissolution with the Maryland State Department of Assessments and Taxation. Pursuant to section 3–408 of the Maryland General Corporation Law, applicant continues to exist after dissolution for the purpose of enabling applicant gradually to settle and close its business, to dispose of and convey its property, to discharge its liabilities, and to distribute to its shareholders any remaining assets, but not for the purpose of continuing the business for which applicant was organized.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31211 Filed 12–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act, Rel. No. 19958; 811–4759]

Olympus Investment Trust; Application for Deregistration

December 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Olympus Investment Trust.

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 September 30, 1993 and amended on December 16, 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, 1925 Century Park East, #1900, Los Angeles, CA 90067.

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 Massachusetts business trust. On July 21, 1986, applicant 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 October 31, 1986, and applicant commenced its initial public offering immediately thereafter.

2. Applicant issued shares in six series: Olympus Growth Fund; Olympus National Tax-Free Fund; Olympus Equity Income Fund; Olympus Stock Fund; Olympus Investment Quality Bond Fund; and Olympus California Intermediate Tax-Free Fund.

3. On April 2, 1993, applicant entered into an asset purchase agreement (the "Agreement ") with Mutual Fund Group for the purchase of applicant's assets. The Agreement provided that: (a) The assets of Olympus Growth Fund would be exchanged for shares of the Vista Capital Growth Fund series of Mutual Fund Group; (b) the assets of Olympus National Tax-Free Fund would be exchanged for shares of the Vista Tax-Free Income Fund series of Mutual Fund Group; (c) the assets of Olympus Equity Income Fund would be exchanged for shares of the Vista Equity Income Fund series of Mutual Fund Group; (d) the assets of Olympus Stock Fund would be exchanged for shares of the Vista Growth and Income Fund series of Mutual Fund Group; (e) the assets of Olympus Investment Quality Bond Fund would be exchanged for shares of the Vista U.S. Government Bond Fund series of Mutual Fund Group; and (f) the assets of Olympus California Intermediate Tax-Free Fund would be exchanged for shares of the Vista California Intermediate Tax-Free Fund series of Mutual Fund Group.

4. On April 2, 1993, applicant's board of trustees approved the reorganization. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on May 4, 1993, and were mailed to shareholders on June 8, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at meetings held on July 1, 1993 for the Olympus National Tax-Free Fund, July 8, 1993 for the Olympus California Intermediate Tax-Free Fund, and July 15, 1993 for the other four series of applicant.

5. On July 16, 1993, the reorganization was consummated. Applicant transferred all assets and liabilities of its series to the corresponding Mutual Fund Group series. The exchanges were made at net asset value. 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.

6. All expenses incurred in connection with applicant's liquidation and reorganization were borne by Olympus Asset Management, applicant's investment adviser, or The Chase Manhattan Bank, Mutual Fund Group's investment adviser. Such expenses, totalling $183,729, included preparation of proxy materials, printing expenses, legal, consulting, accounting, and other fees.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant it 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. 93-31210 Filed 12-21-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Small Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; Part 21 Gliders (Sailplanes) and Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1993. The AC's listed below relate to part 21 of the Federal Aviation Regulations (FAR) regarding Gliders (Sailplanes), part 23 of the FAR, and/or part 3 of the Civil Air Regulations (CAR). We issued these AC's to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Background

We developed these AC's to update existing policy information for gliders (sailplanes) and small airplane certification programs.

Comments

We gave interested parties the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, General Services Section, M-443.2, Washington, DC 20590.

ADVISORY CIRCULAR'S PUBLISHED

AC number	Date	Title
23.1521-2.	1/21/93	Type Certification of Oxygenates and Oxygenated Gasoline Fuels in Part 23 Airplanes with Reciprocating Engines.
23-12	1/27/93	Structural Substantiation of Part 23 Airplane Modifications Involving Increased Engine Power.
21.17-2A	2/10/93	Type Certification—Fixed-Wing Gliders (Sailplanes).
23-13	4/15/93	Fatigue and Fail-Safe Evaluation of Flight Structure and Pressurized Cabin for Part 23 Airplanes.
23.1311-1.	6/11/93	Installation of Electronic Display Instrument Systems in Part 23 Airplanes.
23-8A, Change 1.	8/30/93	Flight Test Guide for Certification of Part 23 Airplanes.
23-14	9/30/93	Type Certification Basis for Conversion from Reciprocating Engine to Turbine Engine-Powered Part 23 Airplanes.
TP101-41.	(Notice of Availability Published in FEDERAL REGISTER on 6/16/93.	Sportplane Design Standards for Acceptance Under Primary Category Rule.

Issued in Kansas City, Missouri, December 7, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-31248 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

Draft Revisions to Advisory Circular 27-1, Certification of Normal Category Rotorcraft, and Draft Revisions to Advisory Circular 29-2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of availability of draft advisory circular (AC) revisions; request for comments.

SUMMARY: This notice announces the availability of and request for comments on draft revisions to AC 27-1, Change 3, Certification of Normal Category Rotorcraft, and draft revisions to AC 29-2A, Change 2, Certification of Transport Category Rotorcraft. The revisions contain guidance material to bring the AC's up to date with the most recent amendments to 14 CFR parts 27 and 29.

DATES: Comments must identify draft revisions to AC 27-1, Change 3, or draft revisions to AC 29-2A, Change 2, and must be received by January 9, 1994.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), Attention: Ms. Kim Smith, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Jones, Rotorcraft Standards Staff, AWS-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0112; telephone (817) 624-5112, facsimile (817) 740-3376. It is anticipated that this office will be relocating during December 1993. After the relocation, Ms. Jones can be contacted at (817) 222-5112.

SUPPLEMENTARY INFORMATION: Copies of the draft revisions have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not receiving these draft revisions may obtain a copy by contacting the person named under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Interested persons are invited to submit comments on these draft revisions. Currently, comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, building 3B, room 143N, 4400 Blue Mound Road, Fort Worth, Texas. It is

anticipated that this office will be relocating to the new DOT/FAA Southwest Regional Headquarters Building during December 1993. After the relocation, the comments may be inspected at the office of the Rotorcraft Standards Staff, FAA, 4th floor, 2601 Meacham Boulevard, Forth Worth, Texas.

All comments received will be considered, then discussed, as needed, during a public meeting in Anaheim, California, on February 2, 1994. Although the public meeting is primarily scheduled for other rotorcraft topics, time will be set aside to discuss any appropriate issues relating to the draft AC revisions.

Issued in Fort Worth, Texas, on November 18, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93-31251 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-93-53]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 6, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 14, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27410.
Petitioner: Mr. Norberto Alfredo Sotelo Ossa.
Sections of the FAR Affected: 14 CFR 129.14.
Description of Relief Sought:
Disposition: To permit Argentinean air taxi operators who operate N registered aircraft to continue to operate until they can obtain a maintenance program approved by the Federal Aviation Administration.

Docket No.: 27448.
Petitioner: TurboCombuster Technology.
Sections of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought:
Disposition: To permit the petitioner to place controlled copies of its inspection procedures manual in designated work stations, rather than providing the manual to supervisory and inspection personnel.

Docket No.: 27513.
Petitioner: Mr. Patrick J. Healy.
Sections of the FAR Affected: 14 CFR 91.805.
Description of Relief Sought: To allow Project Orbis to conduct specific DC-8 flight operations in the United States in support of humanitarian programs of eye surgery skills exchange on board the aircraft and the transit of the aircraft to its requirement location.

Docket No.: 27525.
Petitioner: Mr. William D. Kiper.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought:
Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27533.
Petitioner: Ms. Louise B. Cobbs.
Sections of the FAR Affected: 14 CFR 129.18(a), 129.14, and 91.203.
Description of Relief Sought: To allow Lineas Aereas Costariquenses, S.A. (Lacsa) to operate its A320 aircraft, serial number 420, in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until January 31, 1994.

Docket No.: 27535.
Petitioner: Mr. Stanley J. Green.
Sections of the FAR Affected: 14 CFR 129.18.
Description of Relief Sought: To allow Aeroflot Russian International Airlines to operate its aircraft in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until June 30, 1994.

Dispositions of Petitions

Docket No.: 27469.
Petitioner: L.A.B. Flying Service.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To permit properly trained pilots employed by the petitioner to convert the cabins of its aircraft operated under FAR part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose. *Grant, December 6, 1993, Exemption No. 5804.*

Docket No.: 27508.
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To extend the compliance date requiring installation of airborne windshear detection systems for seven of the petitioner's McDonnell Douglas DC-9-10 aircraft through January 31, 1994. *Denial, September 30, 1993, Exemption No. 5803.*

[FR Doc. 93-31253 Filed 12-21-93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 21, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East 8820 Beck Road, Belleville, Michigan, 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Cynthia D. Rich, Director of the Department of Port Control at the following address: Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44135.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Control under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cleveland Hopkins International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 2, 1993 the FAA determined that the application to use the revenue from a PFC submitted by Department of Port Control was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 2, 1994.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: November 1, 1992.

Estimated charge expiration date: November 1, 1995.

Total approved net PFC revenue: $34,000,000.

Brief description of proposed project: Land Acquisition/Resident Relocation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Department of Port Control, Cleveland Hopkins International Airport.

Issued in Des Plaines, Illinois, on December 15, 1993.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–31252 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a passenger facility charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 21, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Strauss, Deputy Transportation Commissioner at the following address: State of Connecticut Department of Transportation, Bureau of Aviation and Ports, Brainard Airport, 251 Maxim Road, Hartford, Connecticut 06114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhode Island Airport Corporation under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a passenger facility charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 25, 1993, the FAA determined that the application to use the revenue from a passenger facility charge submitted by the State of Connecticut Department of Transportation was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than February 22, 1994.

The following is a brief overview of the application.

Level of PFC: $3.00.

Charge effective date: October 1, 1993.

Estimated charge expiration date: September 1, 1995.

Total net PFC revenue: $12,030,000.

Brief description of proposed project: New Aircraft Ramp, Terminal B Roadway System, Peak Mountain Lights, Design of Glycol Collection System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air commercial taxi operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person, at the State of Connecticut Department of Transportation, Bureau of Aviation and Ports, Brainard Airport, 251 Maxim Road, Hartford, Connecticut 06114.

Issued in Burlington, Massachusetts on December 10, 1993.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93–31247 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 1993, there were nine applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: Gulfport-Biloxi Regional Airport Authority, Gulfport, Mississippi.

Application Number: 93–02–C–00–GPT.

Application Type: Impose and use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $607,817.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: January 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Use PFC Revenue:

Airfield guidance and signage,
Americans with Disabilities Act terminal improvements,
Elevator terminal airside,
West general aviation access road, fencing, and taxiway "F" rehabilitation,
Acquire land and easements to control obstructions,
Update terminal area study,
Overlay, light, and mark west taxiway "F",
West ramp repair joints, slabs, and install lighting,
Acquire land and easements to control obstructions.

Decision Date: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: New Hanover County Airport Authority, Wilmington, North Carolina.

Application Number: 93–01–C–00–ILM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,505,000.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: August 1, 1997.

Class of Air Carriers not Required to Collect PFC's

On-demand air taxi/commercial operators filing FAA Form 1800–31 enplaning less than 150 passengers per year at New Hanover International Airport (ILM).

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at ILM.

Brief Description of Projects Approved for Collection and Use

Local share of Airport Improvement Program (AIP) projects 3–37–0084–11, –12, –13, and –14:

—Reconstruct runway 17/35, phase I,
—Reconstruct runway 17/35, phase II,
—Construct aircraft rescue and firefighting facility (ARFF), phase I,
—Construct ARFF facility, phase II, including Federal inspection services facility relocation, high intensity runway lights on runway 6/24, and apron joint sealing,
Study to define land/easement acquisition needs,
Land acquisition—phase I,
Taxiway B extension/widening.

Brief Description of Projects Approved to Impose Only

Medium intensity taxiway lighting rehabilitation,
Ramp sweeper,
Visual glide slope indicator—runway 35,
Reconstruct/widen taxiways A and H, construct taxiway connectors for runway 17/35,
Construct taxiway connectors to runway 6/24,
Install fencing and security road.

Decision Date: November 2, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Bauer, Atlanta Airports District Office, (404) 994–5306.

Public Agency: New Orleans Airport Board (NOAB), New Orleans, Louisiana.

Application Number: 93–02–U–00–MSY.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $77,800,372.

Earliest Permissible Charge Effective Date: June 1, 1993.

Estimated Charge Expiration Date: April 1, 2000.

Class of Air Carriers Not Required to Collect PFC's

Previously approved in the March 19, 1993, decision.

Brief Description of Projects Approved for Use:

East/west taxiway visual flight rules runway,
North general aviation access road,
East air cargo access roads.

Brief Description of Project Withdrawn:

East/west taxiway land acquisition.

Determination: This project was withdrawn from consideration under this application at the request of the NOAB, by letter dated November 1, 1993.

Decision Date: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Shreveport Airport Authority, Shreveport, Louisiana.

Application Number: 93–01–I–00–SHV.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $33,050,278.

Earliest Estimated Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: February 1, 2019.

Class of Air Carriers Not Required to Collect PFC's:

Nonscheduled Part 135 air taxi operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Shreveport Regional Airport.

Brief Description of Project Approved For Collection and Use

Terminal reconstruction.

Decision Date: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Beaufort County Council, Hilton Head, South Carolina.

Application Number: 93–01–C–00–49J.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,542,300.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: March 1, 1999.

Class of Air Carriers Not Required to Collect PFC's:

Part 135 air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Hilton Head Island Airport's total annual enplanements.

Brief Description of Projects Approved For Collection and Use

Terminal reconstruction,
Apron/stub taxiway,
Access road,
Parallel taxiway.

Decision Date: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: James Castleberry, Atlanta Airports District Office, (404) 994–5306.

Public Agency: City of North Bend, North Bend, Oregon.

Application Number: 93–01–C–00–OTH.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $182,044.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: January 1, 1998.

Class of Air Carriers Not Required to Collect PFC's:

Nonscheduled air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

Brief Description of Project Approved For Collection and Use

South apron, taxiway lighting, guidance signs, and precision approach path indicator construction,
Master plan update,
Taxiway directional signs,
Obstruction removal.

Brief Description of Project Approved For Impose Only

Airport rescue and firefighting truck.

Decision Date: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (206) 227–2654.

Public Agency: Springfield Airport Authority, Springfield, Illinois.

Application Number: 93–03–I–00–SPI.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,542,300.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: March 1, 1999.

Class of Air Carriers Not Required to Collect PFC'S:

On-demand air taxi operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Capital Airport.

Brief Description of Projects Approved for Use

Land acquisition-noise, parcels 9–4–EE, 9–4–FF, 9–4–HH, 9–4–II, 9–4JJ, and 17–3–A,
Land acquisition—parcels 7–1–B and 8–4–A,
Land acquisition—parcels 4–2–A, 4–3–A, 9–1–MM, 9–2–B, 9–4–I, 9–4–J, 9–4–P, 9–4–O, 9–4–MM, and 9–4–PP,
Land acquisition—parcels 16–4–A, 16–4–B1, 16–4–B2, 16–C, and 16–4–D,
Land acquisition—parcels 16–2–B, 16–4–E, 16–4–F, 16–4–G, 16–4–H, 16–4–I, and 16–4–J,
Rehabilitate runway 4 overrun,
Rehabilitate entrance road,
Rehabilitate runways 4/22 and 18/36,
Rehabilitate runway 13/31,
Taxiway from runway 18 to runway 13,
Stabilize shoulders on runway 4/22,
Widen taxiway A,
Parallel taxiway for runway 22,
Parallel taxiway for runway 31,
Exhibit A,
Hush house and sitework,
Update master plan,
Install Instrument Landing System on runway 31,
Snow removal equipment (plow),
Snow equipment (blower and snowplow),
Proximity suits,
Front-end loader,
Terminal building expansion,
Disabled passenger lift.

Brief Description of Projects Withdrawn

Land acquisition—parcels 7–1–E, 7–2–G, and 8–4–B,
Land acquisition—parcel 18–2–K.

Determination: The Springfield Airport Authority requested that these projects be withdrawn from the PFC application by letter dated November 18, 1993.

Decision Date: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (708) 294–7335.

Public Agency: City of Des Moines (City), Des Moines, Iowa.

Application Number: 93–01–C–00–DSM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $6,446,507.

Estimated Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: April 1, 1997.

Class of Air Carriers Not Required to Collect PFC's:

Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Des Moines International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use

Baggage claim expansion,
Restroom expansion on concourses A and C,
Curbside and roadway island canopy construction.

Brief Description of Project Disapproved:

Service dock and roadway modifications.

Determination: Disapproved. The project was determined to not be AIP eligible in accordance with paragraph 551(d)(1) of FAA Order 5100.38A. This paragraph addresses the eligibility of nonrevenue producing, public-use areas in terminal buildings. While the City cited eligibility criteria pertaining to access roads, the FAA has determined that the project must be evaluated in accordance with terminal building criteria, since the service dock is an intregal component of the terminal. In addition, the City was unable to verify that the relocation of the loading dock was necessary to accomplish the baggage expansion project or any other project which would establish the incidental eligibility of this element. Accordingly, this project is disapproved for the imposition and use of PFC revenue.

Decision date: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, FAA Central Region Airports Division, (816) 426–7425.

Public Agency: Rhode Island Airport Corporation, Warwick, Rhode Island.

Application Number: 93–01–C–00–PVD.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $103,885,286.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: August 1, 2013.

Class of Air Carriers Not Required to Collect PFC's:

Part 135 air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of T. F. Green State Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use

Terminal building demolition,
Construct terminal access road,
Construct interim terminal facility,
Construct terminal building,
Construct apron, taxiways, drainage, and utilities,
Construct walkways and drainage,
Landscaping,
Install guidance signs,
Very high frequency omni directional radio range modifications,
Construct storm water retention system,
Construct deicing and glycol retention system,
Construct perimeter service road.

Brief Description of Project Disapproved

Terminal leasehold acquisition.

Determination: Disapproved. The FAA has determined that the payments made to the airlines for lease termination at the current terminal were intended as an incentive only. In order for these payments to be AIP, and therefore PFC, eligible, a buyout provision would need to be in the leases, each leasehold interest would need to be independently appraised, and equal or better facilities could not be made available to the displaced carriers in the new terminal building. In this instance, the FAA has found that none of these conditions are applicable. Therefore, this project does not meet the requirements of section 158.115(b) and so, is not PFC eligible.

Decision Date: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England.

Region Airports Division, (617) 238–7614.

Issued in Washington, DC on December 13, 1993.

Donna Taylor,

Acting Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State/application No./airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama.					
92–01–I–00–HSV, Huntsville Intl-Carl T Jones Field, Huntsville	3/6/1992	$3	$19,002,366	6/1/1992	11/1/2008
93–02–U–00–HSV, Huntsville Intl-Carl T Jones Field, Huntsville	6/3/1993	3	19,002,366	9/1/1993	11/1/2008
92–01–C–00–MSL, Muscle Shoals Regional, Muscle Shoals	2/18/1992	3	104,100	6/1/1992	2/1/1995
Arizona:					
92–01–C–00–FLG, Flagstaff Pulliam, Flagstaff	9/29/1992	3	2,463,581	12/1/1992	1/1/2015
93–01–C–00–YUM, Yuma MCAS/Yuma International, Yuma	9/9/1993	3	1,678,064	12/1/1993	6/1/2003
California:					
92–01–C–00–ACV, Arcata, Arcata	11/24/1992	3	188,500	2/1/1993	5/1/1994
93–01–C–00–CIC, Chico Municipal, Chico	9/29/1993	3	137,043	1/1/1994	6/1/1997
92–01–C–00–IYK, Inyokern, Inyokern	12/10/1992	3	127,500	3/1/1993	9/1/1995
93–01–C–00–LAX, Los Angeles International, Los Angeles	3/26/1993	3	360,000,000	7/1/1993	7/1/1998
93–01–C–00–MRY, Monterey Peninsula, Monterey	10/8/1993	3	3,960,855	1/1/1994	6/1/2000
92–01–C–00–OAK, Metropolitan Oakland International, Oakland	6/26/1992	3	12,343,000	9/1/1992	5/1/1994
93–01–I–00–ONT, Ontario International, Ontario	3/26/1993	3	49,000,000	7/1/1993	7/1/1998
92–01–C–00–PSP, Palm Springs Regional, Palm Springs	6/25/1992	3	81,888,919	10/1/1992	11/1/2032
92–01–C–00–SMF, Sacramento Metropolitan, Sacramento	1/26/1993	3	24,045,000	4/1/1993	3/1/1996
92–01–C–00–SJC, San Jose International, San Jose	6/11/1992	3	29,228,826	9/1/1992	8/1/1995
93–02–U–00–SJC, San Jose International, San Jose	2/22/1993	3	29,228,826	5/1/1993	8/1/1995
93–03–C–00–SJC, San Jose International, San Jose	6/16/1993	3	16,245,000	8/1/1995	5/1/1997
92–01–C–00–SBP, San Luis Obispo County-McChesney Fie, San Luis Obispo	11/24/1992	3	502,437	2/1/1993	2/1/1995
93–01–C–00–STS, Sonoma County, Santa Rosa	2/19/1993	3	110,500	5/1/1993	4/1/1995
92–01–I–00–TVL, Lake Tahoe, South Lake Tahoe	5/1/1992	3	928,747	8/1/1992	3/1/1997
Colorado:					
92–01–C–00–COS, Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	3/1/1993	2/1/1996
92–01–C–00–DVX, Denver International (NW), Denver	4/28/1992	3	2,330,734,321	7/1/1992	1/1/2026
93–01–C–00–EGE, Eagle County Regional, Eagle	6/15/1993	3	572,609	9/1/1993	4/1/1998
93–01–C–00–FNL, Fort Collins-Loveland, Fort Collins	7/14/1993	3	207,857	10/1/1993	6/1/1996
92–01–C–00–GJT, Walker Field, Grand Junction	1/15/1993	3	1,812,000	4/1/1993	3/1/1998
93–01–C–00–GUC, Gunnison County, Gunnison	8/27/1993	3	702,133	11/1/1993	3/1/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State/application No./airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-01-C-00-HDN, Yampa Valley, Hayden	8/23/1993	3	532,881	11/1/1993	4/1/1997
93-01-C-00-MTJ, Montrose County, Montrose	7/29/1993	3	1,461,745	11/1/1993	2/1/2009
93-01-C-00-PUB, Pueblo Memorial, Pueblo	8/16/1993	3	1,200,745	11/1/1993	8/1/2010
92-01-C-00-SBS, Steamboat Springs/Bob Adams Field, Steamboat Springs	1/15/1993	3	1,887,337	4/1/1993	4/1/2012
92-01-C-00-TEX, Telluride Regional, Telluride	11/23/1992	3	200,000	3/1/1993	11/1/1997
Connecticut:					
93-01-C-00-HVN, Tweed-New Haven, New Haven	9/10/1993	3	2,490,450	12/1/1993	6/1/1999
93-02-I-00-BDL, Bradley International, Windsor Locks	7/9/1993	3	12,030,000	10/1/1993	9/1/1995
Florida:					
93-01-C-00-DAB, Daytona Beach Regional, Daytona Beach	4/20/1993	3	7,967,835	7/1/1993	11/1/1999
92-01-C-00-RSW, Southwest Florida International, Fort Myers	8/31/1992	3	252,548,262	11/1/1992	6/1/2014
93-02-U-00-RSW, Southwest Florida International, Fort Myers	5/10/1993	3	252,548,262	11/1/1992	6/1/2014
92-01-C-00-EYW, Key West International, Key West	12/17/1992	3	945,937	3/1/1993	12/1/1995
92-01-C-00-MTH, Marathon, Marathon	12/17/1992	3	153,556	3/1/1993	6/1/1995
92-01-C-00-MCO, Orlando International, Orlando	11/27/1992	3	167,574,527	2/1/1993	2/1/1998
93-02-C-00-MCO, Orlando International, Orlando	9/24/1993	3	12,957,000	12/1/1993	2/1/1998
92-01-C-00-PNS, Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	2/1/1993	4/1/1996
92-01-I-00-SRQ, Sarasota-Bradenton International, Sarasota	6/29/1992	3	38,715,000	9/1/1992	9/1/2005
92-01-I-00-TLH, Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	2/1/1993	12/1/1998
93-01-C-00-TPA, Tampa International, Tampa	7/15/1993	3	87,102,000	10/1/1993	9/1/1999
Georgia:					
93-01-C-00-CSG, Columbus Metropolitan, Columbus	10/1/1993	3	534,633	1/1/1994	6/1/1995
91-01-C-00-SAV, Savannah International, Savannah	1/23/1992	3	39,501,502	7/1/1992	3/1/2004
92-01-I-00-VLD, Valdosta Regional, Valdosta	12/23/1992	3	260,526	3/1/1993	10/1/1997
Idaho:					
93-01-C-00-SUN, Friedman Memorial, Hailey	6/29/1993	3	188,000	9/1/1993	9/1/1997
92-01-C-00-IDA, Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	1/1/1993	1/1/1998
92-01-C-00-TWF, Twin Falls-Sun Valley Regional, Twin Falls	8/12/1992	3	270,000	11/1/1992	5/1/1998
Illinois:					
93-01-C-00-MDW, Chicago Midway, Chicago	6/28/1993	3	79,920,958	9/1/1993	8/1/2001
93-01-C-00-ORD, Chicago O'Hare International, Chicago	6/28/1993	3	500,418,285	9/1/1993	10/1/1999
92-01-I-00-RFD, Greater Rockford, Rockford	7/24/1992	3	1,177,348	10/1/1992	10/1/1996
93-02-U-00-RFD, Greater Rockford, Rockford	9/2/1993	3	1,168,937	12/1/1993	10/1/1996
92-01-I-00-SPI, Capital, Springfield	3/27/1992	3	562,104	6/1/1992	2/1/1994
93-02-U-00-SPI, Capital, Springfield	4/28/1993	3	562,104	6/1/1992	2/1/1994
Indiana:					
92-01-C-00-FWA, Fort Wayne International, Fort Wayne	4/5/1993	3	26,563,457	7/1/1993	3/1/2015
93-01-C-00-IND, Indianapolis International, Indianapolis	6/28/1993	3	177,344,750	9/1/1993	7/1/2005
Iowa:					
92-01-I-00-DBQ, Dubuque Regional, Dubuque	10/6/1992	3	108,500	1/1/1993	5/1/1994
93-01-C-00-SUX, Sioux Gateway, Sioux City	3/12/1993	3	204,465	6/1/1993	6/1/1994
Kentucky: 93-01-C-00-LEX, Blue Grass, Lexington	8/31/1993	3	12,378,791	11/1/1993	5/1/2003
Louisiana:					
92-01-I-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	9/28/1992	3	9,823,159	12/1/1992	12/1/1998
93-02-U-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	4/23/1993	3	9,823,159	12/1/1992	12/1/1998
93-01-C-00-MSY, New Orleans International/Moisant Ft, New Orleans	3/19/1993	3	77,800,372	6/1/1993	4/1/2000
Maine:					
93-01-C-00-PWM, Portland International Jetport, Portland	10/29/1993	3	12,233,751	2/1/1994	5/1/2001
Maryland:					
92-01-I-00-BWI, Baltimore-Washington International, Baltimore	7/27/1992	3	141,866,000	10/1/1992	9/1/2002

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State/application No./airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Massachusetts:					
93-01-C-00-BOS, General Edward L Logan International, Boston	8/24/1993	3	598,800,000	11/1/1993	10/1/2011
92-01-C-00-ORH, Worcester Municipal, Worcester	7/28/1992	3	2,301,382	10/1/1992	10/1/1997
Michigan:					
92-01-C-00-DTW, Detroit Metropolitan-Wayne County, Detroit	9/21/1992	3	640,707,000	12/1/1992	6/1/2009
92-01-I-00-ESC, Delta County, Escanaba	11/17/1992	3	158,325	2/1/1993	8/1/1996
93-01-C-00-FNT, Bishop International, Flint	6/11/1993	3	32,296,450	9/1/1993	9/1/2030
92-01-I-00-GRR, Kent County International, Grand Rapids	9/9/1992	3	12,450,000	12/1/1992	5/1/1998
92-01-C-00-CMX, Houghton County Memorial, Hancock	4/29/1993	3	162,986	7/1/1993	1/1/1996
93-01-C-00-IWD, Gogebic County, Ironwood	5/11/1993	3	74,690	8/1/1993	10/1/1998
93-01-C-00-LAN, Capital City, Lansing	7/23/1993	3	7,355,483	10/1/1993	3/1/2002
92-01-I-00-MQT, Marquette County, Marquette	10/1/1992	3	459,700	12/1/1992	4/1/1996
92-01-C-00-PLN, Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	3/1/1993	6/1/1995
Minnesota:					
93-01-C-00-BRD, Brainerd-Crow Wing County Regional, Brainerd	5/25/1993	3	43,000	8/1/1993	12/31/1995
92-01-C-00-MSP, Minneapolis-St Paul International, Minneapolis	3/31/1992	3	66,355,682	6/1/1992	8/1/1994
Mississippi:					
91-01-C-00-GTR, Golden Triangle Regional, Columbus	5/8/1992	3	1,693,211	8/1/1992	9/1/2006
92-01-C-00-GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	4/3/1992	3	384,028	7/1/1992	12/1/1993
92-01-C-00-PIB, Hattiesburg-Laurel Regional, Hattiesburg-Laurel	4/15/1992	3	119,153	7/1/1992	1/1/1998
93-01-C-00-JAN, Jackson International, Jackson	2/10/1993	3	1,918,855	5/1/1993	4/1/1995
92-01-C-00-MEI, Key Field, Meridian	8/21/1992	3	122,500	11/1/1992	6/1/1994
93-02-C-00-MEI, Key Field, Meridian	10/19/1993	3	155,223	1/1/1994	8/1/1996
Missouri:					
93-01-C-00-SGF, Springfield Regional, Springfield	8/30/1993	3	1,937,090	11/1/1993	10/1/1996
92-01-C-00-STL, Lambert-St. Louis International, St. Louis	9/30/1992	3	84,607,850	12/1/1992	3/1/1996
Montana:					
93-01-C-00-BZN, Gallatin Field, Bozeman	5/17/1993	3	4,198,000	8/1/1993	6/1/2005
92-01-C-00-GTF, Great Falls International, Great Falls	8/28/1992	3	3,010,900	11/1/1992	7/1/2002
93-02-U-00-GTF, Great Falls International, Great Falls	5/25/1993	3	3,010,900	11/1/1992	7/1/2002
92-01-C-00-HLN, Helena Regional, Helena	1/15/1993	3	1,056,190	4/1/1993	12/1/1999
93-01-C-00-FCA, Glacier Park International, Kalispell	9/29/1993	3	1,211,000	12/1/1993	11/1/1999
92-01-C-00-MSO, Missoula International, Missoula	6/12/1992	3	1,900,000	9/1/1992	8/1/1997
Nevada:					
91-01-C-00-LAS, McCarran International, Las Vegas	2/24/1992	3	944,028,500	6/1/1992	2/1/2014
93-02-C-00-LAS, McCarran International, Las Vegas	6/7/1993	3	36,500,000	6/1/1992	9/1/2014
93-01-C-00-RNO, Reno Cannon International, Reno	10/29/1993	3	34,263,607	1/1/1994	5/1/1999
New Hampshire:					
92-01-C-00-MHT, Manchester, Manchester	10/13/1992	3	5,461,000	1/1/1993	3/1/1997
New Jersey:					
92-01-C-00-EWR, Newark International, Newark	7/23/1992	3	84,600,000	10/1/1992	8/1/1995
New York:					
93-01-C-00-BGM, Binghamton Regional/Edwin A Link FIE, Binghamton	8/18/1993	3	1,872,264	11/1/1993	11/1/1997
92-01-I-00-BUF, Greater Buffalo International, Buffalo	5/29/1992	3	189,873,000	8/1/1992	3/1/2026
92-01-I-00-ITH, Tompkins County, Ithaca	9/28/1992	3	1,900,000	1/1/1993	1/1/1999
92-91-C-00-JHW, Chautauqua County/Jamestown, Jamestown	3/19/1993	3	434,822	6/1/1993	6/1/1996
92-01-C-00-JFK, John F. Kennedy International, New York	7/23/1992	3	109,980,000	10/1/1992	8/1/1995
92-01-C-00-LGA, Laguardia, New York	7/23/1992	3	87,420,000	10/1/1992	8/1/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State/application No./airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-01-C-00-PLB, Clinton County, Plattsburgh	4/30/1993	3	227,830	7/1/1993	1/1/1998
92-01-C-00-HPN, Westchester County, White Plains	11/9/1992	3	27,883,000	2/1/1993	6/1/2022
North Dakota:					
92-01-C-00-GFK, Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	2/1/1993	2/1/1997
Ohio:					
92-01-C-00-CAK, Akron-Canton Regional, Akron	6/30/1992	3	3,594,000	9/1/1992	8/1/1996
92-01-C-00-CLE, Cleveland-Hopkins International, Cleveland	9/1/1992	3	34,000,000	11/1/1992	11/1/1995
92-01-I-00-CMH, Port Columbus International, Columbus	7/14/1992	3	7,341,707	10/1/1992	3/1/1994
93-02-I-00-CMH, Port Columbus International, Columbus	7/19/1993	3	16,270,256	2/1/1994	9/1/1996
93-03-U-00-CMH, Port Columbus International, Columbus	10/27/1993	3	16,270,256	1/1/1994	9/1/1996
93-01-C-00-TOL, Toledo Express, Toledo	6/29/1993	3	2,750,896	9/1/1993	9/1/1996
Oklahoma:					
92-01-C-00-LAW, Lawton Municipal, Lawton	5/8/1992	2	334,078	8/1/1992	1/1/1996
92-01-1-00-TUL, Tulsa International, Tulsa	5/11/1992	3	9,717,000	8/1/1992	8/1/1995
93-02-U-00-TUL, Tulsa International, Tulsa	10/18/1993	3	9,717,000	2/1/1994	8/1/1995
Oregon:					
93-01-C-00-EUG, Mahlon Sweet Field, Eugene	8/31/1993	3	3,729,699	11/1/1993	11/1/1998
93-01-C-00-MFR, Medford-Jackson County, Medford	4/21/1993	3	1,066,142	7/1/1993	11/1/1995
92-01-C-00-PDX, Portland International, Portland	4/8/1992	3	17,961,850	7/1/1992	7/1/1994
93-01-C-00-RDM, Roberts Field, Redmond	7/2/1993	3	1,191,552	10/1/1993	3/1/2000
Pennsylvania:					
92-01-I-00-ABE, Allentown-Bethlehem-Easton, Allentown	8/28/1992	3	3,778,111	11/1/1992	4/1/1995
92-01-C-00-AOO, Altoona-Blair County, Altoona	2/3/1993	3	3,778,111	5/1/1993	2/1/1996
92-01-C-00-ERI, Erie International, Erie	7/21/1992	3	198,000	10/1/1992	6/1/1997
93-01-C-00-JST, Johnstown-Cambria County, Johnstown	8/31/1993	3	307,500	11/1/1993	2/1/1998
92-01-I-00-PHL, Philadelphia International, Philadelphia	6/29/1992	3	76,169,000	9/1/1992	7/1/1995
92-02-U-00-PHL, Philadelphia International, Philadelphia	5/14/1993	3	76,169,000	8/1/1993	7/1/1995
92-01-C-OO-UNV, University Park, State College	8/28/1992	3	1,495,974	11/1/1992	7/1/1997
93-01-C-OO-AVP, Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	9/24/1993	3	2,369,566	12/1/1993	6/1/1997
South Carolina:					
93-01-C-OO-CAE, Columbia Metropolitan, Columbia	8/23/1993	3	32,969,942	11/1/1993	9/1/2008
Tennessee:					
93-01-C-OO-TYS, McGhee Tyson, Knoxville	10/6/1993	3	5,681,615	1/1/1994	1/1/1997
92-01-I-OO-MEM, Memphis International, Memphis	5/28/1992	3	26,000,000	8/1/1992	12/1/1994
92-01-C-OO-BNA, Nashville International, Nashville	10/9/1992	3	143,358,000	1/1/1993	2/1/2004
Texas:					
93-02-C-OO-AUS, Robert Mueller Municipal, Austin	6/4/1993	2	6,189,300	11/1/1993	6/1/1995
92-01-C-OO-ILE, Killeen Municipal, Killeen	10/20/1992	3	243,339	1/1/1993	11/1/1994
93-01-I-OO-LRD, Laredo International, Laredo	7/23/1993	3	11,983,000	10/1/1993	9/1/2013
93-01-C-OO-LBB, Lubbock International, Lubbock	7/9/1993	3	10,699,749	10/1/1993	2/1/2000
92-01-I-OO-MAF, Midland International, Midland	10/16/1992	3	35,529,521	1/1/1993	1/1/2013
93-01-C-OO-SJT, Mathis Field, San Angelo	2/24/1993	3	873,716	5/1/1993	11/1/1998
Virginia:					
92-01-I-OO-CHO, Charlottesville-Albemarle, Charlottesville	6/11/1992	2	255,559	9/1/1992	11/1/1993
92-02-U-OO-CHO, Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	9/1/1992	11/1/1993
93-03-U-OO-CHO, Charlottesville-Albemarle, Charlottesville	10/20/1993	0	0	1/1/1994	.....
93-01-C-OO-IAD, Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	1/1/1994	11/1/2003
93-01-C-OO-DCA, Washington National, Washington, DC	8/16/1993	3	166,739,071	11/1/1993	11/1/2000

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State/application No./airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Washington:					
93-01-C-00-BLI, Bellingham International, Bellingham	4/29/1993	3	366,000	7/1/1993	7/1/1994
93-01-C-00-PSC, Tri-Cities, Pasco	8/3/1993	3	1,230,731	11/1/1993	11/1/1996
93-01-C-00-CLM, William R Fairchild International, Port Angelas	5/24/1993	3	52,000	8/1/1993	8/1/1994
92-01-C-00-SEA, Seattle-Tacoma International, Seattle	8/13/1992	3	28,847,488	11/1/1992	1/1/1994
93-02-C-00-SEA, Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	1/1/1994	1/1/1996
93-01-C-00-GEG, Spokane International, Spokane	3/23/1993	3	15,272,000	6/1/1993	12/1/1999
93-01-I-00-ALW, Walla Walla Regional, Walla Walla	8/3/1993	3	1,187,280	11/1/1993	11/1/2014
93-01-C-00-EAT, Pangborn Field, Wenatchee	5/26/1993	3	280,500	8/1/1993	10/1/1995
92-01-C-00-YKM, Yakima Air Terminal, Yakima	11/10/1992	3	416,256	2/1/1993	4/1/1995
West Virginia:					
93-01-C-00-CRW, Yeager, Charleston	5/28/1993	3	3,256,126	8/1/1993	4/1/1998
92-01-C-00-MGW, Morgantown Muni-Walter L. Bill Hart, Morgantown	9/3/1992	3	55,500	12/1/1992	1/1/1994
Wisconsin:					
92-01-C-00-GRB, Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	3/1/1993	3/1/2003
93-01-C-00-MSN, Dane County Regional-Truax Field, Madison	6/22/1993	3	6,746,000	9/1/1993	3/1/1998
93-01-I-00-CWA, Central Wisconsin, Mosinee	8/10/1993	3	7,725,600	11/1/1993	11/1/2012
93-01-C-00-RHI, Rhinelander-Oneida County, Rhinelander	8/4/1993	3	167,201	11/1/1993	4/1/1996
Wyoming:					
93-01-C-00-CPR, Natrona County International, Casper	6/14/1993	3	506,144	9/1/1993	10/1/1996
93-01-C-00-CYS, Cheyenne, Cheyenne	7/30/1993	3	742,261	11/1/1993	8/1/2000
93-01-I-00-GCC, Gillette-Campbell County, Gillette	6/28/1993	3	331,540	9/1/1993	9/1/1999
93-01-C-00-JAC, Jackson Hole, Jackson	5/25/1993	3	1,081,183	8/1/1993	2/1/1996
Guam:					
92-01-C-00-NGM, Agana Nas, Agana	11/10/1992	3	5,632,000	2/1/1993	6/1/1994
Puerto Rico:					
92-01-C-00-BQN, Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	3/1/1993	1/1/1999
92-01-C-00-PSE, Mercedita, Ponce	12/29/1992	3	866,000	3/1/1993	1/1/1999
92-01-C-00-SJU, Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	3/1/1993	2/1/1997
Virgin Islands:					
92-01-I-00-STT, Cyril E King, Charlotte Amalie	12/8/1992	3	3,871,005	3/1/1993	2/1/1995
92-01-I-00-STX, Alexander Hamilton, Christiansted St Croix	12/8/1992	3	2,280,465	3/1/1993	5/1/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93-31245 Filed 12-21-93; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement(s); Somerset County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), Pennsylvania Department of Transportation (PennDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project located in Somerset County, Pennsylvania. It is noted that the U.S. Army Corps of Engineers, Pittsburgh District and the U.S. Environmental Protection Agency are cooperating agencies.

FOR FURTHER INFORMATION CONTACT:

Daniel W. Johnson, Environmental Program Manager, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, PA 17108-1086. Telephone: (717) 782-2276.

G. Edward Stoltz, District Liaison Engineer, Pennsylvania Department of Transportation, 1620 North Juniata Street, Hollidaysburg, PA 16648. Telephone: (814) 696-7170.

SUPPLEMENTARY INFORMATION: The FHWa and PennDOT will prepare an Environmental Impact Statement (EIS) for proposed improvements to a portion of U.S. 219 in Somerset County.

Transportation improvements for a broad study area from Somerset, Pennsylvania to I-68 in Garrett County, Maryland had been considered in the past. An EIS was approved on June 28, 1976 for a four lane limited access highway extending from the existing Route 219 interchange southeast of Somerset Borough to the community of Beechdale, a distance of approximately eight (8) miles. In addition, an EIS was approved on May 26, 1982 for a four lane limited access highway extending

from the community of Beechdale to a point one mile south of Meyersdale Borough, a distance of approximately eight (8) miles. No environmental document was prepared for the remaining portion extending from the point one mile south of Meyersdale to I–68 in Garrett County, Maryland, a distance of approximately seven (7) miles. These proposed highway facilities were not built at the time because funding was not available.

In 1990 a project was initiated to re-examine the transportation needs in the general study area from Somerset to I–68. The environmental documents previously completed and approved were reviewed and a needs analysis was completed for the general study area from Somerset to I–68.

The results of the needs analysis identified a five mile portion of U.S. 219 which experiences severe problems including: traffic congestion, undesirable mix of types of vehicles, local access, safety of motorists and pedestrians, and limitations in roadway geometry. This portion of U.S. 219 is located within, and immediately north and south of Meyersdale Borough.

Problems identified in the general study corridor from Somerset to I–68 include roadway geometry and capacity however these problems do not now, nor is it likely that they will in the foreseeable future (10–15 years) significantly impair the safety of the motorists or traffic flow. Therefore, a detailed study area for the EIS has been defined within the general study corridor. This area consists of U.S. 219 through Meyersdale Borough and includes the northern and southern approaches to the Borough.

Improvements in the detailed study area are now considered necessary to adequately provide for a safe and efficient transportation system because of the current and projected traffic volumes in the Meyersdale area and the inability of the existing street system to handle the current and projected traffic volumes.

A phased approach has been initiated for the preliminary design studies for the proposed highway improvement project in the Meyersdale area.

Included in the first phase of the preliminary engineering and environmental studies is the environmental overview and a preliminary alternatives analysis. The second phase will include a detailed alternatives analysis, technical studies and the preparation of an EIS.

Alternatives under consideration include, but are not limited to: (1) Taking no action; (2) upgrading existing U.S. 219 to current design criteria; and (3) constructing a four lane limited access highway on a new location either east or west of Meyersdale Borough. Additional alternatives may be evaluated based on the public and agency involvement process. Design variations of grade and alignment will be studied and incorporated into the various build alternatives as necessary.

The EIS will include a summary of the needs analysis of the study corridor from Somerset to I–68 and how the focus on Meyersdale developed. The following subject areas will be evaluated in the EIS for the Meyersdale improvements: traffic; air quality; noise; vibration; surface and groundwater resources; floodplains; soils and geology; surface and groundwater quality; wetlands, vegetation and wildlife; threatened and endangered species; farmlands; visual; socioeconomics and land use; energy; hazardous and residual waste sites; section 4(f) properties; historic structures and archaeological sites; wild and scenic Rivers; natural and wild areas; national natural landmarks; and construction impacts. Information describing the proposed action and study process will be provided to appropriate Federal, State, and local agencies and to private organizations and citizens who have an interest in this project to solicit their comments. A series of public and agency meetings will be held in the study area during the winter of 1993; summer of 1994; and the spring of 1995. Public notices of the times and places of these meetings and any required public hearings will be given in a timely fashion. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public involvement and interagency coordination will be maintained throughout the study process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 10, 1993.

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 93–31151 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–68; Notice 1]

Receipt of Petition for Determination that Nonconforming 1991 Mercedes-Benz 500E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 500E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 500E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is on January 21, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. [Docket hours from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation

into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notices in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 500E (Model ID 124.036) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Mercedes-Benz 300E. G&K has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1991 Mercedes-Benz 300E, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

G&K states that is has carefully compared the 1991 model 500E to the 1991 model 300E, and found the two vehicles to be substantially similar with respect to most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1991 model 500E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1991 model 300E that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 500E is identical to the certified 1991 model 300E with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1991 model 500E is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection*: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 206 *Door Locks and Door Retention Components*: replacement of the rear door lock assembly with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection*: (a) installation of an ignition switch-actuated seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors; (c) installation of knee bolsters to augment the vehicle's automatic restraint system. The petitioner claims that the 1991 model 500E is equipped with an airbag that meets the standard's passive restraint requirements.

Standard No. 214 *Side Door Strength*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 500E must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 21, 1993.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 14, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–31156 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–61; Notice 3]

Determination that Nonconforming 1991 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction to notice of determination that nonconforming 1991 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This document corrects a notice published Tuesday, November 16, 1993 (58 FR 60488) announcing that the National Highway Traffic Safety

Administration (NHTSA) had determined that a 1991 Mercedes-Benz 190E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. The model identification number that the notice provided for this vehicle was "Model ID 201.124." That number was in error, and should properly have read "Model ID 201.024."

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and C(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 15, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–31157 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–73; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

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

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes-Benz 500SE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1992 Mercedes-Benz 400SE), and they are capable of being readily modified to conform to the standards.

DATE: The determination is effective as of December 22, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1992 Mercedes-Benz 500SE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 13, 1993 (58 FR 53017) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 50 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes-Benz 500SE (Model ID 140.050) is substantially similar to a 1992 Mercedes-Benz 400SE originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–31158 Filed 12–21–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 14, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1290
Regulation ID Number: FI–81–86 Final
Type of Review: Extension
Title: Bad Debt Reserves of Banks
Description: Section 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585(c).
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,500
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 625 hours

OMB Number: 1545–1353
Regulation ID Number: FI–189–84 Final
Type of Review: Extension
Title: Debt Instruments with Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property
Description: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments

with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.
Respondents: Individual or households, State or local governments, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 750,000
Estimated Burden Hours Per Respondent: 24 minutes
Frequency of Response: Other (per issuance of debt instrument with original issue discount)
Estimated Total Reporting Burden: 289,500 hours
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93-31167 Filed 12-21-93; 8:45 am]
BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

December 15, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0168
Form Number: IRS Form 4361
Type of Review: Extension
Title: Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners
Description: Form 4361 is used by ministers, members of religious orders, or Christian Science Practitioners to file for an exemption from self-employment on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 10,270
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 minutes
Learning about the law or the form—19 minutes
Preparing the form—16 minutes
Copying, assembling, and sending the form to the IRS—17 minutes
Frequency of Response: Other (one time)
Estimated Total Reporting Burden: 10,065 hours
OMB Number: 1545-0553
Form Number: RCMW 1-727A
Type of Review: Extension
Title: Geographic Availability Statement
Description: When IRS recruits applicants to fill positions, this form is used to ascertain the applicant's geographic preference for appointment location. The form facilitates the referral of applicants for positions in geographic areas of their interest. It is used by an individual (government and nongovernment) interested in advertised positions.
Respondents: Individual or households
Estimated Number of Respondents: 1,800
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 180 hours
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93-31168 Filed 12-21-93; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Loan Analysis, VA Form 26-6393

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information:
(1) The title of the information collection, and the Department form number(s), if applicable;
(2) A description of the need and its use;
(3) Who will be required or asked to respond;
(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;
(5) The estimated average burden hours per respondent;
(6) The frequency of response; and
(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 9, 1993.
By direction of the Secretary.

B. Michael Berger,
Director, Records Management Service.

Extension

1. Loan Analysis, VA Form 26-6393.
2. The form is completed by representatives of the lending institution to determine the veteran-borrower's ability to qualify for a VA guaranteed loan. The information is used by VA as evidence of the lender's adherence to VA credit standards.
3. Businesses or other for-profit.
4. 120,000 hours.
5. 30 minutes.
6. On occasion.
7. 240,000 respondents.

[FR Doc. 93-31205 Filed 12-21-93; 8:45 am]
BILLING CODE 8320-01-M

Veterans Health Administration Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development Service; Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives

notice under Public Law 92–463, that a meeting of the Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development will be held at the Downtown Marriott Hotel, 701 A Street, San Diego, California, January 18 through January 20, 1994. The session on January 18, 1994, is scheduled to begin at 3 p.m. and end at 6:30 p.m. The session on January 19 is scheduled to begin at 8 a.m. and end at 5:30 p.m. The session on January 20 is scheduled to begin at 8 a.m. and end at 12 noon. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 18 session for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b (c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Ave., Washington, DC 20420 (phone: 202–523–7425) at least five days before the meeting.

Dated: December 10, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–31203 Filed 12–21–93; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Rehabilitation Research and Development Scientific Review and Evaluation Board Sub-Committee of the Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC January 11 through January 14, 1994. The session on January 11, 1994, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on January 12, 13, 14, 1994, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the January 11 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 12–14, 1994 the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research under way which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b (c)(6) and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: December 10, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–31204 Filed 12–21–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 244
Wednesday, December 22, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 66073, December 17, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 22, 1993.

CHANGES IN THE MEETING: Change in the time of the closed meeting to *approximately 11:00 a.m., Wednesday, December 22, 1993,* following a recess at the conclusion of the open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 20, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–31401 Filed 12–20–93; 3:26 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 22, 1993.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary agenda:* Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of revision of Regulation E (Electronic Fund Transfers).

Discussion agenda:

2. Proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local agencies. (Proposed earlier for public comment; Docket No. R–796).

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–31400 Filed 12–20–93; 3:26 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 58, No. 244
Wednesday, December 22, 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 COMMERCE

Foreign-Trade Zones Board

[Docket 56-93]

Foreign-Trade Zone 59—Lincoln, Nebraska Proposed Expansion of Subzone 59A, Kawasaki Motors Manufacturing Corporation, U.S.A. Plant (Motorcycles, Jetskis, All Terrain Vehicles) Lincoln, NE

Correction

In notice document 93-29327 appearing on page 63335 in the issue of Wednesday, December 1, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-808]

Antidumping Duty Order: Certain Stainless Steel Wire Rods from India

Correction

In notice document 93-29451 beginning on page 63335 in the issue of Wednesday, December 1, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-04-4210-04; AZA 20349A and AZA 23217A]

Arizona: Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ

Correction

In notice document 93-28987 appearing on page 62368 in the issue of Friday, November 26, 1993, in the second column, in the first full paragraph, in the fourth line from the end, after "lot 2" insert a comma, and in the last paragraph, in the last line, "86440" should read "86403".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 93-020]

Captain of the Port Zone Boundaries

Correction

In rule document 93-24206 beginning on page 51726 in the issue of Monday, October 4, 1993, make the following correction:

§ 3.25-10 [Corrected]

1. On page 51728, in the second column, in § 3.25-10(b), in the seventh line from the end, "and proceeds" should read "at proceeds".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AWP-4]

Proposed Alteration of Jet Routes J-86 and J-92

Correction

In proposed rule document 93-29588 beginning on page 63906 in the issue of Friday, December 3, 1993, make the following correction:

§ 71.1 [Corrected]

1. On page 63907, in the third column, in § 71.1, "**J-85 [Revised]**" should read "**J-86 [Revised]**".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-21; Notice 07]

RIN 2127-AE62

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

Correction

In proposed rule document 93-29226 beginning on page 63321 in the issue of Wednesday, December 1, 1993, in **DATES**, in the second line, "January 31, 1993." should read "January 31, 1994."

BILLING CODE 1505-01-D

federal register

Wednesday
December 22, 1993

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1355, et al.

Data Collection for Foster Care and Adoption; Statewide Automated Child Welfare Information Systems; Final Rule and Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

RIN 0970-AB&05

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department is issuing this final rule to implement the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under title IV-B and title IV-E of the Social Security Act are subject to this final rule.

EFFECTIVE DATE: This rule is effective January 21, 1994.

FOR FURTHER INFORMATION CONTACT:

By Mail: Children's Bureau, Administration on Children, Youth and Families, PO Box 1182, Washington, DC 20013, Attention: Daniel H. Lewis.

By Telephone: Daniel H. Lewis, (202) 205-8618, or Michael Ambrose, (202) 205-8740.

SUPPLEMENTARY INFORMATION:

I. General

This rule, generally known as the Adoption and Foster Care Analysis and Reporting System (AFCARS) is designed to collect uniform, reliable information on children who are under the responsibility of the State title IV-B/IV-E agency for placement and care. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. In order to adequately meet the intent of the law and the requirements of this regulation, the States' data collection systems for AFCARS must be computerized.

The Department of Health and Human Services (DHHS) will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted, and to respond to questions and requests from other Departments and agencies, including the General Accounting Office, the Office of Management and Budget (OMB), the DHHS Office of Inspector General, national advocacy organizations, States and other interested organizations. The Department will aggregate the data both by State and nationally and will issue summaries twice a year to each of the States and to any other group or organization on request.

The purpose for the establishment of the AFCARS is twofold: To address policy development and program management issues at both the State and Federal levels. The data will enable the Federal Government to more effectively direct and manage the national foster care and adoption assistance programs. The data will respond to the needs of the Congress, the Department and OMB for national data and information upon which to propose, develop, change and implement policy. Specifically, the Department will use these data for:

- Short and long-term budget projections;
- Trend analyses and short and long-term planning;
- Targeting areas for greater or potential technical assistance efforts, for discretionary service grants, for research and evaluation, and for regulatory change; and
- Background and justification for policy changes and legislative proposals.

The data will enable policymakers to assess the reasons why children are in foster care and develop remedies to prevent it. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption, and identify geographic areas with special problems.

The data will also be useful for research, the ultimate purpose of which is to gain a better understanding of the foster care program and the causes and other factors contributing to its expansion and other changes; and, eventually, to make suggestions and proposals for change to improve the child welfare system.

II. Program Description

Title IV-B of the Social Security Act (the Act), Child Welfare Services, is a formula grant program. Each State receives a basic grant representing its share of $141 million and is eligible for a share of incentive funds beyond the basic grant if it provides certain protection, as required by section 427 of the Act, for children in foster care. The basic grant and the incentive funds provide States with Federal support for a wide variety of State child welfare services including preplacement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and to provide foster care and adoption services. The basic grant and inventive funds can be used to provide services regardless of the income of the families and children who are in need of such services.

Title IV-E of the Act is an entitlement program which authorizes Federal financial participation (FFP) in the costs of State foster care maintenance and adoption assistance payments. Federal matching of State foster care maintenance payments is available for children in foster care who meet certain eligibility criteria that are based, in part, on the child's eligibility under the Aid to Families With Dependent Children (AFDC) program. The adoption assistance program under title IV-E is designed to assist States is placing "special needs" children with adoptive families through the provision of an adoption assistance payment. In order to be eligible for this program, a child must be eligible for AFDC, title IV-E foster care or Supplemental Security Income for the Blind and Disabled (SSI) and must meet the statutory definition of "a child with special needs" according to section 473(c) of the Act.

Under section 473(c), the State title IV-E agency makes a determination as to whether or not a child has special needs, according to the following factors: (1) The child cannot or should not be returned to the home of the parents; (2) there exists a specific factor or condition (such as the child's age, ethnic background, emotional, physical or mental disability, or membership in a minority or sibling group) because of which it is reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance; and, (3) except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance.

There are several Federal programs which fund foster care and adoption assistance payments and services. For FY 1993, $2.574 billion has been appropriated for title IV-E foster care and $279.8 million for title IV-E adoption assistance. Federal funds appropriated for child welfare services under title IV-B for the basic grant and incentive awards amount to $294.624 million in FY 1993. Another major funding source to States for social services is the Social Services Block Grant (title XX of the Act), totaling $2.8 billion in FY 1993. While no specific figures are available on the amounts allocated by the States to adoption and foster care services under title XX, in FY

1991, 34 States used some of these funds for adoption services and 30 States provided foster care services with these funds.

Although title IV–E of the Act is the major single source of Federal support for foster care and adoption assistance payments, over half the funds for adoption and foster care services come from State and local governments and the private sector.

According to State agency information gathered by the American Public Welfare Association (APWA) under the Voluntary Cooperative Information System (VCIS), there were approximately 442,000 children in foster care on the last day of 1992.

In 1989, the most recent year for which complete data have been analyzed, approximately 382,600 children were in foster care. Of these children, approximately 54,700 had plan for adoption and approximately 30,500 had parental rights terminated or relinquished and were waiting for adoptive homes.

III. Past and Current Data Collection Efforts

From the late 1940's through the early 1970's the Children's Bureau (and later, the former Social and Rehabilitation Services) collected data on foster care and adoption from the States on an annual and voluntary basis. When those voluntary efforts were terminated, national data on foster care and adoption were not available. However, the need for reliable and consistent data has always been a critical concern, especially for planning services and developing policy.

In 1978, the Child Abuse Prevention and Treatment and Adoption Reform Act (Pub. L. 95–266) was enacted. It required the Secretary to provide (either directly or by grant or contract) for the establishment and operation of a national adoption and foster care data gathering and analysis system (42 U.S.C. 5113). Before 1978, there had never been a legislatively mandated national data collection system for foster care and adoption with standards and methodology set by Federal law and regulation.

In 1980, landmark legislation reforming the foster care system and initiating Federal financial participation in adoption assistance payments was passed. This Act is known as the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272), 42 U.S.C. 670. It contains two sections which address the subject of data collection. Section 476 of title IV–E of the Act states that, "Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care." In addition, States which apply for additional incentive funds under section 427 of title IV–B must have implemented and be operating a statewide information system that can readily identify the status, demographic characteristics, location and goals for placement of every child in foster care within the preceding 12 months. This requirement applies to all children in foster care under the responsibility of the State title IV–B/IV–E agency, not just those children eligible for title IV–E payments.

As indicated in the hearings prior to the passage of Pub. L. 96–272 (see Congressional Record for July 26, 1977, and October 25 and 29, 1979), the impetus behind the passage of the Adoption Assistance and Child Welfare Act was the belief that the public child welfare system had become a receiving and holding system for children in foster care. The National Study of Social Services to Children and Their Families, conducted in 1977, documented that thousands of children remained in foster care with little hope of being reunited with their parents or placed with adoptive families. The prospect of adoption was particularly bleak if the child was a member of an ethnic or racial minority group, an older child, a member of a sibling group, or mentally or physically disabled.

Repeatedly in hearings and in testimony before the Congress, child advocates and practitioners expressed concern that the public child welfare systems in many of the States did not know how many children were actually in foster care; how long they had been in care; where they resided; their race, age, sex and special needs; or the plan for each child. They indicated that, although this was a problem at the State and local levels, national attention and incentives were needed to focus attention on this lack of information and provided ways to encourage States and localities to develop this information. If the goal of permanency for each child was to be encouraged and achieved, national attention needed to be called to the importance of knowing the locations and characteristics of children in foster care so that those who could not return home might find families through adoption.

In 1982, in response to the legislative requirements in Public Law 95–266 and Public Law 96–272, the Department, through a grant to the American Public Welfare Association (APWA), implemented the Voluntary Cooperative Information System (VCIS) which collects aggregate information annually about children in foster care and special needs adoption from State child welfare agencies.

This voluntary system has been characterized by variation from State to State in reporting periods, the lack of common definitions for data elements and services, and inconsistent methodologies in reporting. In addition, the aggregate nature of the data limits the analyses that can be performed and limits its usefulness for purposes of planning or policy development at either the Federal or State levels.

IV. Legislation Establishing New Data Collection Requirements

Section 9943 of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99–509) amended title IV–E of the Social Security Act by adding section 479. This section sets forth directives for establishing and implementing an adoption and foster care data collection system. The law requires:

(1) The establishment of an Advisory Committee to the Secretary, the composition and tasks of which are mandated by the Act. The tasks include a Report to the Secretary and to the Congress on the results of a study on the development of a data collection system;

(2) The submission to the Congress, by the Secretary, of a subsequent report that, based on the Advisory Committee's Report, recommends a method of establishing, administering and financing a system for data collection on foster care and adoption in the United States; and

(3) The promulgation of regulations that set forth the requirements governing this data collection system.

Although prior legislation authorized data collection efforts, the 1986 OBRA amendments clearly reflected Congressional interest in establishing, administering and financing a system for the collection of data with respect to adoption and foster care.

The Advisory Committee on Adoption and Foster Care Information was established by the Secretary and included representation from private, nonprofit organizations, organizations representing State and local governmental agencies, Federal agencies and other major groups interested in adoption and foster care, as required by the statute. The Advisory Committee was to:

- Identify the types of data necessary to assess on a continuing basis the

incidence, characteristics, and status of adoption and foster care in the United States;

• Develop appropriate national policies with respect to adoption and foster care data collection;

• Evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

• Assess the validity of various methods of collecting data with respect to adoption and foster care; and

• Evaluate the financial and administrative impact of implementing each method.

The Advisory Committee concluded its work and submitted its study findings and recommendations to the Secretary by the legislative deadline of October 1, 1987. Highlights of the report are summarized below:

• Despite some progress over the past decade, there remains a serious shortfall in the availability of adoption and foster care information, particularly for policy purposes.

• The VCIS, initiated by the Federal government in 1982 in concert with the APWA, is the major vehicle for collecting child welfare and adoption data through the voluntary participation of the States. However, not all States have provided reports over the years, reporting periods differ, common definitions and methodologies are lacking, and the nature of aggregate data limits the analyses that can be carried out.

• The VCIS should be phased out gradually so as to avoid a gap in the availability of data, and a mandatory data collection system should be created with separate components for adoption and foster care.

• Adoption data should be collected on all legalized adoptions, including relative and non-relative adoptions and adoptions under both public and private auspices, as well as privately arranged adoptions.

• Foster care data should be collected on all children under the care and responsibility of the State child welfare agency. The foster care data system should also include children placed privately in licensed private agencies.

• Foster care information should include demographic information on the child (sex, birth data, race, ethnicity, previous stays in foster care, service goals, availability for adoption, duration of care, funding sources, and what happens to the child after the period of foster care is concluded). Data on each child should also include relevant demographic information about that child's biological and foster parents.

• Similar information should be collected for all adoptions at the time the adoption is legalized.

• Special provision needs to be made for Indian children who are affected by requirements in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, especially section 1951 mandating submission of adoption data to the Bureau of Indian Affairs (BIA) of the Department of the Interior. Indian children served by a Tribe would be reported to the BIA which would, in turn, report to ACYF.

• Individual child case data should be the basis of the data collection. The data must be kept confidential as the purpose of the data collection system is the conduct of program and policy analyses and not the tracking of individual children at the national level.

• Individual child and family identifiers should be eliminated in the data provided for Federal reporting purposes to preserve confidentiality.

• Nationwide data should be a subset of the same data used by State and local agencies in managing adoption and foster care programs on a day-to-day basis.

• Legislation should be enacted to require the Governor of each State to designate a lead institution to compile and transmit to ACYF statewide data on adoptions.

• Foster care and adoption data should be maintained in computer files at the State level and the data transmitted electronically to ACYF on a quarterly basis.

• The ACYF should generate reports on an annual basis to coincide with the Federal fiscal year. Summary reports should also be produced each quarter so data would be available for use by all States that would coincide with each State's annual fiscal period.

• There should be appropriate penalties for noncompliance and incentives to encourage timely compliance.

• Incentives should include, at a minimum, new Federal funding for 100 percent of add-on developmental expenses incurred by States in the transition to the new data collection system, plus Federal participation at 50 percent for ongoing operational costs.

• The ACYF should also provide training and technical assistance support to the States in establishing the data collection system, commencing in FY 1989. An ongoing work group should be established by ACYF so that there is consultation with appropriate State officials as well as representatives from appropriate groups on the planning and design of the new data collection system.

• The ACYF should be encouraged to conduct a variety of special studies to complement the information compiled under the data collection system. Data from the system would contribute to the conduct of many of those studies.

The Secretary, as required by section 479(b)(1) of the Act, reviewed the Advisory Committee's report and submitted to the Congress a report with recommendations for a new system. The Secretary's report proposed a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States; evaluated the feasibility and appropriateness of collecting data with respect to privately arranged foster care placements and adoptions arranged through private agencies without assistance from public child welfare agencies; and evaluated the impact of the system on the agencies with responsibility for implementing it.

Section 479 directs the Secretary to promulgate regulations that provide for full implementation of a data collection system for adoption and foster care no later than October 1, 1991.

According to section 479, this data collection system shall:

(1) Avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) Assure that any data that are collected are reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) Provide comprehensive national information with respect to—

• Demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents;

• The status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care);

• The number and characteristics of children placed in or removed from foster care, and children adopted or with respect to whom adoptions have been dissolved; and

• The extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) Utilize appropriate requirements and incentives to insure that the system functions reliably throughout the United States.

V. Alternative Methodologies Considered

In deciding how to best implement the requirements of the legislation, the Department did a cost benefit analysis in which five alternatives were considered relative to AFCARS data collection. The Department's assessment of data collection alternatives was guided by the following principles with regard to data utility. It must:

- Produce national information on adoption and foster care.
- Permit meaningful State-specific analyses.
- Permit meaningful comparisons among States.
- Allow for detailed analyses which address critical child welfare policy issues.
- Not unduly burden the Federal government or the States.

The five alternatives considered were:

1. A continuation of the Voluntary Cooperative Information System Survey (VCIS) in its present form.
2. A quality control methodology which would require each State to submit monthly samples of AFCARS data.
3. A semi-annual census of AFCARS data as specified in this final rule.
4. A quarterly census of AFCARS data as originally set forth in the NPRM dated September 27, 1990.
5. A semi-annual sample of AFCARS data.

Each of these alternatives, where applicable, was evaluated on the basis of burden, timeliness, completeness, longitudinal analysis and complexity. Burden deals with the amount of resources expended by the States to satisfy the AFCARS data requirements. Timeliness pertains to the timely receipt of clean data and the timeframe for publication. Completeness addresses the total number of States participating and the number of data elements completed. Longitudinal analysis recognizes whether or not the data is collected on a case by case basis which allows for tracking of case changes over time. Complexity of the data addresses whether or not national data analysis requires a weighting methodology with its attendant limitations. These factors were applied to each alternative and scored according to a set formula.

The result of this analysis indicated that at this time, given Congress' intention with respect to AFCARS, and the noted problems with VCIS and sampling, the semi-annual census appears to be the most viable and, in the long run, the most cost effective alternative. Many States have, to some degree, existing information systems and AFCARS will serve as a catalyst for States to develop a more complete information system or to improve an existing one. Although the semi-annual census for AFCARS data is more costly than that of VCIS or any sampling methodology, the resultant information systems and broader base of data it provides, would allow and encourage States to manage programs more effectively due to more efficient retrieval of available information within the agency. In addition, improved information flow and availability will allow for more informed policy development and, in the long run, more efficiently run programs resulting in cost savings to the States and Federal government.

VI. Summary of Major Changes in the Final Rule

Section 479 of the Social Security Act (the Act), 42 U.S.C. 679, directs the Secretary to promulgate regulations for the implementation of a system to collect data relating to adoption and foster care in the United States.

On September 27, 1990, the Department published a Notice of Proposed Rulemaking (NPRM) (55 FR 39540) that proposed that State agencies administering or supervising the administration of titles IV–B and IV–E of the Act implement data collection systems and report quarterly on data elements set forth in the proposed rule. The NPRM proposed that States report data on all children for whom the State agency was responsible who were in foster care or had been adopted.

The proposed rule was based principally on the Secretary's report and his recommendations to the Congress. The Secretary's report indicated that reporting frequency would be at least annually, and no more frequently than each quarter. The NPRM proposed quarterly reporting. All other aspects of the Secretary's proposed system were included in the NPRM.

The proposed data elements and methodology for data collection were described in Appendices to the proposed rule. These Appendices defined the data elements and proposed the specifications for submission format, record layouts and quality standards for data, including logic edits to assess the internal consistency of the data.

The NPRM included provisions pertaining to State compliance and penalties for noncompliance. Finally, the NPRM addressed costs for the establishment and maintenance of the data collection systems and rules governing State claims for partial reimbursement through administrative cost matching under title IV–E.

Ninety-eight letters were received in response to the NPRM, including 1600 specific comments. These included comments from agencies in 49 States and the District of Columbia, as well as comments from national associations and individuals. All comments were reviewed and analyzed and form the basis of the changes in this final rule.

Eighty-one commenters expressed general agreement with the need for an adoption and foster care data reporting system. Disagreements tended to focus on particular requirements set forth in the NPRM. The issues that elicited the most frequent expressions of concern were the potential time and cost burdens on the States resulting from the time required to collect and process the data and the possible diversion of resources from services to children; the need for greater Federal support in the costs of the information system; objections to definitions of particular data elements and the overall scope of the data requested; and disagreement with the penalty structure. Many States argued that the implementation deadline was unrealistic. Several commenters questioned the need for quarterly reporting. Other concerns included:

(1) The need for technical assistance support;

(2) Questions about data analysis;

(3) The need to clarify the missing data criteria; and

(4) Questions about who reports on Indian children.

These comments have been carefully considered by the Department in reaching the decisions reflected in this final rule. The following is a discussion of the changes made in the final rule as a result of these comments.

Several major changes have been incorporated in the final rule. First, the NPRM reflected the legal mandate to begin full implementation as of October 1, 1991. However, the Department sent an Information Memorandum to the States indicating that the final rule would specify the date of actual implementation. These rules specify that the first reporting period will begin October 1, 1994 and end March 31, 1995. The first transmission must be received in the Administration for Children and Families (ACF) no later than May 15, 1995. The six reporting periods beginning October 1, 1994 and ending September 30, 1997 will be penalty-free. The next year (covering the reporting periods October 1, 1997–March 31, 1998 and April 1, 1998–September 30, 1998) will be at half penalty and the following year, beginning with the transmission filed for the period beginning October 1,

1998, will be at full penalty. Second, the NPRM would have required quarterly reporting. Based upon comments from the States, these rules specify that the reporting frequency will be semi-annual. The semi-annual reporting periods will be as of the end of March and September for each year. The States will be required to submit reports within 45 calendar days after the end of the semi-annual periods. The data must be extracted from the State system as of the last day of each reporting period.

Third, the NPRM's proposed approach to dealing with missing data, and the relationship between missing data and penalties, has been significantly changed. The allowable amount of missing data for any data element prior to the imposition of penalties has been raised from five percent, as proposed in the NPRM, to ten percent. Certain other modifications have been made in response to the comments. These include adding "not yet determined" and "cannot be determined" to several data categories. Only a limited set of core data elements will be required for children who have been in foster care less than 30 days. Core data elements include general information about the jurisdiction, the child's demographic information (date of birth, sex and race/ethnicity), the date of latest removal from the home, the current placement setting, and the date of discharge from substitute care. For children who enter foster care prior to October 1, 1995 and who are still in the system, only core data elements will be required; however, States will also be required to report on the most recent case plan goals affecting those children. Complete adoption data must be reported only for children adopted after the implementation date of October 1, 1994. In accordance with instructions to be issued at a later date, we will require the submission of aggregate information, broken out by age of child, on children adopted prior to October 1, 1994, who are continuing to receive title IV–E subsidies.

Fourth, in order to insure timeliness of the data, the Department will require that data be entered into the State's data system within 60 days of any placement or exit event affecting a child subject to the AFCARS reporting. For each child, we will require a computer generated transaction date to accompany the date of latest removal from the home and the date of discharge from foster care. The transaction date will indicate the actual calendar date when the date of removal and the discharge date are recorded in the State's system. Ninety percent of the subject transactions must have been entered into the data system within 60 days of the event (removal from home or discharge from foster care).

Fifth, for any child in the foster care system more than seven months, the State must indicate the date of the last periodic review. When this is done, it also means that the computer record has been checked and that the data on the child have been reviewed and are current, at least as of that date.

Sixth, modifications were made in the penalty provisions in response to objections from a majority of those commenting. No penalty will be assessed on a State until the State has had an opportunity for a hearing in accordance with the requirements at 45 CFR 201.6. When such a penalty has been assessed in accordance with § 1355.40, one regularly scheduled acceptable data transmission will be considered sufficient to assure the Secretary that there will no longer be any such failure to comply. The Department believes that the penalty provisions are the only ones available under current legislation. The net effect of several of the provisions will be to ease the burden of the penalties upon the States.

Seventh, administrative funding under either title IV–B, or title IV–E for systems design, development and implementation must comply with the requirements of 45 CFR part 95, subpart F, "Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)". Specifically, 45 CFR 95.601 identifies the conditions under which the Department will approve Federal financial participation (FFP). Cost allocation may be required under some circumstances. Cost allocation under subpart F is addressed in 45 CFR 95.631, which requires the identification of costs associated with the development and operation of ADP acquisitions.

As requested by the commenters, the Department will provide technical assistance to those States desiring it on the planning, development and implementation of the required system. The intent is to provide technical assistance through a technical assistance contract and by working with the States to define how the foster care and adoption reporting system fits into the broader framework of support service automation. In order to provide services to children, many States are now in the process of planning for, or developing a comprehensive automated support services system which focuses on case management. Other States plan to enhance an existing management information system to meet the reporting requirements of this rule. Further, to effectively meet the statewide information system requirements of section 427 of title IV–B, States need better automation for monitoring and tracking. As States automate to meet the data reporting requirements of this rule, the Department encourages comprehensive service delivery and case management automation, rather than a simplistic data collection and reporting system which serves only to meet Federal reporting requirements. A state-of-the-art system would go beyond the delivery of management reports by providing the States with a vehicle to increase their efficiency and productivity.

The Department further encourages the States to focus on the level of automation required as an opportunity to develop automated capability which provides for consolidation and integration of children's services. For example, a State should automate every step of the process including referral, eligibility determination, assessment and analysis, placement and reporting. Proper application of automated technology can provide the State, regardless of organizational structure or funding program, with a system which provides for a single point of entry to determine eligibility regardless of whether the child is in title IV–E care or under protective services. The Department will provide guidance in the development of these comprehensive systems.

The designation and contents of the appendices included in the NPRM have been changed in this final rule. Appendix A describes and defines the Foster Care Data Elements and appendix B describes and defines the Adoption Data Elements. Appendices C and D of the NPRM have been dropped for reasons which are explained below and appendices E, F and G of the NPRM have been amended and redesignated C, D and E in this final rule. A new appendix F has been added (see § 1355.40(e) discussion below).

Certain changes have been made in the data elements in appendices A and B. For example, the following foster care data items have been dropped: Race/ethnicity of parents and school status. Categories related to the circumstances of removal from the home have been revised. Revisions were made regarding the categorization of types of disabilities. A data element on out of state placements has been added. For adoption, the child's day of birth has been dropped but the month and year will be reported; for foster care, the full date of birth will be reported.

Indian children covered under section 427 protections must be reported by the

State on the same basis as any other children.

We also are planning to add a financial data element to the appendices which would indicate the monthly amount of State and Federal foster care benefit.

We anticipate that many States will be in a position to include such data in their semiannual reporting if they decide to apply for enhanced funding which is now available for automated data systems. Further in this preamble, the discussion of § 1356.60 will provide more information on the enhanced funding statute and regulation.

We welcome and urge you to provide comments on this matter so we can take your concerns into consideration prior to making such a change.

In the interest of giving States flexibility in implementing AFCARS, we are allowing States the option of submitting data based on sampling for the first and second years. This is discussed later in this preamble.

Finally, in October 1996, the Secretary will review these regulations and the States' implementation of them to determine whether any changes are necessary.

VII. Section by Section Discussion of Comments and the Department's Response

Part 1355—General

Section 1355.20. Definitions

Comment: One commenter requested clarification of "provision of services" under the definition of adoption.

Response: The Department made no changes in the definitions. The definition of "adoption" in § 1355.20 does not mention provision of services.

Section 1355.30. Other applicable regulations

This section addresses the withholding/reduction of FFP, the evidence relevant at hearings under 45 CFR 201.6 related to the standards set forth in § 1355.40 and whether there were circumstances beyond the control of the State or political subdivisions that should be considered by the Secretary.

Comment: Two comments were received from State agencies disagreeing with the evidentiary restrictions in § 1355.30(e) because they either appeared to preclude raising other important issues or were unclear as to whether the adequacy of data submitted could also be discussed.

Response: The rule does preclude factors other than those specified from being raised in the hearing. The intent of this section is to limit the hearing to items immediately relevant to the items set forth in § 1355.40 and to determine whether circumstances beyond the control of the State impeded the accurate or timely submission of the required data. Therefore, no changes were made.

1355.40. Foster care and adoption data collection

Paragraph (a)(1). Implementation of the adoption and foster care data collection system by October 1, 1991.

Comment: A total of 58 comments were received, including responses from 47 State agencies and four national organizations. Forty-nine commenters disagreed with the October 1, 1991 deadline. States pointed out that they must redesign their data systems, and could not complete such systems development by the deadline. Suggested start-up dates ranged from 1992 to 1995 depending on funding, technical assistance, and the availability of staff. Other suggestions addressed the provisions for mandatory adoption reporting; suggested a period of pilot testing; recommended delaying the imposition of penalties until three years after the regulations were issued; and proposed lengthening the schedule for submitting and analyzing data.

Response: The Department concurs with the arguments advanced by the States that they could not meet the schedule originally proposed for full implementation. We believe these same considerations call for a phased imposition of penalties. The final rule reflects these conclusions. The Department has determined that the first reporting period will begin October 1, 1994 and will end March 31, 1995. The first transmission must be received in ACF no later than May 15, 1995. Reports covering the period October 1, 1994 through September 30, 1997 will be penalty-free. Reports for the next year will be subject to half penalty and those for the following year, beginning with the transmission filed for the period beginning October 1, 1998, will be subject to full penalty.

Paragraph (a)(2)–(4). AFCARS includes all children under the authority of the IV–B/IV–E agency.

Comment: Two comments were received disagreeing with the proposed regulation. One commenter suggested including all foster care, adoption, abused, and neglected children in the same data collection requirement since they are essentially one population. The other commenter suggested including all private and independent adoption totals to give a true picture of adoption activity in the United States.

One commenter expressed concern about how to gather information on ongoing cases, some of which may have sealed adoption files. It was suggested that current cases should be "grandfathered" to facilitate conversion to the system.

Response: These paragraphs have been edited for clarification and paragraph (4) of the NPRM has been incorporated into paragraph (3) of the final rule. The Department believes that the inclusion of all children in foster care in the reporting system is responsive to the legislative intent. Children who enter foster care prior to October 1, 1995 and children who are in care less than 30 days will require only a limited core set of data elements to be transmitted. For children who enter foster care prior to October 1, 1995, States will be required to report on the most recent case plan goal affecting those children. For children adopted prior to the implementation date of October 1, 1994, who are continuing to receive Federal title IV–E subsidies, only aggregate data will be required, broken out by the age of the child. The adoption provisions are as inclusive as possible under current law. There is no authority which supports the collection of information on children placed for adoption through private facilities.

Although there is no requirement in this final rule for States to include private adoptions in their AFCARS data transmissions, States are encouraged to report such data on an optional and voluntary basis. Such voluntary reports of private adoptions will use appendix B. Appendix B includes the data element set for all adoptions, not just those with which the title IV–B/IV–E agency is associated. We strongly encourage States that have the authority to collect data from courts, bureaus of vital statistics and other agencies that maintain records of adoptions to use appendix B and take advantage of the opportunity the Department is offering to process and analyze these data in the context of data for all adoptions.

We are aware of the interest of the States in maximizing the coordination of the Adoption and Foster Care Data Collection System (AFCARS) with the voluntary National Child Abuse and Neglect Data System (NCANDS). We are making every effort to insure that the data elements are consistent across AFCARS and NCANDS, although the two systems serve different purposes. Guidance will be provided to assist the States in their reporting efforts. The NCANDS is designed primarily to respond to a legislative requirement in the Child Abuse Prevention, Adoption and Family Services Act of 1988 (Pub. L. 100–294) that the Secretary establish a national data collection program

which coordinates State child abuse and neglect data and includes standardized data on false, unfounded, or unsubstantiated reports, as well as information on the number of deaths due to child abuse and neglect.

Paragraph (b)(i). Semi-annual submittals within 45 days.

Comment: There were 40 comments received, including comments from 27 State agencies and seven national organizations, concerning the appropriate reporting period. There was a wide range of disagreement. Nine State agencies recommended extending the transmission time to 60 or 90 days beyond the end of the quarter. Those agencies cited insufficient time to gather, verify and submit the data as their primary reasons for disagreement. Nine agencies disagreed entirely with quarterly reporting, and recommended semi-annual or annual reporting instead. Reasons given were the scale of the proposed data reporting system, possible fiscal penalties, and the fact that more effort would be devoted to reporting data than providing services. Those in agreement with the requirements as specified in the NPRM said that quarterly reporting makes it easier to analyze trends over time, makes the data available in a more timely fashion, and permits accounting for clients, without system modifications, for children who enter and exit the system in the same reporting period. A significant number of commenters expressed concern as to how confidentiality of the data will be maintained by the Department. A few States advocated a sampling of cases.

Response: This paragraph has been changed in accordance with comments received. The Department has carefully weighed the tradeoffs in quarterly versus semi-annual reporting (annual reporting would not be consistent with the goals set forth in the Act). On balance, the extra administrative burden on the States that would be involved in quarterly reporting outweighs the potential benefits. We believe that obtaining the data twice a year will be sufficiently timely and is more likely to optimize the goals of insuring that the data are reliable and consistent over time while avoiding the unnecessary diversion of resources for agencies responsible for adoption and foster care. The semi-annual reporting periods will close as of the end of March and September for each year. The States will be required to submit reports within 45 days after the end of each semi-annual period. The data transmitted by the State must be extracted from the State information system as of the last day of each reporting period. The first transmission will be due by May 15, 1995 and the second by November 14, 1995.

Appendices C and D in the NPRM, "Adoption Data Elements Subsidy Cessation" and "Adoption Data Elements General Adoption," have been dropped from this final rule. "Subsidy Cessation" was dropped because it added only one additional piece of information to what we would already have, and the additional information could not justify the added effort involved in maintaining, transmitting and processing an additional report. "General Adoption" was dropped because it was decided that the same form (appendix B, section I) could be used for both the mandatory and the voluntary reporting.

The Department has decided to pursue the collection of data on all children in foster care as it is more economical for reporting and processing than reporting data on a sample of cases. The national foster care and adoption data set will accordingly be composed of data extracted from the State systems and represents a subset of data maintained in the State's data system. In reporting data and in the development of public use data files, the Department will follow the policies and procedures, relating to these activities, of the National Center for Health Statistics of the Public Health Service. In addition, in public use data files, counties or equivalent jurisdictions with small populations will be combined into one coding category.

Additional safeguards regarding confidentiality have been introduced in the final rule. The reporting number that would follow the child through every report has been dropped. Instead there will be a sequential number for each record in the transmission. The day of birth and the local agency have been deleted from the adoption data. All of these procedures will insure confidentiality in any data released for research or analysis.

Paragraphs (b)(2)–(3). Timeliness of data entry and reporting.

Comment: Forty-two comments were received, including 30 from State agencies and seven from national organizations. The majority of those disagreeing with the requirement were State agencies concerned that having to take a "snap shot" of data during a specific five day period would not permit enough time to update the data to reflect the status of the children in foster care on the day the data were extracted.

Response: This provision resulted in confusion and misunderstanding among the States. Many erroneously believed that the intent of AFCARS was to reflect the status of the children in foster care rather than the information on the children contained in the State data system on the day the data are extracted. The requirement is to obtain a profile from the State data system. The timeliness and missing data standards reflect the Department's acknowledgment that some information on some children may not be known or current in the State's information system on the date of extraction.

As proposed in the NPRM, compliance in AFCARS will be based on timeliness of submission, consistency of information and timeliness of data entry. The Department is requiring in paragraphs (b)(2) and (d)(1) of this section, therefore, that data on removals and discharges be entered into the State's data system within 60 days of any removal or discharge event affecting a child subject to the AFCARS reporting. The Department has decided to drop the requirement pertaining to the "first five calendar days" after the end of the reporting period (which will now be semi-annual rather than quarterly). However, the requirement that the data submitted must be extracted from the State system as of the last day of each reporting period is now in paragraph (b)(1).

Paragraph (b)(4) of this final rule was a part of (b)(2) in the NPRM. It has been edited and made a separate subparagraph for clarity and greater visibility.

Paragraph (b)(5). Checks used to judge data consistency.

Comment: Four comments were received, three from State agencies. One commenter proposed that if a State transmitting the data cannot get access to the edit checks by which the data will be evaluated, that State should not be penalized for errors or missing data. Another recommended that the Department review the data and report any inconsistencies back to the State within 60 days following the end of the quarter. One commenter questioned how the accuracy of the system will be tested, as opposed to consistency. Another suggested that States run their own consistency checks prior to transmission of the data.

Response: With the exception of technical edits and renumbering as paragraph (b)(5), there is no change in the provision as set forth in paragraph (b)(3) of the NPRM. The internal data verification checks are specified in appendix E of this final rule. The computer program rules for consistency checks will be shared with the States. There are no current proposals for

accuracy checks other than those currently available to the Department through the section 427 and title IV–E reviews or Office of Inspector General audits. However, for children in care more than seven months, the entry of the date of the child's most recent administrative or court review constitutes the State's certification that the information on that child is current as of that date. We would not, however, rule out establishing further accuracy checks in the future.

Paragraph (c). Missing data standards.

Comment: Several comments were received on this provision, all from States. One commenter argued that missing data are valid entries, particularly in the case of abandoned children, and that these entries should not count against the proposed 95 percent accuracy rate. A suggestion was made that the Department allow a "grandfather" period on selected data elements for current cases, rather than require States retrospectively to complete data that may not have been part of automated or manual data systems, such as some of the data required for adoption cases. Some States suggested that the acceptable error rate for missing data be changed from five percent to 10 percent.

Response: The Department concurs with the need to address the missing data issue in a different manner. In appendices A and B, we have changed some of the data element options to "cannot be determined" or "not yet determined." "Grandfathering" of adoption and foster care data is being allowed as summarized above in the Department's response to § 1355.40(a)(2)–(4). As suggested by the States, a new subparagraph (2) has been added to clarify that a penalty will be invoked when the missing data exceed 10 percent for any one element. Subparagraph (2) of the NPRM is now designated subparagraph (3).

Paragraph (d) (1) and (2). Timeliness of foster care data reports.

Comment: Eleven comments were received, eight from State agencies. Four of the disagreeing State agencies recommended that the timeliness standard be lowered to 40 or 50 percent. Others suggested that the rate be raised to reflect a more realistic status of foster care children in each reporting period.

Response: In response to the concerns over the timeliness issue, the Department in subparagraph (d)(1) has revised its approach. For each child, we will require that a computer generated transaction date accompany the date of the latest removal from the home and the date of discharge from foster care. Ninety percent of the subject transactions must have been entered into the system within 60 days of the actual event, i.e., removal from home or discharge from foster care.

Paragraphs (e) (1) through (7). Penalties.

This section specifies that failure by a State to meet the AFCARS requirements is considered a substantial failure to meet the requirements of the title IV–E State plan; and spells out penalties for substantial noncompliance, how penalties will be assessed and the circumstances that will lead to specified penalties.

Comment: Many comments were received on the specific provisions of § 1355.40(e) pertaining to penalties. The largest number of comments focused on the details of the penalty provision in § 1355.40(e)(1). Forty-five comments were received on that provision, including 40 from State agencies and three from national organizations.

One national organization agreed that a penalty system holds States accountable and would thus correct and prevent deficiencies. The majority of commenters disagreed. Their disagreement was based on the rationale that the rules would penalize an area where funds are most needed and that sanctions are the least effective form of shaping behavior. Many commenters noted that the rules fail to offer incentives despite the Advisory Committee's recommendation for incentives.

A variety of other objections concerned costs, fairness, accuracy rate, and practical concerns such as whether States would comply unless the size of the penalty exceeded the costs of capturing the data at the local level. Commenters expressed disagreement on the timeframe for State implementation given the delay in promulgating standards for the system.

Many of the commenters made suggestions, such as that the Department reward "good faith efforts," with graduated penalties to reflect compliance efforts; establish strict guidelines regarding the application and degree of penalties; and outline steps to "satisfy the Secretary."

Some States sought assurances that substantial non-compliance would not jeopardize the entire IV–B/IV–E State plan for compliance. Some commenters disagreed with the interpretation that non-compliance with the proposed rules would constitute non-compliance with the IV–E and IV–B plans, including all IV–E and IV–B dollars. Moreover, it was felt that tying the penalties to the State plan may in the future jeopardize funding for major programs such as AFDC. The commenters suggested that the requirements should clearly explain the financial upper limits of the penalty.

Questions raised included the following: When missing data are provided, will the penalty/sanction be reversed? How will the State handle the penalty if it is linked to a specific county? Will the penalty be applied against the administrative costs claimed by the State or the amount of FFP returned?

Smaller numbers of comments were received on the other provisions related to penalties. Comments on § 1355.40(e)(2) to (7) ranged from a high of 34 comments on the provision dealing with the "satisfaction of the Secretary" to none on subparagraph (e)(5) and three on subparagraph (e)(6); most comments were from State agencies.

The overwhelming majority of the objections were related to the two following issues: The imposition of penalties in subsequent quarters following non-compliance and the lack of quantitative standards necessary to satisfy the Secretary. Suggestions made included: (1) Providing more time for States to implement the system prior to imposing sanctions; (2) recommending that the State's submission of a satisfactory report be considered as "evidence that non-compliance will not recur"; (3) assessing penalties in the quarter after the quarter in which non-compliance occurred to prevent the retroactive recovery of funds; (4) developing specific standards against which to assess penalties if subsequent quarters will be affected; (5) pro-rating penalties to a percentage of missing data; and (6) establishing empirical criteria which would be used to satisfy the Secretary and against which to measure compliance. Several States proposed that all costs associated with the system be allowable administrative costs of IV–E.

Several comments were made on the provisions affecting penalties in Years 3 and 4. While some noted that the proposed penalty would be too low to be effective, others favored reducing the maximum penalty.

One commenter expressed agreement with the proposed rule in support of penalties and sanctions and recommended that a corrective action procedure be implemented. Objections were raised against penalties imposed for missing data and technical errors. The argument was made that the accuracy standard was unrealistic. The lack of an appeals process was criticized. In general there were objections to the criteria for imposing the maximum penalty on a State, and suggestions were made for softening the penalty provisions.

Several of the commenters disagreed with a penalty being imposed in Year 3 as they felt that time was needed to implement and test a new system. Another objection was to the fixed penalties in Years 3 and 4 which fail to differentiate between States according to the accuracy rate of the data.

Four States commented on the penalty provisions for the failure to submit adoption data. The majority of commenters expressed concern regarding the collection of historical data on children receiving subsidies.

Response: The basic concepts in the penalty section will remain the same. However, technical changes including renumbering were made in this paragraph. The Department shares the position of the Advisory Committee that an ultimate resort to penalties is necessary in order to achieve the goals Congress mandated for adoption and foster care data collection in the event of any State not responding in a timely manner. We believe that when States are faced with the possibility of a finding of substantial noncompliance with the title IV–E State plan, and the consequent imposition of penalties, they will be strongly motivated to insure that correct data are submitted within the specified timeframes.

However, the Department believes that most, if not all, of the States will strive to cooperate in implementing AFCARS and submitting the required reports. Consequently, a number of changes have been made which will moderate the impact of the imposition of penalties upon the States. The method of penalties proposed in the NPRM and being modified in this final rule is used because it is the only one allowable under current law. While the Department acknowledges that there is strong support for a system of incentives and that positive reinforcement can be more effective than a system of penalties, there is nothing in the Act which provides a basis for incentive funding.

With respect to § 1355.40(e), the reference date of July 30, 1993, has been added in order to clarify that State 427 incentive funds calculated as of that date shall form the basis for penalty calculations. Another clarification has been added to paragraph (e) in order to provide that the formula for calculation of penalties is not affected by any determinations of compliance with the requirements of section 427 or withdrawal of certifications with respect to section 427. Appendix F reflects the amount of incentive funds available for fiscal year 1993, for each State.

The following changes in the final rule will have the net effect of making the reporting and penalties less burdensome:

(1) The first reporting period will begin October 1, 1994 and end March 31, 1995. The first transmission of data must be received in ACF no later than May 15, 1995. The six reporting periods beginning October 1, 1994 and ending September 30, 1997 will be penalty-free. The next year's reports will be subject to half penalty and, thereafter, beginning with the transmission filed for the period beginning October 1, 1998, the States will be subject to full penalty.

(2) The reporting period will be semi-annual rather than quarterly.

(3) The "satisfaction of the Secretary" requirement will be met by submission of one acceptable regularly scheduled semi-annual data transmission of the type which was the cause of the penalty.

(4) The maximum percentage of missing data for any data element before the imposition of penalties will be raised to ten percent instead of five percent as originally proposed.

(5) During the four reporting periods beginning October 1, 1994 and ending September 30, 1996, States will have the option to comply with the AFCARS regulations by selecting a sample of foster care cases that are under the jurisdiction of the State child welfare agency rather than reporting on the entire population of foster care cases that are under the jurisdiction of the State child welfare agency. (After this optional sampling period, States will be expected to address the entire population of foster care cases as required by this final rule.)

An acceptable formula for determining the sample size is as follows:

$$n = \frac{(N_1 + N_2) \times 1.96^2 \times .5 \times .5}{.03^2 \times (N_1 + N_2 - 1) + 1.96^2 \times .5 \times .5)}$$

N_1 represents the total number of foster care cases that are under the jurisdiction of the State child welfare agency and are active on the last day of the reporting period.

N_2 represents the total number of foster care cases that are under the jurisdiction of the State child welfare agency and left care during the six-month reporting period.

The sample size n meets the criteria for a 95% confidence interval estimate for the population proportion of any attribute specified in AFCARS with a tolerable sampling error of 0.03 and an estimated proportion of 0.5 which maximizes the sample size, n. Thus, there is a 95% chance that the sample size, n, will yield an interval estimate for any attribute specified in AFCARS that will be within three percentage points of the true population proportion. States may use other sample size formulas that meet the criteria specified above.

If States decide to utilize the sample size formula specified above then they need to determine the appropriate values for N_1 and N_2 and substitute them into the above equation to solve for the sample size, n. To assure a self-weighting sample the sample size, n, needs to be apportioned between N_1 and N_2 by multiplying n first by N_1 divided by N and then by N_2 divided by N (where $N=N_1+N_2$). The first calculation yields a sample size called n_1; the second yields a sample size called n_2. States will select a simple random sample of size n_1 from the population of foster care cases that are under the jurisdiction of the State child welfare agency and are active on the last day of the reporting period and a sample of size n_2 from the population of foster care cases that are under the jurisdiction of the State child welfare agency and left care during the reporting period. States may use any recognized random number generators to select the two simple random samples.

States may also use systematic samples to satisfy the sampling option.

(6) Other changes made in the system that will moderate the impact of the penalties include: only a limited number of data elements will be required for foster children who enter care prior to October 1, 1995 and for children in care less than 30 days; for children adopted prior to October 1, 1994, who are continuing to receive Federal subsidies, only aggregate data will be required; and acceptable responses such as "not yet determined" and "cannot be determined" have been added.

Part 1356—Requirements Applicable To Title IV–E

Section 1356.20(b). State plan document and submission requirement

1356.60(c)(2) and (d)(1) through (d)(5). Fiscal requirements (title IV–E)

This section specifies allowable administrative costs necessary for the administration of the adoption and foster care data collection system and spells out procedures for allocation of administrative costs.

Comment: Over 40 comments were received on these provisions, mostly from State agencies and several national organizations. A majority of commenters said it was not equitable to require States to collect and maintain information on all children in foster care, but to reimburse them only on the

percentage of children eligible for IV–E funds. They believe that funding for AFCARS should be based on all children who are in placement with the State agency. Approximately half the commenters disagreed with tying the penalties and costs of data collection to IV–E funds. Some States suggested that there should be a dedicated funding pool specifically for data collection, stating that they should not have to allocate IV–E dollars to other programs. Two States suggested that the Department fund from 90 to 100 percent of the data reporting system.

Two States commented on the provision that the costs of data reporting for children not eligible for title IV–E foster care and adoption assistance payments must be borne by the State and may be paid from title IV–B or other funds. The reasons cited for disagreement were: (1) Demands for IV–B funds already exceed resources; and (2) the Department should utilize the existing authority to provide greater Federal reimbursement for implementation. The case was made that the Department should at least provide incentives for States participating in VCIS to modify their systems to comply with AFCARS.

One commenter suggested that, since the regulation would make adherence to the requirements of section 479 a State plan compliance issue under the title IV–E, it follows that all of the costs associated with implementing that section should be chargeable to title IV–E.

Response: The Department concurs with the interpretation that there is no need for allocating costs because of the State plan requirement. Because this final rule is making the requirement to implement AFCARS as a title IV–E State plan requirement, and because the costs for development and implementation of information systems is an allowable cost under title IV–E, the costs of AFCARS can be directly charged to title IV–E administrative costs at the 50 percent matching rate.

However, section 13713 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), signed by the President on August 10, 1993, amends section 473(a)(3) of the Social Security Act to allow 75 percent match for the planning, design, development or installation of a Statewide mechanized data collection and information retrieval system (including 75 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such system meets certain requirements. The higher matching rate is available for three fiscal years, beginning with fiscal year 1994. In addition, section 13713 of OBRA '93 adds a new paragraph (e) to section 474 of the Social Security Act. This new paragraph provides that the Secretary shall treat as necessary for the proper and efficient administration of the State plan, all automated data collection expenditures carried out in accordance with the requirements for the 75 percent match, without regard to whether the children in the mechanized data collection and information retrieval system are eligible for payment under title IV–E. The regulation implementing the legislation for enhanced match for automated data systems is published simultaneously elsewhere in this **Federal Register** issue.

If the system developed to meet the requirements of this regulation is also used to collect data for programs other than foster care and adoption (e.g., for food stamps, AFDC or Medicaid), then such costs much be fairly allocated to those other programs. To encourage States to develop a comprehensive automated system to improve service delivery, and in turn the quality and timeliness of the data requirements in this rule, technical assistance will be forthcoming. Because of these changes, paragraphs (d)(1) through (4) in the NPRM have been replaced by paragraph (d)(1) in the final rule. Paragraph (d)(5) of the NPRM has been edited and renumbered as (d)(2) in the final rule.

Part 1357—Requirements Applicable to Title IV–B

Section 1357.15(h). Child welfare services State plan requirements and submittal

This section requires each State to provide assurances that it will meet the requirements for data collection for foster care and adoption.

Comment: One comment was received from a State agency objecting to the lack of clarity regarding the potential impact on all IV–E and IV–B funds. In addition, it was suggested that the penalties be limited to the 20 percent maximum of IV–B incentive funds.

Response: The Department's intent in the NPRM was that penalties be limited to a 20 percent maximum of title IV–B incentive funds. This is more clearly stated in the final rule.

VIII. Penalties

In the development of the final rule, the Department carefully considered the best way to encourage the accurate and timely submittal of information. Inasmuch as there is no legal authority to provide financial incentives, the one alternative available is to impose financial assessments for failure to comply with the State plan provision on data reporting. Once a State substantially fails to comply with the requirements for data reporting, the penalties imposed could affect a portion of title IV–E administrative expenditures. Once it is determined that a State is substantially failing to comply with the State title IV–E plan requirements, the funds at risk are those for the semi-annual period(s) for which the State substantially failed to comply.

The proposed penalties are fixed and are set at amounts we believe are large enough to encourage a State to provide the data fully and in a timely way in order to avoid a finding of substantial noncompliance and the ensuing penalties. It is not our intention to make the penalties so great as to significantly interfere with State efforts to provide services to families and children; however, we do want to encourage full reporting. The method for calculating the penalties is based on the standards for completeness and timeliness of a State's data reports.

In the matter of assessing penalties, we concluded that claims for title IV–E administrative expenditures would be the most appropriate focus for penalties. By amending § 1356.20, we propose to treat a failure by a State to comply with the requirements for the data system set forth in the proposed § 1355.40 as a substantial failure in complying with the title IV–E State plan.

We have determined in § 1355.40 that only a portion of a State's title IV–E administrative cost reimbursement will be in jeopardy. The penalties for noncompliance are fixed and are assessed against part of the State's title IV–E administrative cost reimbursement for the period(s) in which the defects occurred. The amount of the title IV–E administrative cost reimbursement against which the fixed penalties are assessed in any semi-annual period of the fiscal year is equal to no more than one-tenth (10 percent) of the amount of the title IV–B incentive funds (under section 427) available to the State for fiscal year 1993. The actual amount to be deducted as a penalty in any one year is cumulative up to a maximum of 10 percent in Year Four (at half penalty) and 20 percent in Year Five (at full penalty).

To calculate the amount of title IV–E administrative costs funds at risk, the following formulas will be used:

T=amount of penalty when a data transmission does not meet the established criteria.

G=State's allotment of section 427 incentive funds for the fiscal year 1993.

Federal Fiscal Year 1998:

T_1=(2.5×G)/100 If either the foster care or adoption data transmission fails to meet the criteria.

T_2=2(2.5×G)/100 If both the foster care and adoption data transmission fail to meet the criteria.

Federal Fiscal Year 1999 and beyond:

T_1=(5×G)/100 If either the foster care or adoption data transmission fails to meet the criteria.

T_2=2(5×G)/100 If both the foster care and adoption data transmission fail to meet the criteria.

The incentive funds used in the calculations do not include reimbursement for voluntary placements to which a State may be entitled. The dollar amounts available under the basic grant and the incentive funding beyond the basic grant are issued each year by the Commissioner, ACYF, in the table of allotments under title IV–B.

The following chart provides a summary overview of the adoption and foster care analysis and reporting system's (AFCARS) reporting requirements and assessment of penalties.

SUMMARY OVERVIEW OF ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) REPORTING REQUIREMENTS AND ASSESSMENT OF PENALTIES

Reporting periods	Report due	Penalty
Year 1:		
October 1, 1994–March 31, 1995	May 15, 1995	No Penalty.
April 1, 1995–September 30, 1995	November 14, 1995	No Penalty.
Year 2:		
October 1, 1995–March 31, 1996	May 15, 1996	No Penalty.
April 1, 1996–September 30, 1996	November 14, 1996	No Penalty.
Year 3:		
October 1, 1996–March 31, 1997	May 15, 1997	No Penalty.
April 1, 1997–September 30, 1997	November 14, 1997	No Penalty.
Year 4:		
October 1, 1997–March 31, 1998	May 15, 1998	Half Penalty (2.5% foster care; 2.5% adoption assistance).
April 1, 1998–September 30, 1998	November 16, 1998	Half Penalty (2.5% foster care; 2.5% adoption assistance).
Year 5:		
October 1, 1998–March 31, 1999	May 17, 1999	Full Penalty (5% foster care; 5% adoption assistance).
April 1, 1999–September 30, 1999 and semi-annually thereafter.	November 15, 1999	Full Penalty (5% foster care; 5% adoption assistance).

Penalties will be assessed semi-annually against a State's title IV–E administrative cost reimbursement in an amount that is equal to no more than 10 percent of the State's annual share of title IV–B funds above the base appropriation of $141 million for fiscal year 1993 (incentive funds available under section 427 of the Act). In the case of States ineligible to receive title IV–B incentive funds, the penalty shall be equal to no more than 10 percent of the amount of title IV–B incentive funds that a State had received or was eligible to receive.

Half of the assessed penalty is applicable to foster care reporting and half to adoption reporting.

In order to comply with AFCARS requirements for foster care reporting and to avoid penalties:

- States must submit foster care reports semi-annually within 45 days of the end of the reporting period.
- Child-specific data must be entered into the information system within 60 days of any removal from the home or discharge from foster care. Ninety percent of such transactions must be entered in the information system within 60 days of the event.
- For any child in care more than seven months, the State must certify that the periodic review requirements have been met in at least 90 percent of the records.
- Data contained in Appendix A must be reported with no more than 10 percent missing data for any one data element.
- For children in care less than 30 days and for children who entered prior to October 1, 1995, only a core set of information will be required as identified in Appendix A.

In order to comply with AFCARS requirements for adoption reporting and to avoid penalties:

- States must submit adoption reports semi-annually within 45 days of the end of the reporting period.
- Adoption data are to be reported during the reporting period in which the adoption is legalized (or, optionally, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period).
- Data contained in Appendix B must be reported with no more than 10 percent missing data for any one data element.
- Full adoption data are required only for children adopted after the AFCARS implementation date of October 1, 1994. Aggregate data, by age of child, are to be reported for children adopted before that date with Federal subsidy.

For both foster care and adoption reporting, States must comply with the procedures for record layout, data consistency checks and electronic data transmission protocols as specified in this final rule in Appendices C, D and E.

The following example is provided to help clarify the proposed penalties: State Q was eligible to receive title IV–B incentive funds (over its share of the base amount of $141,000,000) in fiscal year 1993 of $4,000,000. The potentially applicable penalty against the State's share for either semi-annual period in fiscal year 1998 is 5 percent × $4,000,000 or $200,000. Therefore, the penalty that could be imposed in any reporting period on State Q in 1998 (Year Four) is $200,000, which would be deducted from the FFP for its title IV–E administrative cost reimbursement for that semi-annual period. If State Q were to be subject to the full penalty in both semi-annual reporting periods in Year Five, the total amount of the penalty would be 20 percent of the $4,000,000 or $800,000, which is the maximum amount the State could be penalized in any year.

In reaching the decision to use the section 427 incentive funds available under title IV–B as the basis for calculating the amount of the penalty to be assessed against a State's administrative cost reimbursement under title IV–E, consideration was given to several factors. We sought a method for calculating penalties that: (1) Permitted the dollar amount of the maximum penalty for substantial noncompliance to be known to the States prior to the time the data are submitted; (2) provided an upper limit on the amounts of money that could be in jeopardy; and (3) could be consistently applied to all States. We concluded that, by utilizing the amount of section 427 incentive funds available

to the State agency (which, by statute, must administer both title IV–B and title IV–E) as a basis, all three of our objectives were met. The title IV–B incentive funds represent a fixed number of dollars allocated to the States on a formula basis prior to each fiscal year. Because a State penalty will be calculated using 427 incentive funds, a State will know the maximum amount of dollars at risk.

In § 1355.40, we have provided that the penalties will be deducted semi-annually against a State's title IV–E administrative cost reimbursement for the period in which the noncompliance occurred. Following a final decision of noncompliance, funds will be recovered for all reporting periods until the State demonstrates, by submitting an acceptable report, that it will no longer fail to comply.

The reporting of complete and accurate data is the goal of the information system for adoption and foster care. The level of missing, inconsistent and untimely data should not be so great as to raise concerns about the quality of the State's data submission. However, we recognize that there will be some errors in the data. As long as each element has no more than 10 percent missing data, including data initially missing and data converted to missing because they failed internal consistency tests, and the data report meets the standard for timeliness, no compliance action will be taken.

The final rule outlines the circumstances under which a State will incur the maximum penalty. We will apply the maximum penalty when a State fails to submit both the foster care part and the adoption part of the data report within 45 days; or submits each part within the timeframe, but in each part there is one or more element(s) which exceeds the level of tolerance for missing data as described in appendix E (or, in the case of foster care, the 90 percent standard for timeliness is not met).

In § 1355.40, this rule refers to § 201.6(e) regarding the withholding of funds up to such time as the Secretary is satisfied that there will no longer be any failure to comply. We have identified the criteria for meeting the "satisfaction of the Secretary" requirement as submission of "* * * one acceptable regularly scheduled semi-annual data transmission of the type which was the cause of the penalty."

Each part of the completed report (i.e., the foster care and adoption parts) will be treated separately for purposes of applying the penalties.

The following chart illustrates how penalties are assessed in Years 4 and 5.

ASSESSMENT OF PENALTIES IN THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM

[In Percentages of Incentive Amounts Available Under Section 427 of Title IV–B, Assessed Semi-Annually Against Title IV–E Administrative Cost Reimbursement]

	No submittal	Over 45 days	Missing data	90% standard*
Year 4 (10/1/97–9/30/98):				
Foster Care	5	5	5	5
Adoption	5	5	5	NA
Maximum Penalty = 10%				
Year 5 (10/1/98–9/30/99) and beyond:				
Foster Care	10	10	10	10
Adoption	10	10	10	NA
Maximum Penalty = 20%				

* Ninety percent of the transactions must be entered into the system within 60 days of the event.

As the above chart indicates, there are only two levels at which the penalty can be assessed: First, at the maximum because of deficiencies in both the adoption and foster care reports; or second, at half penalty because of one or more deficiencies in either the adoption or foster care report. The State will incur a penalty for the foster care report if any combination of the four conditions apply, namely: No submittal or Over 45 Days or Missing Data or 90 percent Timeliness Standard. Similarly, the State will incur a penalty for the adoption report if any combination of the three conditions apply, namely: No submittal or Over 45 Days or Missing Data. The penalties reflected in the above chart are maximum penalties for Years 4 and 5. For any given semi-annual reporting period, the penalty assessed would be half the percentages indicated.

IX. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well being. We believe these proposed regulations will serve to strengthen and preserve family life insofar as the demographic information provided on children in foster care will aid in permanency planning for these children and their families. And in the case of adoption, information on children will assist in the placement of children as well as aid in the development of policies and practices that will encourage and support families who care for children in foster care and those who adopt children.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This rule implements section 479 of the Social Security Act which requires the Secretary to promulgate regulations providing for the implementation of a data collection system relating to adoption and foster care in the United States. This rule sets forth the requirements for such a system. Specifically, the rule, among other things, requires States to submit semi-annually to the Department, in electronic form, certain foster care and adoption data. It allows for the submission of only a core set of data

elements for children in foster care less than 30 days and for children entering foster care prior to and within the year after the implementation date; and, it requires complete adoption data only for children adopted after the rule's implementation date. In addition, the rule provides for the phase-in of penalties, with the first two years penalty free.

Funding for systems design, development and implementation must comply with the requirements of 45 CFR part 95, subpart F. The costs of implementing this rule will vary among States, depending on the extent of a State's own data collection activities/systems with regard to foster care and adoption. In this regard, the Department will offer technical assistance to any State for planning, developing and implementing the required data collection and transmission system. A State may directly charge the cost of the operation of the data collection system to title IV–E at the 50 percent matching rate. We estimate that the Federal costs associated with implementing and maintaining a data collection system will be $9 million the first year, $54 million the third year, $38 million the fourth year and $20 million the fifth year.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule, with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of this rule is on the States which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. This final rule contains information collection requirements in § 1355.40, paragraphs (a) and (b), foster care and adoption data collection, which will be submitted to OMB and will not become effective until they are approved. A notice will be published in the **Federal Register** when OMB approves these information collection requirements.

In the NPRM, a chart was provided showing the estimated annual burden hours to the States. The public was asked to comment on the estimated hours as well as any other aspect of the information collection, including suggestions for reducing this burden. In response to comments received, the reporting burden for the collection of information requirements in this final regulation has been reduced to approximately one-half of the initial estimated hours in the NPRM, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and submitting the data in the required format. The final rule now requires submittal of information semi-annually rather than quarterly and reduces the overall number of items to be reported. The revised total annual burden is 413,942 hours.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions, Grant programs—social programs.

45 CFR Part 1356

Adoption and foster care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information system.

45 CFR Part 1357

Adoption and foster care, Child welfare, Child welfare services state plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Nos. 93.658, Foster Care Maintenance, 93.659, Adoption Assistance and 93.645, Child Welfare Services—State Grants)

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: November 19, 1993.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR parts 1355, 1356 and 1357 are amended as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

2. Section 1355.20 is amended by adding definitions for the terms "adoption" and "foster care" as follows:

§ 1355.20 Definitions.

* * * * *

Adoption means the method provided by State law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process is complete.

* * * * *

Foster care means 24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made.

* * * * *

3. Section 1355.30 is amended by revising paragraph (e) as follows:

§ 1355.30 Other applicable regulations.

* * * * *

(e) Section 201.6, Withholding/Reduction of FFP. Pursuant to the requirements under § 1355.40 of this part for data collection, the only evidence relevant at hearings under § 201.6 are those matters related to the standards set forth in § 1355.40 and whether there were circumstances beyond the control of the State or its political subdivisions that should be considered by the Secretary.

* * * * *

4. A new § 1355.40 is added to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each State which administers or supervises the administration of titles IV–B and IV–E must implement a system that begins to collect data on October 1, 1994. The first transmission must be received in ACF no later than May 15, 1995. The data reporting system must meet the requirements of § 1355.40(b) and electronically report certain data

regarding children in foster care and adoption. The foster care data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each State's data transmission must include all children in foster care for whom the State title IV–B/IV–E agency has responsibility for placement, care, or supervision. This includes Native American children covered under section 427 protection on the same basis as any other children. For children in care less than 30 days, only a core set of information will be required, as noted in appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, States will also be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data.

(3) For the purposes of adoption reporting, data are required to be transmitted by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and on all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV–E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the State which placed the child submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The State agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must be entered for children who have been in foster care for more than nine months. Entry of this date constitutes State certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the State's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, States must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the State's detailed submission for the reporting period.

(5) A variety of internal data consistency checks will be used to judge the internal consistency of the semi-annual detailed data submission. These are specified in Appendix E to this part.

(c) *Missing data standards.* (1) The term "missing data" refers to instances where no data have been entered, if applicable, for a particular data element. In addition, all data elements which fail a consistency check for a particular case will be converted to missing data. All data which are "out of range" (i.e., the response is beyond the parameters allowed for that particular data element) will also be converted to missing data. Details of the circumstances under which data will be converted to missing data are specified in appendix E to this part. Data elements with responses of "cannot be determined" or "not yet determined" are not considered as having missing data.

(2) For missing data in excess of 10 percent for any one data element, the penalty will be applied.

(3) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) For each child, a computer generated transaction date must reflect the actual date of data entry and must accompany the date of latest removal from the home and the date of exit from foster care. Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care).

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E State plan. Penalties for substantial noncompliance will be assessed semi-annually against a State's title IV–E administrative cost reimbursement in an amount that is equal to no more than 10 percent of the State's annual share of title IV–B funds above the base appropriation of $141 million. The amount of incentive funds, section 427 of the Act, against which a penalty can be assessed will remain the same as the amount promulgated as being available to the States as of June 30, 1993, the date of issuance of the amount of section 427 funds for fiscal year 1993 (see Appendix F to this part). The penalties will be calculated and applied regardless of any determination of compliance with the requirements of section 427, and regardless of whether any State has withdrawn its certification with respect to section 427. Years One through three (October 1, 1994 through September 30, 1997) will be three penalty-free years of operation. Year Four (October 1, 1997 through September 30, 1998) will be at half penalty and Year Five (October 1, 1998 through September 30, 1999) and thereafter will be at full penalty. The maximum annual penalty is 20 percent.

(2) Penalties will be assessed semi-annually against a State's title IV–E administrative cost reimbursement for the period in which the noncompliance occurred and any subsequent period of noncompliance. Following a decision sustaining ACYF's proposed action, funds will be recovered until the State demonstrates, by submitting an acceptable report, that it will no longer fail to comply.

(3) Half of the maximum allowable assessed penalty for a given reporting period is applicable to foster care reporting and half to adoption reporting.

(4) The penalty for foster care reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(2) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section; or

(iii) Fails to meet the timeliness standards as specified in paragraph (d)(1) of this section.

(5) The penalty for adoption reporting will be applied for any semi-annual

period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(3) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section.

5. Appendices A through F are added to part 1355 as follows:

Appendix A to Part 1355—Foster Care Data Elements

Section I—Foster Care Data Elements

Data elements preceded by "**" are the only data elements required for children who have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either "**" and "***" are the only data elements required. This means that, for these two categories of children, these are the only data elements to which the missing data standard will be applied.

I. General Information
**A. State _____
**B. Report date ____ (mo.) ____ (yr.)
**C. Local Agency (County or Equivalent Jurisdiction) _____
**D. Record Number _____
E. Date of Most Recent Periodic Review (If Applicable) ____ (mo.) ____ (day) ____ (yr.)

II. Child's Demographic Information
**A. Date of Birth ____ (mo.) ____ (day) ____ (yr.)
**B. Sex _____
Male: 1
Female: 2
**C. Race/Origin
1. Race _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
2. Hispanic Origin _____
Yes: 1
No: 2
Unable to Determine: 3
D. Has this child been clinically diagnosed as having a disability(ies)? _____
Yes: 1
No: 2
Not Yet Determined: 3
1. If yes, indicate *each* type of disability found with a "1"
Mental Retardation _____
Visually or Hearing Impaired _____
Physically Disturbed (DSM III) _____
Other Medically Diagnosed Condition Requiring Special Care _____
E. 1. Has this child ever been adopted? _____
Yes: 1
No: 2
Unable to Determine: 3
2. If yes, how old was the child when the adoption was legalized? _____
Less than 2 years old: 1
2 to 5 years old: 2
6 to 12 years old: 3
13 years old or older: 4
Unable to Determine: 5

III. Removal/Placement Setting Indicators
A. Removal Episodes
Date of First Removal From Home ____ (mo.) ____ (day) ____ (yr.)
Total Number of Removals From Home to Date _____
Date Child was Discharged From Last Foster Care Episode (If Applicable) ____ (mo.) ____ (day) ____ (yr.)
**Date of Latest Removal From Home ____ (mo.) ____ (day) ____ (yr.)
** Transaction Date ____ (mo.) ____ (day) ____ (yr.)
B. Placement Settings
Date of Placement in Current Foster Care Setting ____ (mo.) ____ (day) ____ (yr.)
Number of Previous Placement Settings During This Removal Episode _____

IV. Circumstances of Removal
A. Manner of Removal From Home for Current Placement Episode _____
Voluntary: 1
Court Ordered: 2
Not Yet Determined: 3
B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a "1")
Physical Abuse (Alleged/Reported) _____
Sexual Abuse (Alleged/Reported) _____
Neglect (Alleged/Reported) _____
Alcohol Abuse (Parent) _____
Drug Abuse (Parent) _____
Alcohol Abuse (Child) _____
Child's Disability _____
Child's Behavior Problem _____
Death of Parent(s) _____
Incarceration of Parent(s) _____
Caretaker's Inability to Cope Due to Illness or Other Reasons _____
Abandonment _____
Relinquishment _____
Inadequate Housing _____

**V. Current Placement Setting _____
**A. Pre-Adoptive Home: 1
Foster Family Home (Relative): 2
Foster Family Home (Non-Relative): 3
Group Home: 4
Institution: 5
Supervised Independent Living: 6
Runaway: 7
Trial Home Visit: 8
**B. Is Current Placement Out-of-State? _____
Yes (Out-of-State Placement): 1
No (In State Placement): 2

***VI. Most Recent Case Plan Goal _____
Reunify With Parent(s) or Principal Caretaker(s): 1
Live With Other Relative(s): 2
Adoption: 3
Long Term Foster Care: 4
Emancipation: 5
Guardianship: 6
Case Plan Goal Not Yet Established: 7

VII. Principal Caretaker(s) Information
A. Caretaker Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
Unable to Determine: 5
B. Year of Birth
1st Principal Caretaker _____
2nd Principal Caretaker (If Applicable) _____

VIII. Parental Rights Termination (If Applicable)
A. Mother ____ (mo.) ____ (day) ____ (yr.)
B. Legal or Putative Father ____ (mo.) ____ (day) ____ (yr.)

IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)
A. Foster Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
1st Foster Caretaker _____
2nd Foster Caretaker (If Applicable) _____
C. Race/Origin
1. Race of 1st Foster Caretaker _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
2. Hispanic Origin of 1st Foster Caretaker
Yes: 1
No: 2
Unable to Determine: 3
3. Race of 2nd Foster Caretaker (If Applicable) _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
4. Hispanic Origin of 2nd Foster Caretaker (If applicable) _____
Yes: 1
No: 2
Unable to Determine: 3

X. Outcome Information
**A. Date of Discharge From Foster Care ____ (mo.) ____ (day) ____ (yr.)
**Transaction Date ____ (mo.) ____ (day) ____ (yr.)
**B. Reason for Discharge _____
Reunification With Parents or Primary Caretakers: 1
Living With Other Relative(s): 2
Adoption: 3
Emancipation: 4
Guardianship: 5
Transfer to Another Agency: 6
Runaway: 7
Death of Child: 8

XI. Source(s) of Federal Financial Support/Assistance for Child (Indicate all that apply with a "1")
Title IV–E (Foster Care) _____
Title IV–E (Adoption Assistance) _____
Title IV–A (Aid to Families with Dependent Children) _____
Title IV–D (Child Support) _____
Title XIX (Medicaid) _____
SSI or Other Social Security Act Benefits
None of the Above _____

Section II—Definitions of and Instructions for Foster Care Data Elements

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV–B child welfare services State plan and the title IV–E State plan; that is, all children who are required to be provided the protections of section 427 of the Social Security Act (SSA).

This population includes all children supervised by or under the responsibility of

another public agency with which the title IV-B/IV-E State agency has an agreement under title IV-E and on whose behalf the State makes title IV-E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own homes. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

—Family foster homes
—Relative foster homes (whether payments are being made or not)
—Group homes
—Emergency shelters
—Residential facilities
—Child care institutions
—Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the State agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of "8".

I. General Information

A. State**—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date**—The last month and the year for the reporting period.

C. Local Agency**—Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used.

D. Record Number**—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child's case I.D. number except at the State or local level.

E. Date of Most Recent Periodic Review (If applicable)—For children who have been in care seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

II. Child's Demographic Information

A. Date of Birth**—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex**—Indicate as appropriate.

C. Race/Origin**

1. Race—In general, a person's race is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child.

White—A person of European, North African, or Middle Eastern origin.

Black—A person whose ancestry is any of the black racial groups of Africa.

American Indian/Alaskan Native—A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

Asian/Pacific Islander—A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

Unable to Determine—The specific race category is "unable to determine" because the child is very young or is severely disabled and no person is available to identify the child's race.

2. Hispanic Origin—Answer "yes" if the child is a Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child. "Unable to Determine" is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic. "No" is used when it is clear that the child is not Hispanic.

D. Has the child been clinically diagnosed as having a disability(ies)? "Yes" indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. "No" indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. "Not Yet Determined" indicates that a clinical assessment of the child by a qualified professional has not been conducted.

1. Indicate Each Type of Disability With a "1"

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

E. 1. Has this child ever been adopted? If this child has ever been legally adopted, enter "yes." If the child has never been legally adopted, enter "no". Enter "Unable to Determine" if the child has been abandoned or the child's parent(s) are otherwise not available to provide the information.

2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter "Unable to Determine."

III. Removal/Placement Setting Indicators

A. Removal Episodes—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

Date of First Removal From Home—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current[1] removal is the first removal, enter the date of the current removal.

Total Number of Removals from Home to Date—The number of times the child was removed from home, including the current removal.

Date Child was Discharged From Last Foster Care Episode (If Applicable)—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

Date of Latest Removal From Home**—Month, day and year the child was last removed from his/her home for the purpose of being placed in foster care. This would be the date for the current episode or, if the child has exited foster care, the date of removal for the most recent removal.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to "Date of Latest Removal From Home" was entered into the information system.

B. Placement Settings.

Date of Placement in Current Foster Care Setting—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

Number of Previous Placement Settings During This Removal Episode—Enter the number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode.

Voluntary Placement Agreement—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in foster care.

[1] For children who have exited foster care, "current" refers to the most recent removal episode and the most recent placement setting.

Court Ordered—The court has issued an order which is the basis of the child's removal.

Not Yet Determined—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

B. Actions or Conditions Associated With Child's Removal (Indicate all that apply with a "1".)

Physical Abuse—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

Sexual Abuse—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.

Neglect—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

Alcohol Abuse (Parent)—Principal caretaker's compulsive use of alcohol that is not of a temporary nature.

Drug Abuse (Parent)—Principal caretaker's compulsive use of drugs that is not of a temporary nature.

Alcohol Abuse (Child)—Child's compulsive use of or need for alcohol. This element should include infants addicted at birth.

Drug Abuse (Child)—Child's compulsive use of or need for narcotics. This element should include infants addicted at birth.

Child's Disability—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child's removal.

Child's Behavior Problem—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child's running away from home or other placement.

Death of Parent(s)—Family stress or inability to care for child due to death of a parent or caretaker.

Incarceration of Parent(s)—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

Caretaker's Inability to Cope Due to Illness or Other Reasons—Physical or emotional illness or disabling condition adversely affecting the caretaker's ability to care for the child.

Abandonment—Child left alone or with others; caretaker did not return or make whereabouts known.

Relinquishment—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

Inadequate Housing—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

V. Current Placement Setting**

A. Identify the type of setting in which the child currently lives.

Pre-Adoptive Home—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

Foster Family Home (Relative)—A licensed or unlicensed home of the child's relatives regarded by the State as a foster care living arrangement for the child.

Foster Family Home (Non-Relative)—A licensed foster family home regarded by the State as a foster care living arrangement.

Group Home—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

Institution—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

Supervised Independent Living—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

Runaway—The child has run away from the foster care setting.

Trial Home Visit—The child has been in a foster care placement, but, under State agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting out of State?

"Yes" indicates that the current placement setting is located outside of the state making the report.

"No" indicates that the child continues to reside within the state making the report.

Note: Only the state with placement and care responsibility for the child should include the child in this reporting system.

VI. Most Recent Case Plan Goal***

Indicate the most recent case plan goal for the child based on the latest review of the child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

Reunify With Parents or Principal Caretaker(s)—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering foster care in order to reestablish a stable family environment.

Live With Other Relatives—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

Adoption—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

Long Term Foster Care—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

Emancipation—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

Guardianship—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

Case Plan Goal Not Yet Established—No case plan goal has yet been established other then the care and protection of the child.

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter "Unable to Determine" if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—See instructions and definitions under data element II.C. Indicate the race/origin for each of the foster parent(s).

D. Hispanic Origin—See instructions and definitions under data element II.D. Indicate the race/origin for each of the foster parent(s).

X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care**—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to "Date of Discharge from Foster Care" was entered into the information system.

B. Reason for Discharge**.

Reunification With Parents or Primary Caretakers—The child was returned to his or her principal caretaker(s)' home.

Living With Other Relatives—The child went to live with a relative other than the one from whose home he or she was removed.

Adoption—The child was legally adopted.

Emancipation—The child reached majority according to State law by virtue of age, marriage, etc.

Guardianship—Permanent custody of the child was awarded to an individual.

Transfer to Another Agency—Responsibility for the care of the child was awarded to another agency—either in or outside of the State.

Runaway—The child ran away from the foster care placement.

Death of Child—The child died while in foster care.

XI. Source(s) of Federal Support/Assistance for Child (Indicate all That Apply With a "1".)

Title IV–E (Foster Care)—Title IV–E foster care maintenance payments are being paid on behalf of the child.

Title IV–E (Adoption Subsidy)—Title IV–E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

Title IV–A (Aid to Families With Dependent Children)—Child is living with relative(s) whose source of support is an AFDC payment for the child.

Title IV–D (Child Support)—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

Title XIX (Medicaid)—Child is eligible for and may be receiving assistance under title XIX.

SSI or Other Social Security Act Benefits—Child is receiving support under title XVI or other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the State or from some other source (Federal or non-Federal) which is not indicated above.

Appendix B to Part 1355—Adoption Data Elements

Section I—Adoption Data Elements

I. General Information
A. State _____
B. Report Date ____(mo.) ____(day) ____(yr.)
C. Record Number _____
D. Did the State Agency Have any Involvement in This Adoption? _____
Yes: 1
No: 2

II. Child's Demographic Information
A. Date of Birth ____(mo) ____(day) ____(yr.)
B. Sex ____
Male: 1
Female: 2
C. Race/Origin
1. Race _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
2. Hispanic Origin _____
Yes: 1
No: 2
Unable to determine: 3

III. Special Needs Status
A. Has the State child welfare agency determined that this child has special needs? _____
Yes: 1
No: 2
B. If yes, indicate the primary basis for determining that this child has special needs _____
Racial/Original Background: 1
Age: 2
Membership in a Sibling Group to be Placed for Adoption Together: 3
Medical Conditions or Mental, Physical or Emotional Disabilities: 4
Other: 5
1. If III. B was "4," indicate with a "1" the type(s) of disability(ies)
Mental Retardation _____
Visually or Hearing Impaired _____
Physically Disabled _____
Emotionally Disturbed (DSM III) _____
Other Medically Diagnosed Condition Requiring Special Care _____

IV. Birth Parents
A. Year of Birth _____
Mother, If known _____
Father (Putative or Legal), if known _____
B. Was the mother married at the time of the child's birth? _____
Yes: 1
No: 2
Unable to Determine: 3

V. Court Actions
A. Dates of Termination of Parental Rights
Mother ____(mo.) ____(day) ____(yr.)
Father ____(mo.) ____(day) ____(yr.)
B. Date Adoption Legalized ____(mo.) ____(day) ____(yr.)

VI. Adoptive Parents
A. Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
Mother (if Applicable) _____
Father (if Applicable) _____
C. Race/Origin
1. Adoptive Mother's Race (If Applicable)
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
2. Hispanic Origin of Mother (If Applicable) _____
Yes: 1
No: 2
Unable to Determine: 3
3. Adoptive Father's Race (If Applicable)
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
4. Hispanic Origin of Father (If Applicable) _____
Yes: 1
No: 2
Unable to Determine: 3
D. Relationship of Adoptive Parent(s) to the Child (Indicate with a "1" all that apply)
Stepparent
Other Relative of Child by Birth or Marriage _____
Foster Parent of Child _____
Non-Relative _____

VII. Placement Information
A. Child Was Placed From _____
Within State: 1
Another State: 2
Another Country: 3
B. Child Was Placed by _____
Public Agency: 1
Private Agency: 2
Tribal Agency: 3
Independent Person: 4
Birth Parent: 5

VIII. Federal/State Financial Adoption Support
A. Is a monthly financial subsidy being paid for this child? _____
Yes: 1
No: 2
B. If yes, the monthly amount _____
C. If VIII. A is yes, is the subsidy paid under Title IV–E adoption assistance? _____
Yes: 1
No: 2

Section II—Definitions of Instructions for Adoption Data Elements

Reporting population

The State must report on all children who are adopted in the State during the reporting period and in whose adoption the State title IV–B/IV–E agency has had any involvement. All adoptions which occurred on or after October 1, 1994 and which meet the criteria set forth in this regulation must be reported. Failure to report on these adoptions will result in penalties being assessed. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the State child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

These children must be identified by answering "yes" to data element I.D.

Children who are reported by the State, but for whom there has not been any State involvement, and whose reporting, therefore, has not been mandated, are identified by answering "no" to element I.D.

I. General Information

A. State—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the State or local level.

D. Did the State Agency Have Any Involvement in This Adoption?

Indicate whether the State Title IV-B/IV-E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

- A child who had been in foster care under the responsibility and care of the State child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided or not;
- A special needs child who was adopted in the State, whether or not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or
- A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Origin.

1. Race—In general, a person's race is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child.

White—A person of European, North African, or Middle Eastern origin.

Black—A person whose ancestry is any of the black racial groups of Africa.

American Indian/Alaskan Native—A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

Asian/Pacific Islander—A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

Unable to Determine—The specific race category is "Unable to Determine" because the child is very young or is severely disabled and no other person is available to identify the child's race.

2. Hispanic Origin—Answer "yes" if the child is a Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child. "Unable to Determine" is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic.

III. Special Needs Status

A. Has the State Agency Determined That the Child has Special Needs?

Use the State definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV-E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs and only as it is defined by the State.

Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the State.

Age—Primary factor or condition for special needs is age of the child as defined by the State.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the State.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the State, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was "4." Indicate with a "1" the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State. If the child was abandoned and no information was available on the mother, enter "Unable to Determine."

V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents. If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Origin—See instructions and definitions under data element II.C. Indicate the race/origin for each of the adoptive parent(s).

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State—Responsibility for the child resided with an individual or agency within the State filing the report.

Another State—Responsibility for the child resided with an individual or agency in another State or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the Federally recognized Indian Tribes or Indian Tribal Organizations.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. State/Federal Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter "yes" if this child was adopted with an adoption assistance agreement under which: (1) regular subsidies (Federal or State) are paid; (2) the child is eligible for services under titles XIX or XX; or (3) Federal or State funds are made available for other types of assistance or services (including the non-recurring costs of adoption).

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate "0" if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is "Yes," is Child Receiving Title IV–E Adoption Subsidy?

If VIII.A is "yes," indicate whether the subsidy is claimed by the State for reimbursement under title IV–E. Do not include title IV–E non-recurring costs in this item.

Appendix C to Part 1355—Electronic Data Transmission Format

All AFCARS data to be sent from State agencies/Indian Tribes to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical assistance will be provided to negotiate a method of transmission best suited to the States' environment.

There will be four semi-annual electronic data transmissions from the States to the Administration for Children and Families (ACF). The Summary Submission File, one each for Foster Care and Adoption, and the Detail Submission File, one each for Foster Care and Adoption. The Summary File must be transmitted first, followed immediately by the Detail File. See appendix D for Foster Care and Adoption Detail and Summary record layout formats.

There are four methods for electronic data exchange currently operating for other Departmental programs of a similar nature. These methods are: (1) MITRON tape-to-tape transfer, (2) mainframe-to-mainframe data transfer, (3) personal computer (PC) to mainframe data transmission using a data transfer protocol, and (4) a personal computer to personal computer protocol. A general description of these methods is provided below:

1. MITRON, Tape-to-Tape Data Transmission

In order to use the MITRON system, both the sender and receiver must have MITRON equipment (tape drive and main unit) and software. The MITRON system is capable of handling a large volume of data but is limited to one reel of tape per transmission session. (If the data quantity exceeds one tape, a header/trailer record must be placed on each physical tape reel.) These are standard 2400 foot tapes, using standard labels. The tape density is limited to the 1600 bits per inch (bpi) specification.

2. Mainframe-to-Mainframe

The ACF has installed a mainframe-to-mainframe data exchange system using the Sterling Software data transfer package called "SUPERTRACS." This package will allow data exchange between most computer platforms (both mini and mainframe) and the Department's mainframe in a dial-up mode. No additional software is needed by the remote computer site beyond what the Department will supply. This method has proven effective for small to moderate amounts (100 to 5,000 records) of data.

3. Electronic File Transfer Between PC and Mainframe

This method uses the SIMPC software package on the personal computer and the host mainframe. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer and is unable to download and upload to its mainframe, Electronic File Transfer is an appropriate transmission mechanism.

4. Personal Computer to Personal Computer

This method uses the SIMPC software package on the sending personal computer and the receiving personal computer. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer, the personal computer to personal computer transfer is an appropriate transmission mechanism.

In conjunction with Departmental staff, State agencies and Indian Tribes should review their resources and select the system that will best suit their data transmission needs. Over time, State agencies and Indian Tribes can change their transmission methods, provided that proper notification is provided.

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the State agencies and Indian Tribes:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 139 characters long and the Adoption Detailed Data Elements Record is 71 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All States and Indian Tribes must inform the Department, in writing, of the method of transfer they intend to use.

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 65 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYMMDD), e.g., 890122 for January 22, 1989 or year and month (YYMM) order, e.g., 8901 for January 1989. If dates are not applicable, leave the element value blank.

(3) For elements 11–15, 26–40, and 59–65, which are "select all that apply" elements, enter a "1" for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the State's automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	4

Element No.	Appendix A data element	Data element description	No. of numeric characters
03	I.C.	Local Agency FIPS code (county or equivalent jurisdiction)	5
04	I.D.	Record number	6
05	I.E.	Date of most recent periodic review (if applicable)	6
06	II.A.	Date of birth	6
07	II.B.	Sex	1
08	II.C.1.	Race	1
09	II.C.2.	Hispanic origin	1
10	II.D.	Has this child been clinically diagnosed as having a disability(ies)	1
		Indicate each type of disability of the child with a "1" for elements 11–15 and a zero for disabilities that do not apply.	
11	II.D.1.a.	Mental retardation	1
12	II.D.1.b.	Visually or hearing impaired	1
13	II.D.1.c.	Physically disabled	1
14	II.D.1.d.	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1.	Has this child ever been adopted	1
17	II.E.2.	If yes, how old was the child when the adoption was legalized?	1
18	III.A.1.	Date of first removal from home	6
19	III.A.2.	Total number of removals from home to date	2
20	III.A.3.	Date child was discharged from last foster care episode (if applicable)	6
21	III.A.4.	Date of latest removal from home	6
22	III.A.5.	Removal transaction date	6
23	III.B.1.	Date of placement in current foster care setting	6
24	III.B.2.	Number of previous placement settings during this removal episode	2
25	IV.A.	Manner of removal from home for current placement episode	1
		Actions or conditions associated with child's removal: Indicate with a "1" for elements 26–40 and a zero for conditions that do not apply.	
26	IV.B.1.	Physical abuse (alleged/reported)	1
27	IV.B.2.	Sexual abuse (alleged/reported)	1
28	IV.B.3.	Neglect (alleged/reported)	1
29	IV.B.4.	Alcohol abuse (parent)	1
30	IV.B.5.	Drug abuse (parent)	1
31	IV.B.6.	Alcohol abuse (child)	1
32	IV.B.7.	Drug abuse (child)	1
33	IV.B.8.	Child's disability	1
34	IV.B.9.	Child's behavior problem	1
35	IV.B.10.	Death of parent(s)	1
36	IV.B.11.	Incarceration of parent(s)	1
37	IV.B.12.	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13.	Abandonment	1
39	IV.B.14.	Relinquishment	1
40	IV.B.15.	Inadequate housing	1
41	V.A.	Current placement setting	1
42	V.B.	Out of State placement	1
43	VI.	Most recent case plan goal	1
44	VII.A.	Caretaker family structure	1
45	VII.B.1.	Year of birth (1st principal caretaker)	2
46	VII.B.2.	Year of birth (2nd principal caretaker—if applicable)	2
47	VIII.A.	Date of mother's parental rights termination (if applicable)	6
48	VIII.B.	Date of legal or putative father's parental rights termination (if applicable)	6
49	IX.A.	Foster family structure	1
50	IX.B.1.	Year of birth (1st foster caretaker)	2
51	IX.B.2.	Year of birth (2nd foster caretaker—if applicable)	2
52	IX.C.1.	Race of 1st foster caretaker	1
53	IX.C.2.	Hispanic origin of 1st foster caretaker	1
54	IX.C.3.	Race of 2nd foster caretaker (if applicable)	1
55	IX.C.4.	Hispanic origin of 2nd foster caretaker (if applicable)	1
56	X.A.1.	Date of discharge from foster care	6
57	X.A.2.	Foster care discharge transaction date	6
58	X.B.	Reason for discharge	1
		Sources of Federal support/assistance for child; indicate with a "1" for elements 58–64 and a zero for sources that do not apply.	
59	XI.A.	Title IV–N (Foster Care)	1
60	XI.B.	Title IV–E (Adoption Assistance)	1
61	XI.C.	Title IV–A (Aid to Families With Dependent Children)	1
62	XI.D.	Title IV–D (Child Support)	1
63	XI.E.	Title XIX (Medicaid)	1
64	XI.F.	SSI or other Social Security Act benefits	1
65	XI.G.	None of the above	1
		Total characters	139

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYMM), e.g., 9112 for December 1991.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYMM)	4
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	172

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. The record will consist of 37 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYMMDD), e.g., 890122 for January 22, 1989 or year and month (YYMM) order, e.g., 8901 for January 1989. If dates are not applicable, leave the element value blank.

(3) For elements 11–15 and 29–32 which are "select all that apply" elements, enter a "1" for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	4
03	I.C.	Record number	6
04	I.D.	State Agency involvement	1
05	II.A.	Date of birth	4
06	II.B.	Sex	1
07	II.C.1.	Race	1
08	II.C.2.	Hispanic orgin	1
09	III.A	Has the State Agency determined that this child has special needs	1
10	III.B	Primary basis for special needs	1
		Indicate a primary basis of special needs with a "1" for elements 11–15. Enter a zero for special needs that do not apply.	
11	III.B.1.a	Mental retardation	1
12	III.B.1.b.	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e.	Other medically diagnosed condition requiring special care	1
16	IV.A.1.	Mother's year of birth	2
17	IV.A.2.	Father's (Putative or legal) year of birth	2
18	IV.B.	Was the mother married at time of child's birth	1
19	V.A.1.	Date of mother's termination of parental rights	6
20	V.A.2.	Date of father's termination of parental rights	6
21	V.B.	Date adoption legalized	6
22	VI.A.	Adoptive parents family structure	1

Element No.	Appendix B data element	Data element description	No. of numeric characters
23	VI.B.1	Mother's year of birth (if applicable)	2
24	VI.B.2	Father's year of birth (if applicable)	2
25	VI.C.1.	Adoptive mother's race (if applicable)	1
26	VI.C.2	Hispanic origin mother (if applicable)	1
27	VI.C.3	Adoptive father's race (if applicable)	1
28	VI.C.4	Hispanic origin father (if applicable)	1
		Indicate each type of relationship of adoptive parent(s) to the child with a "1" for elements 29–32. Enter a zero for relationships that do not apply below.	
29	VI.D.1	Stepparent	1
30	VI.D.2.	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A.	Child was placed from	1
34	VII.B.	Child was placed by	1
35	VIII.A.	Is this child receiving a monthly subsidy	1
36	VIII.B.	If VIII.B is "yes." What is the monthly amount	5
37	VIII.C	If VII.B is "yes." Is the child receiving title IV–E adoption assistance?	1
		Total Characters	72

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYMM), e.g., 9112 for December 1991.

c. Adoption Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYMM)	4
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	172

Appendix E to Part 1355—Data Standards

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of the penalty provisions. (See § 1355.40(e) for penalty provision description.) The four types of assessments are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic

counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See Section A.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not case, an internal inconsistency will be detected and an "error" indicated in the detailed data file.

A number of data elements have "if applicable" contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the "Year of Birth" and "Race/Origin" elements must be completed and the "non-applicable" fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11–15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must *not* be blank.

(7) If Data Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a "1". Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49–55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a "1". Enter a zero for sources that do not apply.

(12) If the answer to the question, "Has this child ever been adopted?" (Element 16) is "1" (Yes), then the question, "How old was the child when the adoption was legalized?" (Element 17) must have an answer from "1" to "5."

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, "Not Yet Determined."

(14) If Reason for Discharge (Element 58) is option 3, "Adoption," then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is "1" for a make and "2" for a female, but the datum provided in the element is "3," this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term "missing data" refers to instances where data for an element are required but are not present in the submission. Data elements with values of "Unable to Determine," "Not Yet Determined" or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(17) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Local agency FIPS code.
04	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element description
05	Date of most recent periodic, review.
06	Child's date of birth.
07	Child's sex.
08	Child's race.
09	Hispanic origin.
10	Does child have a disability(ies)?
11–15	Type of disability (at least one must be selected).
16	Has child been adopted?
17	How old was child when adoption was legalized?
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.

Element No.	Element description
47	Date of mother's parental rights termination.
48	Legal of putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic 1st foster caretaker.
54	Race of 2nd foster caretaker.
55	Hispanic 2nd foster caretaker.
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

All data elements will be used in calculating the missing data provision of the penalty unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 42
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 43
56 to 58

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

Computer generated transaction dates indicate the date when key foster care events are entered into the State's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.

a. Date of Latest Removal From Home

The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.

b. Date of Discharge From Foster Care

The Date of Discharge From Foster Care Transaction Date (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.

For purposes of penalty processing, ninety percent of the records in a detailed data submission, must indicate that:

(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;

and, where applicable,

(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption

1. Summary Data Elements File Submission Standards

A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means (see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the "Date Adoption Legalized." If this is not the case, an internal inconsistency will be detected and an "error" indicated in the detailed data file.

A number of data elements have "if applicable" contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then the appropriate sex of the single female/male element in the "Family Structure," "Year of Birth" and "Race/Origin" elements must be completed and the "non-applicable" fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the State child welfare agency has determined that the child is a special needs child (Element 9), then "the primary basis for determining that this child has special needs" (Element 10) must be completed. If "the primary basis for determining that this child has special needs" (Element 10) is answered by option "4," then at least one element between Elements 11–15, "Type of Disability," must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

(4) If "Is a monthly financial subsidy being paid for this child" (Element 35) is answered negatively, "2", then Element 36 must be zero (0) and "Is the subsidy paid under Title IV–E adoption assistance" (Element 37) must be a "2".

(5) If the "Child Was Placed By" (Element 34) is answered with option 1, "Public Agency," then the question, "Did the State Agency Have any Involvement in This Adoption" (Element 4) must be "1".

(6) If the "Relationship of Adoptive Parent(s) to the Child," "Foster Parent of Child" (Element 31) is selected, then the question, "Did the State Agency Have any Involvement in This Adoption" (Element 4) must be "1".

(7) If "Is a monthly financial subsidy being paid for this child?" (Element 35) answered "1," then the question, "Did the State Agency Have any Involvement in This Adoption" (Element 4) must be "1."

(8) If the "Family Structure" (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the "Adoptive Mothers's Race" (Element 25) and "Hispanic Origin" (Element 26) must be completed. Similarly, if the "Family Structure" (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24), the "Adoptive Fathers's Race" (Element 27) and "Hispanic Origin" (Element 28) must be completed. If the "Family Structure" (Element 22) is option 1 or 2, then both Mother's and Father's "Year of Birth," "Race" and "Hispanic Origin" must be completed.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data

elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is "1" for a male and "2" for a female, but the datum provided in the element is "3," this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

3. Missing Data Standards

The term "missing data" refers to instances where data for an element are required but are not present in the submission. Data elements with values of "Unable to Determine," "Other" or which are not applicable, are *not* considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(8) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Record number.
04	Did the State agency have any involvement in this adoption?

(2) Less Than Ten Percent Missing Data

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element name
05	Child's date of birth.
06	Child's sex.
07	Child's race.
08	Is child hispanic?
09	Does child have special needs?
10	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15	Type of special need (at least one must be selected.)
16	Mother's year of birth.
17	Father's year of birth.
18	Was mother married at time of child's birth?
19	Date of mother's termination of parental rights.
20	Date of father's termination of parental rights.
21	Date adoption legalized.
22	Adoptive parent(s)' family structure.
23	Mother's year of birth.
24	Father's year of birth.
25	Adoptive mother's race.
26	Hispanic mother.
27	Adoptive father's race.
28	Hispanic father.
29–32	Relationship of adoptive parent(s) to child (at least one must be selected.)
33	Child placed from.
34	Child placed by.
35	Is a monthly financial subsidy paid for this child?
36	If yes, the monthly amount is?
37	Is the child receiving Title IV–E adoption assistance? (If Element 35 is a "1" (Yes) an answer to this question is required.)

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

Only the adoption records with a "1" (Yes) answer in Element 4, "Did the State Agency have any Involvement in this adoption" will be subject to the penalty assessment process.

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Adoption Data Reports

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For penalty assessment purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the State's option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

Appendix F to Part 1355

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV–B CHILD WELFARE SERVICES FISCAL YEAR 1993

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Alabama	5,798,251	2,771,128	3,027,123
Alaska	674,777	355,179	319,598
Arizona	4,781,390	2,291,632	2,489,758
Arkansas	3,495,975	1,685,501	1,810,474
California	30,048,818	14,206,363	15,842,455
Colorado	3,844,876	1,850,024	1,994,852
Connecticut	2,065,826	1,011,122	1,054,704
Delaware	763,822	397,168	366,654
Dist of Col	448,212	248,344	199,868
Florida	12,946,006	6,141,615	6,804,391
Georgia	8,386,050	3,991,391	4,394,659
Hawaii	1,281,048	641,063	639,985
Idaho	1,734,494	854,884	879,610
Illinois	12,157,021	5,769,574	6,387,447
Indiana	7,115,189	3,392,123	3,723,066
Iowa	3,565,712	1,718,385	1,847,327
Kansas	3,083,341	1,490,926	1,592,415
Kentucky	5,192,133	2,485,316	2,706,817
Louisiana	6,750,330	3,220,076	3,530,254
Maine	1,533,067	759,902	773,165
Maryland	4,256,288	2,044,023	2,212,265
Massachusetts	4,566,755	2,190,422	2,376,333
Michigan	10,860,253	5,158,089	5,702,164

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV–B CHILD WELFARE SERVICES FISCAL YEAR 1993—Continued

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Minnesota	5,092,532	2,438,349	2,654,183
Mississippi	4,437,556	2,129,499	2,308,057
Missouri	6,217,709	2,968,921	3,248,788
Montana	1,211,809	608,414	603,395
Nebraska	2,136,670	1,044,528	1,092,142
Nevada	1,326,362	662,431	663,931
New Hampshire	1,078,123	545,375	532,748
New Jersey	5,307,662	2,539,793	2,767,869
New Mexico	2,493,475	1,212,778	1,280,697
New York	15,530,358	7,360,253	8,170,105
North Carolina	8,326,069	3,963,107	4,362,962
North Dakota	982,955	500,499	482,456
Ohio	13,052,582	6,191,871	6,860,711
Oklahoma	4,428,365	2,125,165	2,303,200
Oregon	3,576,418	1,723,434	1,852,984
Pennsylvania	12,649,960	6,002,017	6,647,943
Rhode Island	1,070,439	541,752	528,687
South Carolina	5,101,221	2,442,447	2,658,774
South Dakota	1,107,009	558,996	548,013
Tennessee	6,328,617	3,021,219	3,307,398
Texas	23,687,998	11,206,947	12,481,051
Utah	3,478,384	1,667,206	1,801,178
Vermont	749,584	390,454	359,130
Virginia	6,321,841	3,018,024	3,303,817
Washington	5,667,518	2,709,481	2,958,037
West Virginia	2,564,554	1,246,294	1,318,260
Wisconsin	6,033,052	2,881,847	3,151,205
Wyoming	751,264	391,247	360,017

[1] These totals include allotments to the United States Territories. Therefore, the summation of the States' allotments will not be equivalent.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

6. The authority citation for part 1356 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

7. Section 1356.20 is amended by redesignating existing paragraphs (b) through (d) as (d) through (f) and adding new paragraphs (b) and (c) as follows:

§ 1356.20 State plan document and submission requirements.

* * * * *

(b) Failure by a State to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the State in complying with the State plan for title IV–E. Penalties as described in § 1355.40(e) of this chapter shall apply.

(c) For purposes of the application of penalties described in § 1355.40 of this chapter, the requirement at § 201.6(e) regarding the withholding of funds until the Secretary "* * * is satisfied that there will no longer be any such failure to comply * * *" will be met by submission of one acceptable regularly scheduled semi-annual data transmission of the type which was the cause of the penalty.

* * * * *

8. Section 1356.60 is amended by adding a new paragraph (c) (2)(x), and new paragraph (d), and republishing the introductory text in paragraph (c)(2) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(c) * * *

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

* * * * *

(x) Costs related to data collection and reporting.

* * * * *

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV–E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

9. The authority citation for part 1357 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

10. Section 1357.15 is amended by adding a new paragraph (h) as follows:

§ 1357.15 Child welfare services State plan requirements and submittal.

* * * * *

(h) In meeting the requirements of section 442(b)(8), each State must provide assurances that it will meet the requirements for data reporting for foster care and adoption as described in 45 CFR 1355.40 and transmit the required data in the form and manner prescribed by that section.

[FR Doc. 93–30999 Filed 12–21–93; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

RIN 0970–AB

Statewide Automated Child Welfare Information Systems

AGENCY: Office of Information Systems Management (OISM), ACF, HHS.

ACTION: Interim final rule.

SUMMARY: These interim final rules implement section 13713 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), signed by the President on August 10, 1993. Under section 13713, funding is made available for the planning, design, development and installation of statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act (the Act) and implementing regulations; to the extent practicable, be capable of interfacing with State child abuse and neglect automated systems; to the extent practicable, be capable of interfacing with, and retrieving information from the State automated system for determining eligibility for title IV–A assistance; and, be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under State plans approved under title IV–B or IV–E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components effective October 1, 1993. This funding rate is eliminated under the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation at the 50 percent matching rate is available for the operation of such systems.

DATES: Effective December 22, 1993. *Comments:* Comments must be received on or before January 21, 1994.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: Ms. Naomi Marr, Office of Information Systems Management, room 300E, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Comments may be inspected between 8 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Naomi Marr, (202) 401–6960.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule contains information collection activities 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).

In accordance with the Paperwork Reduction Act of 1980, the department is resubmitting for OMB clearance the APD process, described in this document, under which States may apply for and obtain Federal financial participation in their APD acquisitions. This reporting requirement was previously approved under OMB control number 0990–0174.

The reporting burden over and above what the States already do for the current APD approval process is estimated to average 10 hours for the initial submission of an APD. This includes time for reviewing instructions, and collecting and reporting the needed information in the APD. The Department will submit a new request for OMB clearance of the additional requirements imposed by the APD process for statewide automated child welfare information systems. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 and the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Statutory Authority

These regulations are published under the authority of several provisions of the Social Security Act (the Act), as amended by Public Law 103–66. Section 474(a)(3) of the Act contains new requirements providing funding for statewide automated child welfare information systems to carry out the State's programs under parts IV–B and IV–E of the Act. Under section 474(a)(3)(c), Federal financial participation at the 75 percent matching rate is available from October 1, 1993 through September 30, 1996 (after which time the rate is reduced to 50 percent), for the planning, design, development and installation of statewide automated child welfare information systems (including the full amount of expenditures for hardware components for such systems) to the extent that such systems—

(i) Meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

(ii) To the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) To the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part IV–A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) Are determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under a State's plans approved under part IV–B or IV–E of the Act.

Under section 474(a)(3)(D), Federal financial participation at the 50 percent matching rate is available for the operation of the systems described above.

Section 474(e) provides that the Secretary treat as necessary for the proper and efficient administration of the State plan, all expenditures of a State necessary to plan, design, develop, install, and operate the information retrieval system under section 474(a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under part IV–E of the Act.

These regulations are also published under the general authority of section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Justification for Dispensing With Notice of Proposed Rulemaking

The amendments to these regulations are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that if the Department has good cause for finding that a Notice of Proposed Rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the final regulation of the reasons for doing so.

The Department finds that there is good cause to dispense with Notice of Proposed Rulemaking with respect to these changes. We find that publication of these proposed rules would be impracticable, and not in the public interest. The statutory provision being implemented under these rules is effective October 1, 1993, and with respect to the availability of enhanced funding expires September 30, 1996. Publication of a proposed rule could impinge on a State's ability to take advantage of the availability of enhanced funding to improve its ability to serve at risk children, as well as the Secretary's ability to ensure that such expenditures are limited to the planning and development of efficient, economical and effective statewide automated child welfare information systems.

However, we are interested in comments on these interim final rules. We will consider any comments that are received within 30 days of the date of publication of this interim final rule and, if appropriate, we will publish final rules with any necessary changes.

Background

The title IV–E program, Foster Care and Adoption Assistance, provides Federal funds to States for the care of eligible dependent, abused or neglected children who must be placed in foster care, and for adoption assistance payments for certain children with special needs. The title IV–B, subpart 1, program provides Federal funds for service programs for children and their families aimed at strengthening families and preventing the unnecessary separation of children from their families; assuring adequate care by the State of children who are away from their homes; providing services to return children when separation occurs; and placing children for adoption or another permanent placement when restoration to the family is not possible or appropriate.

In addition, Public Law 103–66 added a new capped entitlement program under title IV–B, subpart 2, for family preservation and family support services. Family preservation services are targeted to families that are already in crisis and children who are at risk of being placed in foster care and include intensive interventions to help families weather crises, reunifications of families by returning home foster care children whenever possible, and arranging adoptions or permanent and appropriate living arrangements for those children who cannot return home. Family support services are designed to help increase the strength and stability of families and include programs to improve and reinforce parenting skills, to provide respite care for care providers and drop-in centers for families with information and referrals to access other services.

Effective statewide automated capability to support the administration of services offered under these programs in a comprehensive fashion is essential to enable long over-due improvements to program administration and service delivery. With these varied programs, States have an opportunity to operate a continuum of services to support abused, neglected and special needs children, as well as to ensure that families are helped to stay together where possible. By including these programs in a single automated information system, a State will eliminate redundant data collection and file maintenance in determining eligibility, providing services, and tracking program operations and costs. With a single Statewide automated information system, States will realize more efficient and effective processes and procedures and as a result improved service delivery. Readily available information and automated procedures to assist in case assessments and plans will allow States to be more proactive in program administration and to focus efforts on preventive services and measures rather than constantly reacting to crisis.

Families today are under tremendous stress from causes ranging from a weak job market and health care crisis to teen pregnancy, AIDS, substance abuse epidemics, and violence in our streets. These stresses on families have resulted in steadily rising caseloads (and numbers of complex cases) which are threatening to overwhelm the network of public and private service programs for children and families. Child welfare systems are now overburdened, understaffed and at a crisis point. Lawsuits are more prevalent, staff turnover continues to be a problem and administrators are forced to respond to crises without adequate resources.

To address the clear need for systemic reform, section 13713 of Public Law 103–66 amends the funding provisions under section 474 of the Act to provide funding for the development and operation of comprehensive information systems to assist in the administration of title IV–B and IV–E programs. While the statutory language does not detail the nature of such systems, we believe it was clearly Congressional intent to limit enhanced funding to systems which would facilitate a comprehensive approach to strengthen families in which children are at risk and improve child welfare service administration through the use of better business practices.

To encourage States to act quickly to develop efficient comprehensive statewide automated information systems, Congress limited the availability of Federal funding at the 75 percent matching rate for Statewide Automated Child Welfare Information Systems (SACWIS) to Fiscal Years 1994, 1995 and 1996.

For many years, concerns have been raised about the lack of information available on children in foster care and their families. To address some of these concerns, in 1986 Congress amended title IV–E of the Social Security Act by adding section 479 which required the Federal government to institute a foster care and adoption data collection system. In response, requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) were implemented under regulations at 45 CFR 1355.40 published elsewhere in this **Federal Register**. AFCAR systems collect information on children in foster care and children adopted through the public child welfare system. Although AFCARS will substantially improve information available on children in foster care and children being adopted and provide information essential for informed policy making and planning, its primary emphasis is on data analysis and reporting.

However, comprehensive child welfare information systems which incorporate the entire spectrum of child welfare and family support services, as well as the AFCARS requirements, will play a more pivotal role by enhancing the collection of data needed by policy makers and, more importantly, by providing the tools to assist caseworkers and managers in making decisions and providing comprehensive support to families in need. By applying appropriate technology to the management of child welfare programs, administrative and system barriers that inhibit the provision of effective services to children can be largely eliminated.

Information systems technology can facilitate caseworker decisions by providing caseworkers with immediate access to case file information and reducing the time spent by workers searching for case information. These systems can also provide managers and supervisors with quick access to information to monitor and evaluate caseworker tasks and goals. In addition, reporting requirements can be met with minimal duplication of effort with properly designed information system data bases. In summary, these

information systems will result in more efficient and effective practices in administering child welfare programs which in turn will ultimately result in improved service delivery.

In developing these regulations we considered all information available on the need for comprehensive child welfare services, including existing State efforts to establish such systems and the efforts of a State and Federal child welfare systems workgroup which convened prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). While we believe these rules address the basic needs of such systems yet provide maximum State flexibility, we have included a comment period with this rule and invite suggestions and comments for improvement. Final rules will be issued to the extent necessary to reflect comments received.

Regulatory Provisions

We have included the requirements for the automation of comprehensive child welfare services under 45 CFR part 1355, which provides the general requirements for Foster Care Maintenance Payments, Adoption Assistance and Child Welfare Services. A new § 1355.50 has been added to provide that the purpose of these regulations is to set forth the requirements and procedures States must meet in order to receive Federal financial participation authorized under the Budget Reconciliation Act of 1993 for the planning, design, development, installation and operation of statewide automated child welfare information systems.

A new § 1355.52, Funding authority for statewide automated child welfare information systems (SACWIS), has been added to effect the statutory provisions under section 474(a)(3)(C) of the Social Security Act authorizing funding for comprehensive child welfare systems.

Paragraph (a) provides the basic requirements a State must meet in order to be eligible for Federal financial participation at a 75 percent matching rate for fiscal years 1994, 1995 and 1996 and at a 50 percent matching rate thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system.

First, under § 1355.52(a)(1), the SACWIS must provide for the collection and electronic reporting of data required under section 479(b) of the Act and the implementing regulations under § 1355.40. Under section 479(b) of the Act, States must establish and implement adoption and foster care reporting systems designed to collect uniforms, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement and care. Those requirements, Adoption and Foster Care Analysis and Reporting Systems (AFCARS), were recently implemented under § 1355.40 published elsewhere in this **Federal Register.**

Under paragraph (a)(2), the SACWIS must, to the extent practicable, provide for an interface with the State's data collection system for child abuse and neglect. The phrase "to the extent practicable" as used in this paragraph is statutory and reflects in part the voluntary nature of the National Child Abuse and Neglect Data Systems (NCANDS) established under Pub. L. 100–294, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as well as the inherent requirement that such interface be cost beneficial to the title IV–B/IV–E programs.

However, we would expect that most States would integrate the automation of child abuse and neglect activities as part of their SACWIS, because of the direct association between child protection and child welfare services. The child protection system is actually the front end (the first point of contact) of child welfare services. In most cases, the child welfare system first learns of a new child or a new family through that child's or family's contact with child protection services. At the time of the initial contact, child protection services collects much of the information that is needed later in the foster care and adoption process and for use in any newly established family preservation and family support service activities.

While the language of the statute speaks of interfacing with child abuse and neglect data systems, we understand that in many States these data are already a part of a larger child welfare system and/or States will be considering the integration of such data as part of an overall comprehensive information/client system. Accordingly, the Statewide Automated Child Welfare Information Systems development effort may include automated procedures which will provide the State with the capability to meet the National Child Abuse and Neglect Data System. The information gathered in the NCANDS effort is critical information for making informed decisions about services and service needs at the point of deciding to maintain the child at home, or in placement, and adoption. In addition, basic demographic child and family data are the same as that required by AFCARS so that duplicate data gathering and input can be avoided. We have determined that such efforts would meet the efficient, economical and effective administration factors mentioned above.

While we believe that such interface/integration is vital, in accordance with the statute any State which can clearly demonstrate through the submission of documentation with the advanced planning document (APD) that such integration or interface is not practicable because no automated Statewide database exists to complete the interface or because of cost constraints would not be required to include this provision in the SACWIS as a condition of approval. In the latter case, the documentation should establish that the costs to develop and operate an automated interface with the existing system will exceed the combined costs of manual inquiry, verification and information exchange with the existing system, and duplicate data entry and maintenance in the SACWIS.

Similarly, paragraph (a)(3) requires that the SACWIS, to the extent practicable, provide for interface with and retrieval of information from the State automated information system that collects information relating to eligibility of individuals under title IV–A of the Act. Interface with, and access to, the data maintained by State IV–A systems is of vital importance for gathering information about clients or other relevant persons and because eligibility for foster care maintenance payments as well as adoption assistance are based in part, on a child's eligibility under the AFDC program. However, as provided in greater detail under the discussion of § 1355.53 below, this requirement need not be met if a State clearly demonstrates through the submission of documentation with the APD, as indicated under § 1355.52(a)(2), that electronic interface and data retrieval is not practicable because of limitations in the design of the IV–A system or because of cost constraints.

Finally, paragraph (a)(4) requires that the SACWIS provide for more efficient, economical and effective administration of the programs carried out under State plans approved under title IV–B and title IV–E.

As used here, efficient, economical and effective means that: The system must improve program management and administration by addressing all program services and case processing requirements by meeting the requirements of § 1355.53; the design must appropriately apply computer technology; the project must not require duplicative application system development or software maintenance;

the procurement must provide for maximum free and open competition; and the costs must be reasonable, appropriate and beneficial. These are basic standards which should be inherent in any automated systems effort. The Administration for Children and Families has used them consistently in considering State plans to automate.

The statute, in authorizing for the first time automated information systems for family and children's programs, specifically requires the Secretary to include economic considerations, along with the traditional statutory provisions for systems implementation of "efficient and effective" in determining whether a system should be funded. We believe that this clearly signals Congressional concern over the enormous costs which have occurred with respect to other public assistance systems and the expectation that the Secretary will take some measures to contain costs. In accordance with existing requirements at 45 CFR part 95, we will scrutinize the APD and the accompanying cost benefit analysis before approval as well as monitor adherence to the approved APD.

Paragraph (b) provides that Federal financial participation provided under paragraph (a) is also available for the full amount of expenditures for hardware components. The matching rate provided is 75 percent with respect to Fiscal Years 1994, 1995 and 1996, and 50 percent thereafter. The general requirements applicable to the treatment of hardware expenditures under part 95 apply to all such expenditures.

Paragraph (c) provides that Federal financial participation at the 50 percent matching rate is available for the operating costs of Statewide Automated Child Welfare Information Systems described under paragraph (a).

We have added a new paragraph § 1355.53 to specify the conditions for funding systems under § 1355.52. Functional guidelines providing details of these requirements will be issued shortly in the form of a program instruction.

Under paragraph (a), as a condition of funding, the SACWIS must be designed, developed (or an existing enhanced State system), and installed in accordance with an approved advance planning document (APD). The APD must provide for an efficient and effective design which, when implemented, will produce a comprehensive system which will improve the program management and administration of the State plans for titles IV–B and IV–E. Comprehensive means that the SACWIS must, to the extent feasible and appropriate, introduce, monitor and account for all the factors of child welfare services, foster care and adoption assistance, family preservation and support services, and independent living services, as provided under paragraph (b).

Paragraphs (b)(1) through (b)(8), provide the functional capabilities required of the SACWIS for effective management, tracking and reporting. First, under paragraph (b)(1) the system must provide the State automated support to meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this chapter. This follows the statutory requirement that comprehensive child welfare systems development, under the new funding mechanism, support the AFCARS requirements vital to informed policy making and planning of child welfare programs.

Paragraph (b)(2) includes the requirements for system interface or integration necessary for the coordination of services with other Federally assisted programs and for the elimination of paperwork and duplication of data collection and data entry. Under this paragraph the SACWIS must provide for electronic data exchange with State systems for: (A) Title IV–A, (B) National Child Abuse and Neglect Data Systems (NCANDS), (C) title XIX, and (D) title IV–D, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints.

Electronic exchange of casefile information will assist in service planning, allowing multiple aspects of a client's needs to be addressed, and appropriate services to be initiated in a prompt and coordinated way and will insure that the system operates more efficiently by eliminating redundant data and paper exchanges and the delays resulting from separate processes.

With respect to the electronic exchange with the NCANDS and IV–A systems, these are statutory conditions of funding which must be met to the extent practicable. As indicated previously, we have defined "practicable" to mean that the interface requirement need not be met if the responding program system is not capable of an exchange (and the State does not wish to pursue such capability) or where cost constraints render such an interface infeasible as demonstrated by the State through the submission of documentation, in the APD, that the development and operation of such an exchange would exceed the costs of manual inquiry, verification and information exchange as well as the cost of duplicate data entry and maintenance.

Similarly, the electronic data exchange with the title XIX system is required unless the State Medicaid system does not have the capacity for such an interface or the State clearly demonstrates through the submittal of documentation that such an exchange would not otherwise be practicable because of cost constraints. While this requirement was not expressly provided in statute, because the vast majority of clients under State title IV–E plans are also Medicaid eligible, an interface between the agencies is critical to efficient and effective operation of State plans for child welfare.

The requirement for an interface with the State's child support enforcement system, unless demonstrated to be impracticable, duplicates the systems requirements under the title IV–D program, requiring statewide child support enforcement systems to provide electronic data exchange with the title IV–E program, to assure that benefits and services are provided in an integrated manner and that the State is able to collect support from the responsible parent. Thus, we do not anticipate that any State will be unable to meet this requirement.

Paragraphs (b)(3) through (b)(8) provide, in accordance with section 474(a)(3)(C)(iv) of the Act, the functional requirements determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under State plans approved under parts IV–B and IV–E of the Act. We have determined, based on field experience, contact with the General Accounting Office, input from State and private sector child welfare representatives and experts and through the review of existing State and local efforts to automate child welfare information systems that the level of system functionality required by these paragraphs represents the minimum but most desirable and cost-effective requirements of a statewide automated child welfare information system.

Paragraph (b)(3) requires that the SACWIS enable the State to meet the provisions of section 427(a) of the Act by providing for the automated collection, maintenance, management and reporting of necessary information.

Section 427(a) of the Act requires that each child in foster care under the responsibility of the State agency be afforded specific protections related to case planning, case reviews and dispositional hearings. To address these protections, the State must provide for an inventory of all children in foster care; a statewide information system to describe and track children in foster care; a case review system which provides for a case plan, periodic reviews and procedural safeguards; and, a program for reunification services.

Accordingly, we are requiring under paragraph (b)(3) that the SACWIS must have automated procedures and processes to assist the State in meeting the 427(a) requirements. At a minimum, these automated procedures would include collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location and goals for foster children can be determined.

Under paragraph (b)(4), the SACWIS must provide for the collection and management of information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B subparts 1 and 2, family preservation and family support services, family reunification and permanent placement. This provision speaks to intake and assessment activities which include processing referrals for services, conducting investigations and determining the need for services.

Under paragraph (b)(5), which is self-explanatory, the SACWIS must collect and manage information necessary to determine eligibility for the foster care program, the adoption assistance program, and the independent living program.

Paragraph (b)(6) requires that the SACWIS support necessary case assessment activities. Under this requirement, the system must have automated procedures to assist in evaluating the client's needs.

Under paragraph (b)(7), the SACWIS must assist the State in monitoring case plan development, review and management, including eligibility determinations and redeterminations. Under this requirement the system must provide for service provision and case management which entails determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can provide services, authorizing services and managing the delivery of services. To assist in case management, the system should provide for case status and work flow aids to determine progress toward the case plan goal and service monitoring, which could include time or event-driven caseworker ticklers.

Finally, under paragraph (b)(8), the confidentiality and security of the information and the system must be ensured. Under this paragraph, the system should provide for: the basic physical safety of the data and its security including appropriate safeguards from inappropriate disclosure, data back-up and recovery, disaster recovery and contingency planning.

Paragraph (c) provides other program functions which may be included in the SACWIS design under paragraph (a) of this section. We believe that the vast majority of States would want to incorporate these functions in their SACWIS development or enhancement activities but we are sensitive to the need for State flexibility. The discretion provided under paragraph (c) will allow States to determine their own optimal level of automation and to provide guidance to prevent inefficient or ineffective use of automation which may add significant cost and complexity to program administration but do very little to improve services provided.

Under paragraph (c)(1), the SACWIS may provide management and tracking capability to assist the State in resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families. This establishes relationships with and maintains information on an array of service providers, including prevention programs, placement services and foster care providers and includes activities such as recruitment of foster/adoptive families, performance of home studies, training families and monitoring standards and violations.

Under paragraph (c)(2) the SACWIS may provide for tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties. This function encompasses legal activities and documentation procedures involving judicial events and might include activities such as the preparation and recording of petitions, informing parties of impending actions and tracking events and recording outcomes of petitions, hearings and proceedings.

Under paragraph (c)(3) the SACWIS may provide automated capability to assist in the administration and management of staff and workloads. This functionality would provide for a sensible and practical balance between the workload and workforce and provide a methodology for management to prioritize resource allocation and workload decisions.

Under paragraph (c)(4) of this section, the SACWIS may assist the State in tracking and management of licensing verification activities. This would provide automated capability to track and manage compliance with regulatory standards for licensing of facilities and homes and certification status as well as tracking facility capacity, limitations, level of care and utilization and could include licensing renewal and issuance if the responsibility resides with the child welfare agency.

Paragraph (c)(5) provides that the SACWIS may support the State in priority setting and risk assessment activities necessary to determine the client's level of risk. Such automated support could include an expert systems module, or rule-based automation to assist in consistent caseworker analysis and to aid in decision-making to the extent the APD justifies that such automation is both technologically and programmatically feasible as well as cost effective. Such programs use knowledge and inference procedures to assist in determining a course of action based on the level of risk, possible solutions, and prioritizing resources to reduce the risk. While expert systems cannot substitute for case workers making decisions in the field after on-site investigation, they can assist in more efficient use of case worker time and resources by sharing how other experts would proceed in a given situation.

Paragraph (d) provides that the SACWIS design may also provide for interface with other automated information systems, including, but not limited to: Accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate. Such interface or integration would create a link to obtain and verify client information that is maintained in other systems to ensure appropriate delivery of services such as information on school attendance and performance. Other linkages could include resource directories and license payment systems.

Under paragraph (e), if the cost benefit analysis submitted as part of the APD indicates that full adherence to

paragraph (c) and (d), would not be cost beneficial (e.g., relative to the State caseload or level of automation), final approval of the APD may be withheld pending reassessment of the State's specific automation needs and, as necessary, adjustment of the APD to reflect a level of automation which is cost beneficial. We believe this is in keeping with the intent of the statute that such systems provide more economical administration of services provided under titles IV–B and IV–E.

Paragraph (f) provides that a Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which provides for a comprehensive system and which will support these enhancements on a phased basis. We recognize that States may need to take this approach which is designed to allow AFCARS requirements to be met expeditiously, while providing for the development a more comprehensive case management system at a slower pace.

The Administration for Children and Families will provide technical assistance to assist States in the planning, design, development and installation of a SACWIS, upon request. Such assistance includes aid in defining a case management system and in preparing a phased approach to development, as provided above, so that AFCARS requirements can be addressed expeditiously.

We will also be available to provide technical assistance to States wishing to pursue multi-State projects. Several States have indicated interest in this approach and we would certainly encourage the development of such projects to maximize the benefits of application software development and acquisition.

Finally, paragraph (f) requires that the system perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

A new § 1355.54 has been added to address requirements for submittal of advance planning documents. Under § 1355.54, Submittal of advance planning documents, the State title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

We would note that while the requirements under part 95 related to system transfer continue to apply (States must consider system transfer as one option and provide a justification if it is not the option selected), because of the limited scope of current comprehensive child welfare systems, a flexible approach in considering justifications for not transferring an existing system will be adopted. While we encourage information sharing and will aid in this effort, we recognize that the vast majority of child welfare systems, where they exist, are under-developed unlike other public assistance information systems where an array of models are available for transfer.

The conditions for FFP at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles IV–A, IV–B and IV–E of the Act (among others) are contained in 45 CFR part 95, subpart F. At 45 CFR 95.611 we explicitly note that the State agency shall obtain prior written approval before beginning a project where enhanced FFP will be requested.

If a State is proceeding with the planning, design, development, or installation of a child welfare information system under an APD which was approved prior to October 1, 1993, an As Needed APD Update (or Annual APD Update, as appropriate) must be submitted to the Department for review and approval. The regulations related to an As Needed APD Update, which are defined at 45 CFR 95.605(3)(b), indicate that this document must be submitted when significant changes are expected to the project (e.g., changes in scope of the project, overall increase in Federal funding, or changes in the distribution of project costs). Furthermore, the regulations at 45 CFR 95.611(c)(2) indicate that the State must submit the As Needed APD Update to the Department, no later than sixty days after the occurrence of the project changes which are being reported. This regulation requires that an As Needed APD Update be submitted sixty days from the date of this Interim Final Rule. To receive enhanced funds, in this instance, the As Needed APD Update must identify the changes from the originally approved APD and address how the system will satisfy the minimum system requirements in § 1355.53.

A new § 1355.55 has been added to provide for ACF review and assessment of Statewide automated child welfare information systems. To ensure that funding is being used appropriately, it is necessary to conduct periodic reviews. Access to all aspects of the SACWIS, including design, development and operation, work performance and cost records must be made available to the Federal government by the State at intervals deemed necessary by ACF to monitor the project and to have an end of project closeout to ensure that all aspects of the project have been adequately completed.

Under paragraph (a), ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems: (1) Meet § 1355.53 of this chapter, (2) meet the goals and objectives stated in the approved APD, (3) meet the schedule, budget, and other conditions of the approved APD, and (4) comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

A new § 1355.56, Failure to meet the conditions of the approved APD, has been added to provide information on the consequences and actions resulting from a State's failure to meet the conditions of the approved APD. Under paragraph (a) of § 1355.56 if ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended. Further, paragraph (b) provides events which shall take place should suspension of the APD occur. Under paragraph (b)(1), if the approval of an APD is suspended during the planning, design, development, installation, or operation of the SACWIS the State will be given written notice of the suspension stating: (A) The reason for the suspension, (B) the date of the suspension, (C) whether the suspended system complies with part 95 criteria for 50 percent FFP, and (D) the actions required by the State for future enhanced funding. Under paragraph (b)(2), the suspension will be effective as of the date the State failed to comply with the approved APD. Paragraph (b)(3) further provides that the suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a

State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, paragraph (b)(4) provides that all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

A new § 1355.57 has been added to address the issue of cost allocation. Under paragraph (a), all expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this chapter shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan. This provision reiterates the statutory intent that the system may apply to all children under the responsibility of the State title IV–B/IV–E agency not just those eligible for title IV–E payments. However, to the extent that the system includes functionality not directly related to the purposes of title IV–B and title IV–E (e.g., adult support services), the cost to design, develop and implement such functions must be charged to the appropriate funding source they support and associated operating costs allocated as required under part 95, as provided below.

Paragraph (b) provides that cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 and section 479(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plans approved under titles IV–B or IV–E.

We have also made a conforming change to § 1356.60, Fiscal requirements (title IV–E), by adding a new paragraph (e), Federal matching funds for SACWIS. This paragraph merely reiterates the statutory provision that all expenditures related to an approved APD under § 1355.52, will be treated as necessary for the proper and efficient administration of the State plan, without regard to whether the system is used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments are made under title IV–E.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—social programs

45 CFR Part 1356

Adoption and foster care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—Social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program No. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services–State Grants)

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: November 19, 1993.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR parts 1355 and 1356 are amended as set forth below.

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1301 and 1302.

2. A new § 1355.50 is added to read as follows:

§ 1355.50 Purpose of this part.

This part sets forth the requirements and procedures States must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

3. A new § 1355.52 is added to read as follows:

§ 1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).

(a) States may receive Federal reimbursement at the 75 percent match rate for FY 1994, FY 1995 and FY 1996, and at the 50 percent level thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system, to the extent such system:

(1) Provides for the State to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the State data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State automated information system that collects information relating to the eligibility of individuals under title IV–A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a State plan approved under title IV–B and title IV–E.

(b) States may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rates provided under paragraph (a) of this section.

(c) Expenditures for the operation of the automated information system described in paragraph (a) of this section are eligible for FFP at the 50 percent matching rate.

3. Section 1355.53 is added to read as follows:

§ 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the State plans for titles IV–B and IV–E as provided under this section.

(b) At a minimum, the system must provide for effective management, tracking and reporting by providing automated procedures and processes to:

(1) Meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this part;

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

(i) Systems operated under title IV–A,

(ii) National Child Abuse and Neglect Data Systems (NCANDS),

(iii) Systems operated under title XIX, and

(iv) Systems operated under title IV–D;

(3) Support the provisions of section 427(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location, and goals for foster care children can be determined;

(4) Collect and manage information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B Subparts 1 and 2, family preservation and family support services, family reunificication and permanent placement;

(5) Collect and manage information necessary to determine eligibility for:

(i) The foster care program,

(ii) The adoption assistance program, and

(iii) The independent living program;

(6) Support necessary case assessment activities;

(7) Monitor case plan development, payment authorization and issuance, review and management, including eligibility determinations and redeterminations; and

(8) Ensure the confidentiality and security of the information and the system.

(c) A system established under paragraph (a) of this section may also provide support in meeting the following program functions:

(1) Resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families;

(2) Tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties;

(3) Administration and management of staff and workloads;

(4) Licensing verification; and

(5) Risk analysis.

(d) The system may also provide for interface with other automated information systems, including, but not limited to, accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate.

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation appropriate to meet the State's needs.

(f) A Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

4. A new § 1355.54 is added to read as follows:

§ 1355.54 Submittal of advance planning documents.

The State title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

5. A new § 1355.55 is added to read as follows:

§ 1355.55 Review and assessment of the system developed with enhanced funds.

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems:

(1) Meet § 1355.53 of this chapter,

(2) Meet the goals and objectives stated in the approved APD,

(3) Meet the schedule, budget, and other conditions of the approved APD, and

(4) Comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

(b) [Reserved]

6. A new § 1355.56 is added to read as follows:

§ 1355.56 Failure to meet the conditions of the approved APD.

(a) If ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) If the approval of an APD is suspended during the planning, design, development, installation, or operation of the system:

(1) The State will be given written notice of the suspension. This notice shall state:

(i) The reason for the suspension,

(ii) The date of the suspension,

(iii) Whether the suspended system complies with criteria for 50 percent FFP, and

(iv) The actions required by the State for future enhanced funding.

(2) The suspension will be effective as of the date the State failed to comply with the approved APD;

(3) The suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding.

(4) Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

7. A new § 1355.57 is added to read as follows:

§ 1355.57 Cost allocation.

(a) All expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance

payments may be made under the State plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plan approved under title IV–B or IV–E.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

1. The authority citation for part 1356 continues to read as follows:

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 620 *et seq.*; 42 U.S.C. 1302.

2. Section 1356.60 is amended by adding a new paragraph (e) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(e) *Federal matching funds for SACWIS.* All expenditures of a State to plan, design, develop, install and operate the Statewide automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the State plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

[FR Doc. 93–31000 Filed 12–21–93; 8:45 am]

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federal register

Wednesday
December 22, 1993

Part III

General Services Administration

41 CFR Ch. 301

Federal Travel Regulation; Maximum Per Diem Rates; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 34]

RIN 3090–AE97

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum lodging and meals and incidental expenses amounts in certain existing per diem localities, designates in-season and off-season maximum lodging amounts for use in listed seasonal localities during the designated time periods, and adds new per diem localities.

DATES: This final rule is effective on January 1, 1994, and applies for travel (including travel incident to a change of official station) performed on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Cooke or Karen Kinsella, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

For the reasons set out in the preamble, under 5 U.S.C. 5701–5709 and E.O. 11609, July 22, 1971 (36 FR 13747), title 41, chapter 301 of the Code of Federal Regulations is amended by revising Appendix A to chapter 301 to read as follows:

CHAPTER 301—TRAVEL ALLOWANCES

APPENDIX A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under § 301–7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
CONUS, Standard rate		$40		$26		$66
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302–2, 302–4, and 302–5 of this subtitle.)						
ALABAMA						
Anniston	Calhoun	41		26		67
Birmingham	Jefferson	52		30		82
Dothan	Houston	43		26		69
Gulf Shores	Baldwin.					
(April 1–September 30)		91		26		117
(October 1–March 31)		48		26		74
Huntsville	Madison	55		34		89
Mobile	Mobile	55		30		85
Montgomery	Montgomery	51		26		77
Sheffield	Colbert	56		26		82
ARIZONA						
Casa Grande	Pinal	50		26		76
Chinle	Apache.					
(April 1–October 31)		83		26		109
(November 1–March 31)		51		26		77
Grand Canyon Nat'l Park/Flagstaff	Coconino	89		30		119
Kayenta	Navajo.					
(May 1–October 14)		77		26		103
(October 15–April 30)		48		26		74
Phoenix/Scottsdale	Maricopa.					
(December 1–April 30)		87		34		121
(May 1–November 30)		61		34		95
Prescott	Yavapai.					
(April 1–October 14)		48		30		78
(October 15–March 31)		42		30		72
Sierra Vista	Cochise	46		26		72
Tucson	Pima County; Davis–Monthan AFB.					
(November 1–April 30)		62		30		92
(May 1–October 31)		50		30		80
Yuma	Yuma	58		26		84
ARKANSAS						
Fayetteville	Washington	45		26		71
Fort Smith	Sebastian	42		26		68

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
Helena	Phillips	44		26		70
Hot Springs	Garland	52		30		82
Little Rock	Pulaski	52		30		82
CALIFORNIA.						
Bridgeport	Mono	61		34		95
Chico	Butte	58		34		92
Clearlake	Lake	55		26		81
Death Valley	Inyo	97		38		135
El Centro	Imperial	49		30		79
Eureka	Humboldt	65		30		95
Fresno	Fresno	62		34		96
Gualala/Point Arena	Mendocino	100		34		134
Herlong	Lassen	42		26		68
Los Angeles	Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordinance Test Station, China Lake.	102		38		140
Merced	Merced	46		34		80
Modesto	Stanislaus	54		34		88
Monterey	Monterey.					
(June 1–October 14)		82		34		116
(October 15–May 31)		74		34		108
Napa	Napa.					
(April 1–October 31)		73		34		107
(November 1–March 31)		65		34		99
Oakland	Alameda, Contra Costa and Marin	71		38		109
Ontario/Victorville/Barstow	San Bernardino	60		34		94
Palm Springs	Riverside.					
(December 1–May 14)		73		38		111
(May 15–November 30)		53		38		91
Palo Alto/San Jose	Santa Clara	70		38		108
Redding	Shasta	60		34		94
Redwood City/San Mateo	San Mateo	71		34		105
Sacramento	Sacramento	67		34		101
San Diego	San Diego	78		38		116
San Francisco	San Francisco	96		38		134
San Luis Obispo	San Luis Obispo.					
(May 1–September 30)		55		38		93
(October 1–April 30)		49		38		87
Santa Barbara	Santa Barbara	79		34		113
Santa Cruz	Santa Cruz.					
(June 1–September 30)		80		34		114
(October 1–May 31)		64		34		98
Santa Rosa	Sonoma	61		34		95
South Lake Tahoe	El Dorado (See also Stateline, NV).					
(June 1–September 30)		91		38		129
(October 1–May 31)		68		38		106
Stockton	San Joaquin	56		30		86
Tahoe City	Placer.					
(June 1–September 14)		67		38		105
(September 15–May 31)		55		38		93
Vallejo	Solano	44		30		74
Visalia	Tulare	61		30		91
West Sacramento	Yolo	48		26		74
Yosemite Nat'l Park	Mariposa	83		38		121
Yuba City	Sutter	46		30		76
COLORADO						
Aspen	Pitkin.					
(January 15–March 31)		130		38		168
(April 1–January 14)		74		38		112
Boulder	Boulder.					
(May 1–December 31)		71		34		105
(January 1–April 30)		64		34		98
Colorado Springs	El Paso.					
(May 1–August 31)		51		26		77
(September 1–April 30)		43		26		69
Denver	Denver, Adams, Arapahoe and Jefferson	77		38		115
Durango	La Plata.					
(June 1–September 30)		80		34		114
(October 1–May 31)		50		34		84
Glenwood Springs	Garfield	53		30		83

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
Grand Junction	Mesa	44		30		74
Gunnison	Gunnison.					
(May 1–October 14)		51		26		77
(October 15–April 30)		40		26		66
Keystone/Silverthorne	Summit	122		38		160
Loveland	Larimer	42		26		68
Montrose	Montrose	41		26		67
Pagosa Springs	Archuleta.					
(June 1–September 30)		47		26		73
(October 1–May 31)		40		26		66
Pueblo	Pueblo	44		26		70
Steamboat Springs	Routt.					
(February 1–March 31)		90		30		120
(April 1–January 31)		57		30		87
Trinidad	Las Animas.					
(June 1–September 14)		45		26		71
(September 15–May 31)		40		26		66
Vail	Eagle.					
(January 1–March 31)		151		38		189
(April 1–December 31)		74		38		112
CONNECTICUT						
Bridgeport/Danbury	Fairfield	77		34		111
Hartford	Hartford and Middlesex	69		38		107
New Haven	New Haven	67		34		101
New London/Groton	New London.					
(June 1–October 31)		63		30		93
(November 1–May 31)		56		30		86
Putnam/Danielson	Windham	60		26		86
Salisbury	Litchfield	78		38		116
DELAWARE						
Dover	Kent	50		26		76
Lewes	Sussex.					
(June 1–September 14)		62		30		92
(September 15–May 31)		40		30		70
Wilmington	New Castle	78		34		112
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (See also Maryland and Virginia.)		113		38		151
FLORIDA						
Altamonte Springs	Seminole	62		26		88
Bradenton	Manatee.					
(January 1–May 14)		60		26		86
(May 15–December 31)		42		26		68
Clewiston	Hendry	53		26		79
Cocoa Beach	Brevard.					
(May 1–December 31)		73		30		103
(January 1–April 30)		65		30		95
Daytona Beach	Volusia.					
(February 1–April 14)		65		26		91
(April 15–January 31)		49		26		75
Fort Lauderdale	Broward.					
(December 15–April 30)		79		30		109
(May 1–December 14)		61		30		91
Fort Myers	Lee.					
(January 1–April 30)		90		34		124
(May 1–December 31)		67		34		101
Fort Pierce	Saint Lucie.					
(January 1–April 30)		57		30		87
(May 1–December 31)		45		30		75
Fort Walton Beach	Okaloosa.					
(April 1–September 14)		66		30		96
(September 15–March 31)		56		30		86
Gainesville	Alachua	52		30		82
Jacksonville	Duval County; Naval Station Mayport	50		30		80
Key West	Monroe.					
(December 15–April 30)		148		38		186
(May 1–December 14)		102		38		140
Kissimmee	Osceola.					
(January 1–September 14)		68		30		98

Per diem locality		Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]			
(September 15–December 31)		61	30	91
Lakeland	Polk.			
(January 1–April 14)		56	26	82
(April 15–December 31)		49	26	75
Miami	Dade	73	34	107
Naples	Collier.			
(December 15–April 14)		91	34	125
(April 15–December 14)		54	34	88
Orlando	Orange	66	30	96
Panama City	Bay.			
(March 1–September 14)		49	30	79
(September 15–February 28)		40	30	70
Pensacola	Escambia	57	30	87
Punta Gorda	Charlotte.			
(January 1–April 14)		71	30	101
(April 15–December 31)		47	30	77
Saint Augustine	Saint Johns.			
(February 1–September 14)		60	30	90
(September 15–January 31)		44	30	74
Sarasota	Sarasota.			
(December 15–April 14)		68	30	98
(April 15–December 14)		46	30	76
Stuart	Martin.			
(January 1–April 30)		63	30	93
(May 1–December 31)		51	30	81
Tallahassee	Leon	53	26	79
Tampa/St. Petersburg	Hillsborough and Pinellas	57	26	83
Vero Beach	Indian River.			
(February 1–April 30)		71	26	97
(May 1–January 31)		54	26	80
West Palm Beach	Palm Beach.			
(December 15–April 30)		69	34	103
(May 1–December 14)		55	34	89
GEORGIA				
Albany	Dougherty	51	26	77
Athens	Clarke	44	26	70
Atlanta	Clayton, De Kalb, Fulton and Cobb	81	38	119
Augusta	Richmond; Savannah River Plant	44	26	70
Brunswick	Glynn	41	26	67
Columbus	Muscogee	48	26	74
Macon	Bibb	44	26	70
Norcross/Lawrenceville	Gwinnett	56	30	86
Savannah	Chatham	49	30	79
Warner Robins	Houston	43	26	69
IDAHO				
Boise	Ada	49	30	79
Coeur d'Alene	Kootenai.			
(April 1–October 31)		65	26	91
(November 1–March 31)		51	26	77
Idaho Falls	Bonneville	43	30	73
Ketchum/Sun Valley	Blaine.			
(November 15–March 31)		77	38	115
(April 1–November 14)		58	38	96
Lewiston	Nez Perce	44	26	70
McCall	Valley	50	30	80
Pocatello	Bannock	47	26	73
Stanley	Custer.			
(June 1–September 30)		51	30	81
(October 1–May 31)		41	30	71
ILLINOIS				
Alton	Madison	48	26	74
Bloomington	McLean	42	30	72
Champaign/Urbana	Champaign	48	30	78
Chicago	Du Page, Cook and Lake	104	38	142
Danville	Vermilion	43	26	69
Decatur	Macon	45	26	71
Dixon	Lee	45	26	71
East St. Louis	St. Clair	46	26	72
Joliet	Will	51	26	77
Kankakee	Kankakee	50	26	76

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
Peoria	Peoria	62		30		92
Rock Island/Moline	Rock Island	64		26		90
Rockford	Winnebago	56		30		86
Springfield	Sangamon	51		30		81
INDIANA						
Anderson	Madison	54		26		80
Bloomington/Crane	Monroe and Martin	52		30		82
Burlington Beach/Valparaiso	Porter	55		26		81
Columbus	Bartholomew	45		30		75
Dale	Spencer	45		26		71
Elkhart	Elkhart	50		26		76
Evansville	Vanderburgh	52		30		82
Fort Wayne	Allen	57		26		83
Gary	Lake	52		30		82
Indianapolis	Marion County; Fort Benjamin Harrison	71		34		105
Jasper	Dubois	45		26		71
Jeffersonville/Charlestown	Clark County; Indiana Army Ammunition Plant	45		26		71
Lafayette	Tippecanoe	52		30		82
Logansport	Cass	47		26		73
Madison	Jefferson	50		26		76
Marion	Grant	44		26		70
Michigan City	La Porte	44		26		70
Muncie	Delaware	55		26		81
Nashville	Brown.					
(June 1–September 30)		72		26		98
(October 1–May 31)		60		26		86
New Albany	Floyd	45		26		71
Richmond	Wayne	43		26		69
South Bend	St. Joseph	61		30		91
Terre Haute	Vigo	51		26		77
IOWA						
Bettendorf/Davenport	Scott	56		26		82
Cedar Rapids	Linn	48		26		74
Des Moines	Polk	55		30		85
Dubuque	Dubuque	43		30		73
Iowa City	Johnson	48		30		78
Sioux City	Woodbury	47		26		73
Waterloo	Black Hawk	47		26		73
KANSAS						
Hays	Ellis	42		26		68
Kansas City	Johnson and Wyandotte (See also Kansas City, MO)	67		34		101
Manhattan	Riley	53		26		79
Topeka	Shawnee	47		26		73
Wichita	Sedgwick	62		30		92
KENTUCKY						
Ashland	Boyd	41		26		67
Bowling Green	Warren	44		30		74
Covington	Kenton	48		34		82
Florence	Boone	49		30		79
Frankfort	Franklin	42		26		68
Lexington	Fayette	51		30		81
Louisville	Jefferson	60		34		94
Owensboro	Daviess	47		26		73
Pikeville	Pike	42		26		68
Prestonsburg	Floyd	44		26		70
LOUISIANA						
Alexandria	Rapides Parish	44		30		74
Baton Rouge	East Baton Rouge Parish	53		30		83
Bossier City	Bossier Parish	53		30		83
Lafayette	Lafayette Parish	52		30		82
Lake Charles	Calcasieu Parish	43		30		73
Monroe	Ouachita Parish	47		26		73
New Orleans	Parishes of Jefferson, Orleans, Plaquemines and St. Bernard.	66		34		100
Shreveport	Caddo Parish	53		30		83
Slidell	St. Tammany Parish	43		30		73
MAINE						
Auburn	Androscoggin.					
(July 1–October 14)		52		30		82

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(October 15–June 30)		41		30		71
Augusta	Kennebec	53		26		79
Bangor	Penobscot.					
(July 1–October 31)		60		30		90
(November 1–June 30)		47		30		77
Bar Harbor	Hancock.					
(June 1–September 30)		76		34		110
(October 1–May 31)		66		34		100
Bath	Sagadahoc.					
(June 1–October 14)		64		26		90
(October 15–May 31)		53		26		79
Calais	Washington.					
(June 1–October 14)		64		26		90
(October 15–May 31)		48		26		74
Kennebunk/Sanford	York.					
(May 1–September 30)		69		30		99
(October 1–April 30)		44		30		74
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH).					
(June 1–September 30)		66		30		96
(October 1–May 31)		53		30		83
Portland	Cumberland.					
(July 1–October 31)		67		30		97
(November 1–June 30)		54		30		84
Presque Isle	Aroostook	41		26		67
Rockport	Knox.					
(June 1–September 30)		83		30		113
(October 1–May 31)		63		30		93
Wiscasset	Lincoln.					
(June 1–September 30)		66		30		96
(October 1–May 31)		43		30		73
MARYLAND						
(For the counties of Montgomery and Prince Georges, see District of Columbia.)						
Annapolis	Anne Arundel	76		34		110
Baltimore	Baltimore and Harford	78		38		116
Columbia	Howard	87		34		121
Cumberland	Allegany	49		26		75
Easton	Talbot	59		30		89
Frederick	Frederick	55		34		89
Hagerstown	Washington	55		30		85
Lexington Park/St. Inigoes/Leonardtown.	St. Marys	54		26		80
Lusby	Calvert	58		34		92
Ocean City	Worcester.					
(May 1–September 30)		107		34		141
(October 1–April 30)		46		34		80
Salisbury	Wicomico	52		30		82
Tower Garden on Bay	Queen Anne's	44		30		74
Waldorf	Charles	44		30		74
MASSACHUSETTS						
Andover	Essex	80		34		114
Boston	Suffolk	101		38		139
Cambridge/Lowell	Middlesex	95		38		133
Hyannis	Barnstable.					
(June 1–September 30)		95		30		125
(October 1–May 31)		71		30		101
Martha's Vineyard/Nantucket	Dukes and Nantucket.					
(June 1–October 31)		134		38		172
(November 1–May 31)		106		38		144
Northampton	Hampshire	59		26		85
Pittsfield	Berkshire	52		34		86
Plymouth	Plymouth.					
(June 15–October 31)		92		26		118
(November 1–June 14)		74		26		100
Quincy	Norfolk	79		34		113
South Deerfield/Greenfield	Franklin	64		26		90
Springfield	Hampden	61		30		91
Taunton/New Bedford	Bristol	58		26		84
Worcester	Worcester	61		26		87
MICHIGAN						
Adrian	Lenawee	46		26		72

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
Ann Arbor	Washtenaw	65		30		95
Battle Creek	Calhoun	44		26		70
Bay City	Bay	50		26		76
Bellaire	Antrim	51		26		77
Cadillac	Wexford	49		26		75
Charlevoix	Charlevoix	88		30		118
Detroit	Wayne	80		38		118
Drummond Island	Chippewa	67		26		93
Escanaba	Delta.					
(June 1–September 30)		49		26		75
(October 1–May 31)		40		26		66
Flint	Genesee	45		30		75
Gaylord	Otsego.					
(June 1–September 30)		57		26		83
(October 1–May 31)		51		26		77
Grand Rapids	Kent	60		30		90
Grayling	Crawford	50		26		76
Hancock	Houghton	49		26		75
Holland	Ottawa.					
(May 1–September 30)		54		26		80
(October 1–April 30)		44		26		70
Houghton Lake	Roscommon	49		26		75
Jackson	Jackson	48		26		74
Kalamazoo	Kalamazoo	59		30		89
Lansing/East Lansing	Ingham	54		26		80
Leland	Leelanau.					
(May 1–September 30)		72		26		98
(October 1–April 30)		64		26		90
Ludington	Mason.					
(June 1–September 14)		72		26		98
(September 15–May 31)		41		26		67
Mackinac Island	Mackinac.					
(June 1–September 30)		91		34		125
(October 1–May 31)		80		34		114
Manistee	Manistee.					
(May 15–October 31)		51		26		77
(November 1–May 14)		40		26		66
Marquette	Marquette.					
(June 1–September 30)		47		26		73
(October 1–May 31)		42		26		68
Midland	Midland	54		26		80
Muskegon	Muskegon	45		26		71
Ontonagon	Ontonagon	49		26		75
Port Huron	St. Clair	50		34		84
Saginaw	Saginaw	51		30		81
South Haven	Van Buren.					
(May 1–September 30)		65		26		91
(October 1–April 30)		47		26		73
St. Joseph/Benton Harbor/Niles	Berrien	49		30		79
Traverse City	Grand Traverse.					
(May 1–September 30)		85		30		115
(October 1–April 30)		51		30		81
Troy/Pontiac	Oakland	59		34		93
Warren	Macomb	46		26		72
MINNESOTA						
Albert Lea	Freeborn	42		26		68
Austin	Mower	42		26		68
Bemidji	Beltrami	42		30		72
Brainerd	Crow Wing.					
(May 1–September 14)		46		30		76
(September 15–April 30)		40		30		70
Duluth	St. Louis.					
(June 1–September 30)		54		34		88
(October 1–May 31)		46		34		80
Fergus Falls	Otter Tail	57		26		83
Grand Rapids	Itasca	47		30		77
Hinckley	Pine	43		26		69
Mendota Heights	Dakota	58		30		88
Minneapolis/St. Paul	Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	64		34		98

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
Rochester	Olmsted	56		30		86
St. Cloud	Steams	41		30		71
MISSISSIPPI						
Biloxi/Gulfport/Pascagoula/Bay St. Louis.	Harrison, Jackson, and Hancock.					
(May 1–September 14)		73		30		103
(September 15–April 30)		59		30		89
Jackson	Hinds	52		30		82
Natchez	Adams	47		30		77
Oxford	Lafayette	44		26		70
Ridgeland	Madison	46		38		84
Vicksburg	Warren	45		30		75
MISSOURI						
Branson	Taney.					
(May 1–October 31)		71		30		101
(November 1–April 30)		47		30		77
Cape Girardeau	Cape Girardeau	45		26		71
Columbia	Boone	50		26		76
Hannibal	Marion.					
(June 1–September 14)		49		26		75
(September 15–May 31)		40		26		66
Jefferson City	Cole	49		26		75
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS)	67		34		101
Lake Ozark	Miller	48		34		82
Osage Beach	Camden.					
(May 15–October 14)		67		30		97
(October 15–May 14)		40		30		70
Springfield	Greene	56		30		86
St. Louis	St. Charles and St. Louis	74		38		112
MONTANA						
Billings	Yellowstone	48		26		74
Great Falls	Cascade	51		26		77
Helena	Lewis and Clark	44		26		70
Kalispell/Polson	Flathead and Lake.					
(April 15–September 30)		48		26		74
(October 1–April 14)		40		26		66
NEBRASKA						
Kearney	Buffalo	42		26		68
Lincoln	Lancaster	47		26		73
North Platte	Lincoln	42		26		68
Omaha	Douglas	57		30		87
NEVADA						
Elko	Elko	51		26		77
Las Vegas	Clark County; Nellis AFB	69		38		107
Lovelock	Pershing.					
(May 1–September 30)		48		26		74
(October 1–April 30)		40		26		66
Reno	Washoe	53		30		83
Stateline	Douglas (See also South Lake Tahoe, CA).					
(June 1–September 30)		91		38		129
(October 1–May 31)		68		38		106
Winnemucca	Humboldt	42		26		68
NEW HAMPSHIRE						
Concord	Merrimack	56		26		82
Conway	Carroll.					
(June 15–October 14)		73		30		103
(October 15–June 14)		50		30		80
Cornish	Sullivan	41		26		67
Durham	Strafford.					
(June 1–October 31)		52		26		78
(November 1–May 31)		42		26		68
Laconia	Belknap.					
(June 15–October 14)		66		30		96
(October 15–June 14)		50		30		80
Lebanon/Hanover	Grafton	86		34		120
Manchester	Hillsborough	68		30		98
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME).					
(June 1–September 30)		66		30		96

Per diem locality		Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]			
(October 1–May 31)		53	30	83
NEW JERSEY				
Atlantic City	Atlantic.			
(June 1–October 14)		109	38	147
(October 15–May 31)		82	38	120
Belle Mead	Somerset	58	30	88
Camden	Camden	63	34	97
Dover	Morris County; Picatinny Arsenal	58	26	84
Edison	Middlesex	65	38	103
Freehold/Eatontown	Monmouth County; Fort Monmouth	69	34	103
Millville	Cumberland	48	30	78
Moorestown	Burlington	71	34	105
Newark	Bergen, Essex, Hudson, Passaic and Union	87	38	125
Ocean City/Cape May	Cape May.			
(May 15–September 30)		111	34	145
(October 1–May 14)		70	34	104
Princeton/Trenton	Mercer	74	34	108
Salem	Salem	50	26	76
Tom's River	Ocean	78	30	108
NEW MEXICO				
Albuquerque	Bernalillo	60	34	94
Artesia	Eddy	42	26	68
Cloudcroft	Otero	74	26	100
Farmington	San Juan	54	30	84
Gallup	McKinley	50	26	76
Las Cruces/White Sands	Dona Ana	44	30	74
Los Alamos	Los Alamos	59	30	89
Raton	Colfax	47	26	73
Roswell	Chaves	41	26	67
Santa Fe	Santa Fe.			
(May 1–October 31)		95	34	129
(November 1–April 30)		80	34	114
Silver City	Grant	41	26	67
Taos	Taos	65	30	95
NEW YORK				
Albany	Albany	68	30	98
Auburn	Cayuga	50	26	76
Batavia	Genesee.			
(May 1–September 30)		60	26	86
(October 1–April 30)		49	26	75
Binghamton	Broome	58	30	88
Buffalo	Erie	72	34	106
Canton	St. Lawrence	55	26	81
Catskill	Greene.			
(July 1–September 14)		63	26	89
(September 15–June 30)		49	26	75
Corning	Steuben	62	30	92
Elmira	Chemung	57	30	87
Glens Falls	Warren.			
(June 1–October 31)		71	34	105
(November 1–May 31)		50	34	84
Ithaca	Tompkins	61	30	91
Jamestown	Chautauqua	43	30	73
Kingston	Ulster	53	30	83
Lake Placid	Essex.			
(June 1–November 14)		93	30	123
(November 15–May 31)		66	30	96
Monticello	Sullivan.			
(June 1–September 14)		55	30	85
(September 15–May 31)		47	30	77
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties.	142	38	180
Niagara Falls	Niagara.			
(May 15–September 30)		86	34	120
(October 1–May 14)		55	34	89
Owego	Tioga	41	26	67
Palisades/Nyack	Rockland	58	34	92
Plattsburgh	Clinton.			
(June 1–September 30)		47	30	77

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(October 1–May 31)		42		30		72
Poughkeepsie	Dutchess	63		26		89
Rochester	Monroe	67		34		101
Romulus	Seneca	67		26		93
Saratoga Springs	Saratoga.					
(June 1–September 30)		69		38		107
(October 1–May 31)		51		38		89
Schenectady	Schenectady	59		34		93
Syracuse	Onondaga	64		30		94
Troy	Rensselaer	47		30		77
Utica	Oneida	60		30		90
Watertown	Jefferson	54		30		84
Watkins Glen	Schuyler.					
(May 1–October 31)		71		26		97
(November 1–April 30)		47		26		73
West Point	Orange	50		34		84
White Plains	Westchester	104		38		142
NORTH CAROLINA						
Asheville	Buncombe.					
(May 1–October 31)		53		30		83
(November 1–April 30)		45		30		75
Boone	Watauga	44		26		70
Charlotte	Mecklenburg	63		34		97
Duck	Dare.					
(May 1–September 30)		93		30		123
(October 1–April 30)		49		30		79
Elizabeth City	Pasquotank	47		26		73
Fayetteville	Cumberland	43		26		69
Greensboro/High Point	Guilford	54		30		84
Kinston	Lenoir	48		26		74
Morehead City	Carteret.					
(May 1–September 30)		59		26		85
(October 1–April 30)		40		26		66
Raleigh/Durham/Chapel Hill	Wake, Durham and Orange	70		34		104
Wilmington	New Hanover.					
(May 1–September 14)		49		26		75
(September 15–April 30)		44		26		70
Winston–Salem	Forsyth	55		30		85
NORTH DAKOTA						
Bismarck/Mandan	Burleigh and Morton	45		30		75
Fargo	Cass	48		30		78
Grand Forks	Grand Forks	46		26		72
Minot	Ward	45		26		71
OHIO						
Akron	Summit	62		34		96
Bellevue/Norwalk	Huron.					
(May 15–September 14)		70		26		96
(September 15–May 14)		40		26		66
Chillicothe	Ross	45		26		71
Cincinnati/Evendale	Hamilton and Warren	62		30		92
Cleveland	Cuyahoga	78		38		116
Columbus	Franklin	69		34		103
Dayton/Fairborn	Montgomery and Greene; Wright–Patterson AFB	63		30		93
Defiance	Defiance	51		26		77
East Liverpool	Columbiana	48		26		74
Elyria	Lorain.					
(June 1–September 30)		51		26		77
(October 1–May 31)		40		26		66
Fairfield/Hamilton	Butler	59		26		85
Findlay	Hancock	45		26		71
Geneva	Ashtabula	57		26		83
Jackson	Jackson and Pike	46		26		72
Lancaster	Fairfield	47		26		73
Martin's Ferry/Bellaire	Belmont	41		26		67
Port Clinton/Oakharbor	Ottawa.					
(May 1–September 30)		79		30		109
(October 1–April 30)		40		30		70
Portsmouth	Scioto	48		26		74
Sandusky	Erie.					
(May 15–September 14)		91		30		121

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(September 15–May 14)		44		30		74
Springfield	Clark	48		30		78
Tinney/Fremont	Sandusky.					
(June 1–September 14)		54		26		80
(September 15–May 31)		40		26		66
Toledo	Lucas	56		30		86
Wapakoneta	Auglaize	42		26		68
Warren	Trumbull	45		30		75
OKLAHOMA						
Ada	Pontotoc	46		26		72
Lawton	Comanche	45		26		71
Muskogee	Muskogee	41		26		67
Norman	Cleveland	47		30		77
Oklahoma City	Oklahoma	51		26		77
Stillwater	Payne	44		26		70
Tulsa/Bartlesville	Osage, Tulsa and Washington	53		30		83
OREGON						
Ashland/Medford	Jackson.					
(June 1–September 30)		63		30		93
(October 1–May 31)		44		30		74
Beaverton	Washington	61		26		87
Bend	Deschutes	53		30		83
Clackamas	Clackamas	55		26		81
Coos Bay	Coos.					
(May 1–September 30)		56		26		82
(October 1–April 30)		43		26		69
Eugene	Lane	51		30		81
Gold Beach	Curry.					
(May 15–October 14)		67		26		93
(October 15–May 14)		44		26		70
Lincoln City/Newport	Lincoln.					
(June 1–September 14)		69		30		99
(September 15–May 31)		54		30		84
Portland	Multnomah	67		30		97
Salem	Marion	49		26		75
Seaside	Clatsop.					
(May 1–September 30)		89		26		115
(October 1–April 30)		71		26		97
PENNSYLVANIA						
Allentown	Lehigh	59		34		93
Altoona	Blair	46		26		72
Bloomsburg	Columbia	48		30		78
Chester/Radnor	Delaware	88		38		126
Du Bois	Clearfield	48		26		74
Easton	Northampton	42		26		68
Erie	Erie.					
(June 1–August 31)		56		26		82
(September 1–May 31)		44		26		70
Gettysburg	Adams.					
(May 1–September 14)		63		30		93
(September 15–April 30)		42		30		72
Harrisburg	Dauphin	75		34		109
Johnstown	Cambria	48		26		74
King of Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA).	83		34		117
Lancaster	Lancaster	64		30		94
Lebanon	Lebanon County; Indian Town Gap Military Reservation.	49		26		75
Mechanicsburg	Cumberland	53		30		83
Mercer	Mercer	47		26		73
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	89		34		123
Pittsburgh	Allegheny	75		34		109
Reading	Berks	52		26		78
Scranton	Lackawanna	58		30		88
Shippingport	Beaver	47		30		77
Somerset	Somerset	56		30		86
State College	Centre	53		30		83
Stroudsburg	Monroe	43		30		73
Uniontown	Fayette	67		26		93

Per diem locality		Maximum lodging amount (a)	+ M&IE rate (b)	= Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]			
Valley Forge	Chester	82	38	120
Warminster	Bucks County; Naval Air Development Center	63	30	93
Wilkes-Barre	Luzerne	52	30	82
Williamsport	Lycoming	47	26	73
York	York	59	30	89
RHODE ISLAND.				
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	80	34	114
Newport	Newport.			
(May 1–October 14)		102	38	140
(October 15–April 30)		62	38	100
Providence	Providence	78	34	112
Quonset Point	Washington.			
(May 15–September 30)		53	26	79
(October 1–May 14)		40	26	66
SOUTH CAROLINA				
Charleston	Charleston and Berkeley	59	30	89
Columbia	Richland	53	30	83
Greenville	Greenville	49	26	75
Hilton Head	Beaufort.			
(May 1–September 30)		73	34	107
(October 1–April 30)		42	34	76
Myrtle Beach	Horry County; Myrtle Beach AFB.			
(May 1–September 30)		89	30	119
(October 1–April 30)		40	30	70
Spartanburg	Spartanburg	49	26	75
SOUTH DAKOTA				
Custer	Custer.			
(June 1–September 30)		64	26	90
(October 1–May 31)		40	26	66
Hot Springs	Fall River.			
(May 1–September 30)		64	26	90
(October 1–April 30)		40	26	66
Rapid City	Pennington.			
(June 1–August 31)		67	26	93
(September 1–May 31)		41	26	67
Sioux Falls	Minnehaha	54	26	80
Spearfish	Lawrence.			
(June 1–September 14)		65	26	91
(September 15–May 31)		40	26	66
TENNESSEE				
Chattanooga	Hamilton	43	26	69
Clarksville	Montgomery	41	26	67
Columbia	Maury	53	26	79
Gatlinburg	Sevier.			
(May 15–October 31)		72	30	102
(November 1–May 14)		55	30	85
Johnson City	Washington	53	30	83
Kingsport/Bristol	Sullivan	43	30	73
Knoxville	Knox County; city of Oak Ridge	54	30	84
Memphis	Shelby	57	30	87
Murfreesboro	Rutherford	42	26	68
Nashville	Davidson	56	30	86
Shelbyville	Bedford	47	26	73
TEXAS				
Abilene	Taylor	44	26	70
Amarillo	Potter	51	30	81
Austin	Travis	65	34	99
Beaumont	Jefferson	44	26	70
Brownsville	Cameron	55	30	85
Brownwood	Brown	42	26	68
College Station/Bryan	Brazos	48	26	74
Corpus Christi/Ingelside	Nueces and San Patricio	64	30	94
Dallas/Fort Worth	Dallas and Tarrant	71	34	105
Denton	Denton	47	26	73
El Paso	El Paso	58	30	88
Fort Davis	Jeff Davis	59	26	85
Galveston	Galveston.			
(May 15–September 14)		74	30	104

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(September 15–May 14)		64		30		94
Granbury	Hood	52		26		78
Houston	Harris County; L. B. Johnson Space Center and Ellington AFB.	78		38		116
Kingsville	Kleberg	41		26		67
Lajitas	Brewster	59		26		85
Laredo	Webb	55		30		85
Longview	Gregg	47		26		73
Lubbock	Lubbock	60		26		86
Lufkin	Angelina	43		26		69
McAllen	Hidalgo	59		26		85
Midland/Odessa	Ector and Midland	55		26		81
Nacogdoches	Nacogdoches	49		26		75
Plainview	Hale	42		26		68
Plano	Collin	71		26		97
San Angelo	Tom Green	45		30		75
San Antonio	Bexar	67		30		97
Temple	Bell	48		26		74
Tyler	Smith	48		26		74
Victoria	Victoria	44		26		70
Waco	McLennan	52		26		78
Wichita Falls	Wichita	46		26		72
UTAH						
Bullfrog	Garfield.					
(May 15–September 30)		90		26		116
(October 1–May 14)		54		26		80
Cedar City	Iron.					
(June 1–September 30)		56		30		86
(October 1–May 31)		41		30		71
Moab	Grand.					
(April 1–November 30)		77		26		103
(December 1–March 31)		40		26		66
Provo	Utah	48		30		78
Salt Lake City/Ogden	Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot.	68		30		98
St. George	Washington	46		30		76
Vernal	Uintah	43		26		69
VERMONT						
Burlington	Chittenden	63		30		93
Middlebury	Addison	72		30		102
Montpelier	Washington	51		26		77
Rutland	Rutland.					
(December 15–March 31)		64		30		94
(April 1–December 14)		53		30		83
White River Junction	Windsor.					
(September 15–October 14)		67		30		97
(October 15–September 14)		45		30		75
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)						
Blacksburg	Montgomery	55		26		81
Bristol*		43		26		69
Charlottesville*		53		34		87
Covington*		41		26		67
Fredericksburg*		43		26		69
Lexington*		43		26		69
Lynchburg*		52		30		82
Manassas/Manassas Park*	Prince William	50		26		76
Norfolk* (also Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake)*.	York County; Naval Weapons Station, Yorktown.					
(May 1–September 30)		83		34		117
(October 1–April 30)		61		34		95
Petersburg*	Fort Lee	44		26		70
Richmond*	Chesterfield and Henrico Counties; also Defense Supply Center.	59		34		93
Roanoke*	Roanoke	55		30		85
Staunton*		43		26		69
Wallops Island	Accomack.					
(May 15–September 30)		66		26		92

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(October 1–May 14)		46		26		72
Warrenton/Amissville	Fauquier and Rappahannock	51		30		81
Waynesboro*.						
(May 1–October 31)		51		26		77
(November 1–April 30)		40		26		66
Williamsburg*.						
(June 1–September 30)		70		34		104
(October 1–May 31)		49		34		83
Wintergreen	Nelson	83		38		121
*Denotes independent cities.						
WASHINGTON						
Anacortes/Mt. Vernon	Skagit.					
(May 1–August 31)		58		30		88
(September 1–April 30)		43		30		73
Bellingham	Whatcom	54		30		84
Bremerton	Kitsap	43		30		73
Kelso/Longview	Cowlitz	46		30		76
Lynnwood/Everett	Snohomish	57		30		87
Ocean Shores	Grays Harbor.					
(April 1–September 30)		60		26		86
(October 1–March 31)		47		26		73
Port Angeles	Clallam.					
(May 15–September 30)		60		30		90
(October 1–May 14)		41		30		71
Port Townsend	Jefferson.					
(April 15–October 14)		66		26		92
(October 15–April 14)		45		26		71
Richland	Benton	46		34		80
Seattle	King	79		34		113
Spokane	Spokane	55		30		85
Tacoma	Pierce	55		30		85
Tumwater/Olympia	Thurston	61		34		95
Vancouver	Clark	56		34		90
Whidbey Island	Island	45		30		75
Yakima	Yakima	44		30		74
WEST VIRGINIA						
Beckley	Raleigh	47		26		73
Berkeley Springs	Morgan	64		26		90
Charleston	Kanawha	55		30		85
Harpers Ferry	Jefferson	57		26		83
Huntington	Cabell	53		26		79
Martinsburg	Berkeley	49		30		79
Morgantown	Monongalia	49		30		79
Parkersburg	Wood	45		30		75
Wheeling	Ohio	44		26		70
WISCONSIN						
Brookfield	Waukesha	64		34		98
Cable	Bayfield	41		26		67
Eau Claire	Eau Claire	48		30		78
Green Bay	Brown	54		26		80
Kewaunee	Kewaunee.					
(June 1–September 14)		51		26		77
(September 15–May 31)		40		26		66
La Crosse	La Crosse	55		30		85
Lake Geneva	Walworth.					
(May 1–October 14)		71		34		105
(October 15–April 30)		52		34		86
Madison	Dane	59		30		89
Marinette	Marinette	46		26		72
Milwaukee	Milwaukee	67		30		97
Mishicot	Manitowoc	52		26		78
Oshkosh	Winnebago	53		30		83
Rhinelander/Minocqua	Oneida	54		26		80
Sturgeon Bay	Door.					
(June 1–September 14)		63		26		89
(September 15–May 31)		40		26		66
Wausau	Marathon	49		26		75
Wautoma	Waushara	43		26		69
Wisconsin Dells	Columbia.					
(June 1–September 14)		82		30		112

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2 3]					
(September 15–May 31)		42		30		72
WYOMING						
Casper	Natrona	41		30		71
Cheyenne	Laramie	48		30		78
Cody	Park.					
(May 1–September 30)		53		26		79
(October 1–April 30)		40		26		66
Gillette	Campbell	42		26		68
Jackson	Teton.					
(June 1–October 14)		75		34		109
(October 15–May 31)		57		34		91
Rock Springs	Sweetwater	41		26		67
Thermopolis	Hot Springs.					
(June 1–September 14)		47		26		73
(September 15–May 31)		40		26		66

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

[3] Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Transportation Management Division (FBX), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual survey.

Dated: December 3, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–31174 Filed 12-21-93; 8:45 am]

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Wednesday
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Part IV

Environmental Protection Agency

40 CFR Part 122 et al.

Treatment of Indian Tribes as States for Purposes of Sections 308, 309, 401, 402, and 405 of the Clean Water Act (CWA); Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 501

[FRL-4667-9]

RIN 2040-AB70

Treatment of Indian Tribes as States for Purposes of Sections 308, 309, 401, 402, and 405 of the Clean Water Act (CWA).

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Water Quality Act of 1987 amends the CWA by adding section 518, which requires EPA to promulgate regulations specifying how Tribes will be treated in the same manner as States for various provisions of the CWA.

This final rule establishes requirements for determining eligibility of Indian Tribes to be treated in the same manner as States for several sections of the CWA. The rule establishes eligibility requirements for monitoring, inspections and entry under section 308 (in part) as well as Federal enforcement under section 309 (in part). The rule also sets requirements for certification of water quality standards for some types of NPDES permits under section 401 (in part) for the National Pollutant Discharge Elimination System (NPDES) under section 402. The rule also establishes the eligibility requirements for the pretreatment program under section 402 and the sewage sludge management program under section 405. If an Indian Tribe is found so eligible, the Tribe may apply to EPA to assume the NPDES permit program (including pretreatment) and State sludge management program. This regulation satisfies the statutory provisions in section 518 of the CWA with respect to the 402 program, and is consistent with previous Agency rulemaking addressing the eligibility of Indian Tribes to assume CWA section 405 State sludge management programs.

EFFECTIVE DATE: The rule shall be effective January 21, 1994.

ADDRESSES: The public may inspect the record for this rulemaking and all comments received on the proposed regulation, "Treatment of Indian Tribes as State (Final Rule)," at the Environmental Protection Agency, Water Docket, 401 M Street, SW., Washington, DC 20460, Room L102 between the hours of 9 a.m. and 3:30 p.m. on business days. For access to docket materials, please call (202) 260-3027 for an appointment during the aforementioned hours. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Laura J. Phillips, OWEC, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260- 9522.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

I. Background
A. Statutory Authority
B. Supplemental Statutory Background
C. Changes to the Proposed Rule
D. NPDES Application Process Simplified for Indian Tribes
II. Summary and Explanation of Today's Action
A. Treatment of Indian Tribes in the Same Manner as States
1. Federal Recognition
2. "Substantial Governmental Duties and Powers"
3. Jurisdiction
4. Tribal Capability
5. Process for Evaluating Applications
B. Transition in Permitting Authority
C. Additional Amendments
III. Response to Comments
A. Response to Comments on Proposed Rule (3/10/92)
1. Tribal Regulation of Fee Lands of Nonmembers
2. Tribal Jurisdiction Under CWA Section 518(e)(2)
3. Transition Issues
4. Criminal Enforcement Authority
5. Other Comments
a. Simplification of Tribal Application for Treatment in the Same Manner as a State
b. Tribal Funding
c. Tribal Standards Under the CWA
d. EPA's "Regulatory Flexibility Act" Analysis
B. Supporting Comments
IV. Other Regulatory Requirements
A. Compliance with Executive Order 12991 (Regulatory Impact Analysis)
B. Paperwork Reduction Act
C. Regulatory Flexibility Act

I. Background

A. Statutory Authority

The over-all objective of the CWA as amended is to restore and maintain the chemical, physical, and biological integrity of the Nation's water. The two national goals the Act established in 1972 include: (1) Eliminating the discharge of pollutants into navigable waters; and (2) achieving an interim water quality level that would protect fish, shellfish, and wildlife while providing for recreation in and on the water wherever attainable.

Since 1972, section 101(b) of the CWA makes it national policy to recognize and preserve the States' primary responsibility to meet these goals. Over the past 20 years, the Agency has focused on developing standard operating relationships with the States and localities. These relationships have generally led to the successful operation of EPA and State Programs on most lands in the United States.

Congress, through amendments to both the CWA in 1987 and the Safe Drinking Water Act (SDWA) in 1986 (as well as amendments to the Clean Air Act (CAA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)), has authorized EPA to treat Indian Tribes in the same manner as States under various provisions of these Acts. Amendments to both statutes required the Agency to promulgate regulations that would establish exactly how Tribes would be treated in the same manner as States.

The February 4, 1987, amendments to the CWA (33 U.S.C. 1251 *et seq.*) added a new section 518 entitled "Indian Tribes." These amendments authorize EPA to treat Indian Tribes as States for the purposes of certain provisions of the Act, and provide grant and contract assistance (for certain of these programs) to Indian Tribes where appropriate. The amendments require EPA to promulgate regulations specifying how the Agency will treat an Indian Tribe in the Same Manner as a State under the following provisions: Title II (Construction Grants), section 104 (Research, Investigation, and Training), section 106 (Grants for Pollution Control), section 303 (Water Quality Standards and Implementation Plans), section 305 (Water Quality Inventory), section 308 (Inspections, Monitoring, and Entry), section 309 (Federal Enforcement), section 314 (Clean Lakes), section 319 (Nonpoint Source), section 401 (Certification), section 402 (National Pollutant Discharge Elimination System), and section 404 (Dredge and Fill Permit Program). In addition, as will be discussed further below, today's rule also addresses Tribal assumption of CWA section 405 State sludge management programs.

Section 518(e) of the CWA establishes certain criteria an Indian Tribe must meet before Treatment in the Same Manner as a State is authorized:

(1) "The Indian Tribe has a governing body carrying out substantial governmental duties and powers";

(2) "the functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation", and

(3) "the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and of all applicable regulations."

In addition to the eligibility requirements specified in section 518(e), section 518(h)(2) defines Indian Tribes as follows: "'Indian Tribe' means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation." Consequently, existing Federal recognition and governmental authority over reservation lands must also be demonstrated by an Indian Tribe seeking authorization to administer the NPDES or State sludge management programs.

B. Supplemental Statutory Background

In 1972, Congress established the NPDES permit program to regulate the discharge of pollutants into "waters of the United States." The CWA prohibits the discharge of pollutants without an NPDES permit (section 301). Congress gave States the option of assuming NPDES permit program authority, subject to EPA approval (section 402). A new State assuming this responsibility may operate a partial or phased in program in accordance with section 402(n) of the CWA.

The Act prescribes minimum requirements which States must meet before exercising their option to assume the NPDES program, and assigns program approval and oversight responsibility to EPA. EPA regulations applicable to the NPDES program appear at 40 CFR parts 122 through 125, with the procedures and criteria for State assumption of the NPDES permit program being set forth in part 123. Once a Tribe is determined to be eligible for Treatment in the Same Manner as a State, the Tribe must meet the requirements for an approvable NPDES program specified in 40 CFR part 123 in order to assume the authority to issue CWA section 402 permits, except in the area of criminal enforcement responsibility, in which case EPA has established an alternative procedure as discussed below.

Section 405 of the CWA addresses requirements regarding the utilization or disposal of sewage sludge, and directs EPA to issue regulations providing guidelines for the disposal and utilization of sewage sludge. The CWA was amended in 1987 to add a new section 405(f) establishing a permitting program to implement sewage sludge management requirements. The Agency has promulgated regulations codified at 40 CFR parts 123 and 501 which address State sludge management programs under CWA section 405 (54 FR 18716, May 2, 1989) as revised (58 FR 9404, February 19, 1993). Section 405(f) provides for incorporation of sewage sludge use or disposal requirements into either CWA section 402 NPDES permits (or other permits issued under certain other Federal environmental laws) or into State sludge management permits issued under State sludge management programs approved by EPA. The regulations applicable to State sludge management programs (including State sludge management permits) appear at 40 CFR part 501 for non-NPDES programs, and parts 122 and 123 for NPDES programs.

Section 518(e) expressly addresses assumption of section 402 NPDES permitting authority by eligible Indian Tribes, and this basis for sewage sludge permitting is addressed by today's amendments with regard to the NPDES program. While section 518(e) of the CWA does not expressly address Tribal assumption of non-NPDES State sludge management program permits under section 405, the final State sludge management program regulations addressed this issue in the preamble (54 FR 18751, May 2, 1989), and the definition of "State" set forth at 40 CFR 501.2 recognizes that Indian Tribes may assume such programs if they meet the eligibility requirements of CWA section 518(e). The preamble to the final State sludge management program regulations noted that regulations governing procedures and criteria for Tribal assumption of CWA programs were forthcoming, and today's final rule, in addition to establishing criteria for Tribal assumption of the NPDES program, would establish similar criteria for Tribal assumption of CWA section 405 State sludge management programs.

As the preamble to the final sewage sludge program regulations provided, there are several important reasons why Indian Tribes may apply for assumption of non-NPDES State sludge management programs.

In the 1988 proposal of part 501, EPA proposed treating Indian Tribes as States for purposes of non-NPDES section 405(f) sludge management programs even though section 518(e), which addresses the status of Indian Tribes under the CWA, does not specifically list section 405 as a program for which EPA may treat an Indian Tribe as a State. EPA reasoned that omission of section 405 from section 518 was the result of oversight, not of deliberation. EPA advanced two basic reasons in support of this position. First, section 518 authorized treating Indian Tribes as States for purposes of other sludge management activities, e.g., Title II (construction grants) and section 303 (water quality standards and implementation plans). Second, section 518 would clearly allow Indian Tribes to be treated as States for purposes of administering an approved NPDES program (including sludge management) and there is no reason why Indian Tribes should not be similarly treated for purposes of administering a non-NPDES program that regulated the same activities. (54 FR 18751, May 2, 1989.)

States are also empowered by section 401 of the CWA to certify that Federal permits or licenses issued by Federal agencies, will be in compliance with, among others, the State's water quality standards. Under section 518(e) of the CWA, Indian Tribes are eligible for Treatment in the Same Manner as States for section 401 certification purposes. The assumption of 401 certification authority by Indian Tribes as States was addressed in a separate final rulemaking package (56 FR 64876, December 12, 1991) by amendment of 40 CFR part 131, governing water quality standards. 40 CFR 131.4(c) provides that "[w]here EPA determines that a Tribe qualifies for treatment as a State for purposes of water quality standards, the Tribe likewise qualifies for treatment as a State for purposes of certifications conducted under Clean Water Act section 401." 56 FR 64894.

Today's final rule also makes a corresponding change to the State certification provisions of subpart D of 40 CFR part 124. Part 124 states the procedures for issuing permits for several EPA programs. Subpart D describes various procedures applicable only to the NPDES program and specifically provides for State certification of NPDES permits pursuant to CWA section 401(a)(1). As added by this final rule, new § 124.51(c) follows § 131.4(c) in stating that an Indian Tribe qualified for Treatment in the Same Manner as a State for purposes of the Water Quality Standards Program is likewise qualified for Treatment in the Same Manner as a State for purposes of State certification pursuant to CWA section 401(a)(1).

Section 518 of the CWA also provides for Treatment of Indian Tribes in the Same Manner as States for purposes of sections 308 and 309 of the CWA (in part). Under today's final rule, any Tribe which is approved to be treated in the same manner as a State for purposes of sections 402 and/or 405 of the CWA is automatically eligible to be treated in the same manner as a State for purposes of sections 308 and 309. In addition, the Agency promulgated amendments to the regulations (58 FR 8172, February 11, 1993) codified at 40 CFR parts 232 and 233 which address the dredge and fill

permit program under section 404 of the CWA and which also provide that any Tribe which is approved to be treated in the same manner as a State for purposes of section 404 is automatically eligible to be treated in the same manner as a State for purposes of sections 308 and 309. Under section 309, EPA may take specified enforcement actions whenever the Administrator finds that a person is in violation of various provisions of the Act (including section 405), of any permit condition or limitation in an NPDES permit implementing various provisions of the CWA, or of specified pretreatment program requirements. Section 309 also establishes penalties for violations of specific provisions of the Act (including section 405), of any permit condition or limitation in an NPDES permit implementing various provisions of the CWA, or of specified pretreatment program requirements. As discussed above, a Tribe treated in the same manner as a State for purposes of sections 402 and/or 405 would be eligible to apply to administer the NPDES (including the pretreatment and NPDES sludge components) or State sludge management permit programs under 40 CFR parts 123 or 501. Those State program regulations require States to have specified enforcement powers, including the power to assess stated penalties. See 40 CFR 123.27, 403.10, and 501.17. As with any authorized State, EPA has the authority to enforce any NPDES or State sludge management permit issued by an Indian Tribe which had obtained authorization under 40 CFR part 123 or 501.

In addition, any Tribe treated in the same manner as a State for purposes of the NPDES or State sludge management programs is also automatically eligible to be treated in the same manner as a State for purposes of section 308(c) (State inspection authority for point sources) for similar reasons as section 309. Recognition of State inspection authority is part of the NPDES or State sludge management permit program authorization requirements for which a State must apply under sections 402 and/or 405. See 40 CFR 123.26, 403.10, and 501.16.

Today's final rule is the last that EPA plans to issue implementing section 518 of the CWA. EPA has already issued regulations implementing section 518 under sections 106, 303, 314, 319, 401 (in part) and Title II, and sections 404, 308 (in part) and 309 (in part). Today's final rule covers sections 308 (in part), 309 (in part), 401 (in part), 402, and 405 (although not explicitly mentioned in section 518).

The only sections of the CWA explicitly identified in section 518 for which EPA has not yet specified Treatment in the Same Manner as a State procedures are sections 104 and 305. EPA does not believe, however, that additional regulations are necessary. Section 104 authorizes a variety of grants and funding to organizations for research, investigations, training, etc. Tribes currently are eligible under the major funding provisions of section 104 regardless of whether they are treated in the same manner as States for purposes of the Act. Thus, EPA has determined that specific regulations are not needed to effectuate the purposes of section 518. With respect to section 305, EPA has already waived the requirement to submit a biennial report for Indian Tribes under section 305(b). See 40 CFR 130.4; 54 FR 14354, 14357 (April 11, 1989). Thus, regulations treating Tribes in the same manner as States for section 305 would be superfluous.

C. Changes to the Proposed Rule

EPA has reviewed all comments submitted on the proposed rule, and responds to the comments in this preamble and in the "Response to Comments" document available in the docket for today's rule. EPA has determined that no changes to the actual rule (or amendments to 40 CFR to incorporate the necessary language for Treatment in the Same Manner as a State for federally recognized Indian Tribes) are currently necessary from the language proposed on March 10, 1992.

D. NPDES Application Process Simplified for Indian Tribes

This rule was originally proposed on March 10, 1992 and the comment period closed on May 11, 1992. On November 10, 1992, EPA's Deputy Administrator signed a memorandum entitled "Simplification of EPA's Process for Treating Tribes as States." By that memorandum, the Agency formally adopted a new policy for simplifying the process for treating Indian Tribes in the same manner in which it treats States under several statutes, including the Clean Water Act. A copy is available in the docket for today's rule.

EPA has decided to proceed with the issuance of this rule so that there will be no further delays in allowing interested Tribes to seek authorization for the 402 or 405 permit programs. EPA recognizes, however, that some changes to today's rule may later be necessary to implement fully its new policy on treatment as State simplification. EPA plans to make necessary changes, as appropriate, to its Treatment in the Same Manner as a State regulations across all of its programs in the near future; it will make any necessary changes to this regulation at that time. In the interim, EPA will continue to work with Tribes to ensure that the existing regulations do not pose an unreasonable burden on Tribes wishing to assume authority for the 402 or 405 permit program(s) and will implement EPA's simplification process on an ad hoc basis, as appropriate, in implementing today's rule.

II. Summary and Explanation of Today's Action

Today's final rule would implement section 518 of the CWA, which authorizes EPA to treat an Indian Tribe in the same manner as a State for assumption of the NPDES permit program if the Indian Tribe meets the eligibility criteria and would also allow Tribal assumption of CWA section 405 State sludge management programs.

The criteria for treating Indian Tribes in the same manner as States under the CWA and the SDWA are very similar. The Agency believes that it has established a reasonable process for Tribes to demonstrate State eligibility, but is reassessing this process to simplify it even further.

Most qualification criteria are of a general nature and need only be provided when a Tribe first applies for "Treatment in the Same Manner as a State" under the SDWA, CWA, or CAA. For example, the "Federal recognition" and "governmental duties and powers" criteria will almost always require the same showing for a Tribe and would ordinarily need to be demonstrated only during the first application a Tribe submitted under any of the Acts.

However, the Agency believes that even with a streamlined application procedure, some qualifications will still need to be demonstrated separately for each program, particularly regarding capability. For example, a Tribe may possess the requisite capability to establish water quality standards but not to assume the NPDES permit program. Yet the Agency does not wish to put Tribes through the burden of filing complete applications for Treatment in the Same Manner as a State for each separate program. Consequently, the Agency will allow Indian Tribes which have previously been designated as a State under the SDWA, CWA, or CAA (once regulations are promulgated) to provide only that information which is unique to the specific additional program(s) (which may include demonstrating adequate regulatory authority to administer the specific program) the Tribe is applying for.

As is the case for States, an Indian Tribe must have its own legal

authorities to administer a program under the CWA; EPA cannot delegate its own authority. However, the Agency considered whether the lack of comprehensive criminal enforcement authority would preclude Tribes from applying for the NPDES (section 402) or CWA section 405 State sludge management programs, and the dredge and fill permit program (section 404) that currently require such authority for an approvable State program.

Section 1451 of SDWA specifically states that Indian Tribes are not required to exercise criminal enforcement jurisdiction for primary enforcement responsibility. The CWA amendments, however, do not include similar language indicating whether it would be appropriate to treat a Tribe not having criminal enforcement authority over all individuals on the reservation in the same manner as a State where such authority is currently required for State program assumption.

The Agency realizes that a comprehensive criminal enforcement requirement could raise substantial impediments to Tribal assumption of those CWA programs that require such authorities of States. Federal law bars Indian Tribes from trying criminally or punishing non-Indians in the absence of a treaty or other agreement to the contrary. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian court or tribunal from imposing any criminal fine greater than $5,000 upon Indians within its jurisdiction (25 U.S.C. 1302(7)).

The Agency believes that even though Congress did not explicitly waive the requirement under CWA, as under SDWA, that Congress nonetheless intended Tribes to be able to obtain primacy without demonstrating comprehensive criminal enforcement authority. If EPA were to infer that Congress, by failing to insert language similar to that contained in section 1451 of SDWA, intended not to waive the criminal enforcement requirement, EPA's reading would make part of section 518 of CWA a nullity, since absent further legislative action, no Tribe would be able to assume a program under section 402 or 404 of CWA. This reading would contradict the clear intent of section 518 to allow Tribes to assume all specified CWA programs where they meet the 518(e) criteria and further would violate two traditional rules of statutory construction: (1) Legislation should not be interpreted as being meaningless, if at all possible; and (2) ambiguous Federal statutes addressing Indian affairs should be interpreted to the benefit of the Tribes.

Sections 123.27 of the NPDES regulations and 501.17 of the State sludge management program regulations require that a State have criminal enforcement authority to be approved. This rule amends the existing regulations by adding §§ 123.34 and 501.25 so that Tribes are not required to exercise comprehensive criminal enforcement jurisdiction as a condition to assuming the 402 or State sludge management programs. Under this rule, Tribes are, instead, required to provide for the timely and appropriate referral of criminal enforcement matters to the Regional Administrator when Tribal enforcement authority does not exist (i.e., for non-Indians or fines over $5,000). Such procedures must be established in a formal Memorandum of Agreement (MOA) with the Regional Administrator. Related changes to cross-reference to the enforcement authority provisions of §§ 123.34 and 501.25 would also be made in §§ 123.25, 501.1(c)(5), and 501.15(b). The Tribe is, of course, still required to carry out its monitoring and compliance responsibilities and assist in the identification of potential criminal violators. Thus, the lack of comprehensive Tribal criminal enforcement authority will not prevent a Tribe from having an approvable 402 or 405 State program. In promulgating the amendments to the regulations (58 FR 8172, February 11, 1993) codified at 40 CFR parts 232 and 233 which address the dredge and fill permit program under section 404 of the CWA, the Agency took the same position.

Because CWA program funds are limited, many Indian Tribes may decide it is not cost-effective or otherwise beneficial to apply for various CWA program authorities. The Agency encourages Tribes to carefully consider which of the available programs would be beneficial to assume and to target the Tribal efforts and resources towards those specific programs. The Agency notes that Tribal assumption of the CWA programs discussed in today's rule is voluntary on the part of the Tribes.

In order to facilitate consistent implementation of the requirements of the CWA, an Indian Tribe and the State or States adjacent to the lands where such Tribe is located may enter into a cooperative agreement, subject to the review and approval of the Administrator or his or her delegatee, to jointly plan and administer the requirements of this Act (see section 518(d) of the CWA).

The Agency strongly encourages such cooperative agreements because of the relative benefits such as information and resource sharing. The Agency does not have any specific criteria that a cooperative agreement must meet, so long as all parties involved approve it and it complies with the intent and administrative requirements of the CWA. In situations where EPA is a signatory to a cooperative agreement, all Federal requirements that govern such agreements must also be met.

Draft cooperative agreements should be submitted to the Regional Administrator for review and approval. If necessary, the Agency will develop guidance to assist the Tribes and States in developing cooperative agreements.

A. Treatment of Indian Tribes in the Same Manner as States

With the exception of criminal enforcement requirements, eligible Tribes seeking approval of the NPDES or State sludge management programs are required to comply with all existing requirements for those programs. For the NPDES program (including NPDES sludge management programs), these requirements are contained in the regulations at part 123; for the CWA section 405 State sludge management program, the applicable requirements are found at part 501. Those parts set out specific requirements for State program submissions, approval procedures, and programmatic and enforcement authorities. Today's final rule makes several revisions to 40 CFR parts 122 through 124 and 501 in order to set out and clarify NPDES and State sludge management program requirements for Indian Tribes.

No amendments have been made to 40 CFR part 403 governing the pretreatment program because no changes to part 403 are necessary to allow a Tribe to apply for pretreatment authority, once changes are made to parts 122 and 123. See 40 CFR 403.1(b)(3) and 403.10. Part 403 incorporates the definition of "State" in 40 CFR 122.2 (which is revised by this rule) in its definitional section. See 40 CFR 403.3(m).

This final rule would amend 40 CFR parts 122 through 124 and 501 to implement CWA section 518 and create procedures for Indian Tribes to apply to EPA for Treatment in the Same Manner as a State in order to be eligible to apply concurrently or sequentially for assumption of the NPDES and State sludge management programs. As will be discussed further below, the final rule adds §§ 123.31 through 123.34 and §§ 501.22 through 501.25 to the regulations to establish criteria Indian Tribes must meet for Treatment in the Same Manner as a State, lists the

information the Tribe must provide in its application to EPA, and provides a procedure for EPA to formally review the application. The Administrator has delegated the authority to determine whether a Tribe meets the criteria for Treatment in the Same Manner as a State to the Regional Administrators. The requirements a Tribe must meet under all the CWA Indian regulations are as identical as possible leaving room for program specific requirements which are explained further in the capability requirements section of this notice.

As mentioned previously, section 518 of the CWA stipulates that a Tribe is eligible for Treatment in the Same Manner as a State if it meets the following criteria:

(1) The Tribe is federally recognized;

(2) The Tribe carries out substantial governmental duties and powers over a Federal Indian reservation;

(3) The Tribe has appropriate regulatory authority over surface waters of the reservation; and

(4) The Tribe is reasonably expected to be capable of administering the relevant CWA program.

The Agency believes the language in section 518 requires that each of these eligibility criteria be satisfied through a separate demonstration by a Tribe following the procedures of the regulations set forth in § § 123.31 through 123.33 for the NPDES program and § § 501.22 through 501.24 for the State sludge management program. These procedures are intended to ensure that Tribes who are treated in the same manner as States meet the requirements in the CWA, not to act as a barrier to program assumption. The Agency hopes that as many Tribes as possible will assume responsibility for the CWA programs where the Tribe and the Agency deem it appropriate.

1. Federal Recognition

With respect to Federal recognition as an Indian Tribe, the Secretary of the Interior periodically publishes a list of federally recognized Tribes. If the applicant appears on this list it need only state that this is so. If the Tribal name does not appear on this list because the list has not been updated, the Tribe can still provide appropriate documentation to EPA verifying that it is federally recognized by the Secretary of Interior. The regulations applicable to this requirement appear in § § 123.31(a)(1), 123.32(a), 501.22(a)(1), and 501.23(a)

2. "Substantial Governmental Duties and Powers"

In addition, a Tribe must satisfy the second criterion that the Tribe is "carrying out substantial governmental duties and powers." The Agency defines "substantial governmental duties and powers" to mean that the Tribe is currently performing governmental functions to promote the public health, safety, and welfare (of the affected population) within a defined geographical area. The regulations applicable to this requirement appear in § § 123.31(a)(2), 123.32(b), 501.22(a)(2), and 501.23(b). Many Indian Tribal governments perform functions traditionally performed by sovereign governments. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercising the power of eminent domain, and exercising police power (i.e., providing for the public health, safety, and general welfare of the affected population). Based on comments on the SDWA Indian Primacy Rule, the Agency believes that most Tribes will be able to meet these criteria without much difficulty. (See 53 FR 37399.)

The Agency intends to minimize the burdens to a Tribe to demonstrate that it is carrying out substantial governmental duties and powers. The Agency will require a narrative statement:

(1) Describing the form of Tribal government;

(2) describing the types of essential governmental functions currently performed such as those listed above; and

(3) identifying the legal authorities for performing these functions (e.g., Tribal constitutions, codes, etc.).

The Agency merely intends the functions listed above (e.g., police powers affecting the health, safety and welfare, taxation, and power of eminent domain) as examples. It is not necessary that an applicant be currently performing each such function to qualify for Treatment in the Same Manner as a State. The Agency intends only to require sufficient documentation to determine whether a Tribe satisfies the statutory requirement of "carrying out substantial governmental duties and powers."

3. Jurisdiction

The third requirement a Tribe must meet for Treatment in the Same Manner as a State is that "the functions to be exercised by the Tribe must pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the boundaries of a reservation * * *" The regulations applicable to this requirement appear in § § 123.31(a)(3), 123.32(c), 501.22(a)(3), and 501.23(c).

The question of where a Tribe may exercise CWA authority has been a subject of significant comment in this and other CWA rulemakings. EPA has taken a consistent approach on this matter. EPA is responding to the various comments on this matter in this preamble and in the "Response to Comments" document.

Under today's final rule, Tribes are limited to obtaining Treatment in the Same Manner as a State status for only water resources within the borders of the reservation over which they possess authority to issue NPDES or sludge permits. EPA believes that it was the intent of Congress to limit Tribes to obtaining the status of Treatment in the Same Manner as a State for lands within the reservation. EPA bases this conclusion, in part, on the definition of "Indian Tribe" found in CWA section 518(h)(2). Nonetheless, the meaning of the term "reservation" must be determined in light of statutory law and with reference to relevant case law. EPA considers trust lands formally set apart for the use of Indians to be "within a reservation" for purposes of section 518(e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Comm'n* v.*Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S. Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within a reservation" rather than the label attached to it. EPA does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation if the Tribe can demonstrate the requisite authority over such water resources. EPA does not read the holding in *Brendale* v.*Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989), as preventing EPA from recognizing Tribes as States for purposes of administering the NPDES and/or State sludge management programs on fee lands within the reservation, even if section 518 is not an express delegation of authority to Indian Tribes to regulate the activities of non-members on Indian lands (an issue discussed in detail below). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the

Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* v. *United States*, 450 U.S. 544, 565–66 (1981) at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

The process the Agency will establish for Tribes to demonstrate their authority includes the submission of a statement signed by the Tribal Attorney General or an equivalent official explaining the legal basis for the Tribe's regulatory authority to administer the desired program(s). The statement is similar to the statement currently required of States applying for 402 permit or State sludge management program assumption (40 CFR 123.23; 501.13). The Attorney General's Statement will supplement the other documentation mentioned in § § 123.32 and 501.23 of this final rule (e.g., a map, copies of tribal codes and ordinances, etc.). The Attorney General's Statement with the supporting documentation will assist EPA in verifying that the Tribe has the necessary authority to administer the appropriate CWA program.

The Agency presumes that, in general, Tribes are likely to possess the authority to regulate activities affecting water resources on the reservation for purposes of administering the NPDES and/or State sludge management programs. However, the Agency does not believe that it would be appropriate to recognize Tribal authority and approve Tribal NPDES and sludge management program authorization applications in the absence of verifying documentation. Just as when EPA considers a State application to assume the NPDES or State sludge management program, EPA must not authorize program responsibility to a Tribe unless the Tribe can adequately show it possesses the requisite authority. The Agency recognizes that there may be some disputes regarding the extent of Tribal authority to administer CWA programs and therefore believes it necessary to require documentation to demonstrate adequate authority by Tribes applying for CWA programs. The request that a given Tribe establish its authority to administer CWA programs is not meant to be a barrier or a deterrent to that Tribe's attainment of these programs. Rather the intent of these requirements is to raise at an early date the presence or absence of a key element to effective administration of CWA programs.

In addition, in light of the legislative history of section 518, the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved. Therefore, EPA does not believe it is currently appropriate to eliminate the requirement that Tribes make an affirmative demonstration of their regulatory authority. EPA will authorize Tribes to exercise responsibility for the NPDES and/or State sludge management programs once the Tribe shows that, in light of the factual circumstances and the generalized findings EPA has made regarding reservation water resources, it possesses the requisite authority.

EPA would advise Tribes, in their Attorney Generals' Statements, to outline *all* bases for concluding that the Tribe has adequate authority. This can only help EPA to make a proper determination to treat the Tribe in the Same Manner as a State.

Where the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to an area in dispute, then Tribal assumption of the NPDES and/or State sludge management program would be restricted accordingly. If the authority in dispute were focused on a limited area, this would not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

4. Tribal Capability

The fourth criterion that a Tribe must meet is that, in the Regional Administrator's judgment, the Tribe must be "reasonably expected to be capable" of administering an effective program. The regulations applicable to this criterion appear in § § 123.31(a)(4), 123.32(d), 501.22(a)(4), and 501.23(d).

In evaluating a Tribe's demonstration that it is "reasonably expected to be capable" of administering an effective program, the Regional Administrator will consider the following five factors:

(1) The Tribe's previous management experience;

(2) Existing environmental or public health programs administered by the Tribe;

(3) The mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government;

(4) The relationship between regulated entities and the administrative agency of the Tribal government which is, or will be, designated as the primacy agent; and

(5) The technical and administrative capabilities of the staff to administer and manage the program.

The Agency recognizes that certain Tribes may not have substantial experience in administering environmental programs. For this reason the Agency would require Tribes in § § 123.32(d)(5) and 501.23(d)(5) either: (1) To show that they have the necessary management and technical skills, or (2) to submit a plan detailing steps for acquiring the necessary management and technical skills. Although lack of this experience will not preclude a Tribe from demonstrating the required capability, the presence of such experience will be of significant importance to the Agency.

This demonstration, however, does not change the requisite showing which an Indian Tribe must make for assumption of the NPDES or State sludge management programs. Except in the area of criminal enforcement authority as discussed above, an Indian Tribe must fully satisfy the traditional State program requirements of 40 CFR parts 123 or 501 before NPDES or State sludge management authorization is allowed, as stated in § § 123.31(b) and 501.22(b). In evaluating a Tribal application for Treatment in the Same Manner as a State, the Regional Administrator must determine whether the Tribe is "reasonably expected to be capable" of carrying out the functions of an effective NPDES or State sludge management program. See, for example, 40 CFR 123.23(a) and 501.22. In other words, where an Indian Tribe prepares one simultaneous application for Treatment in the Same Manner as a State and to operate the NPDES or State sludge management programs, the Tribe must have an effective program in place for EPA to approve the Tribe under § 123.1 or § 501.1. Nothing would preclude EPA, however, from approving the Tribe's "Treatment in the Same Manner as a State" application while the Tribe's NPDES and/or State sludge management program was still under development.

EPA will request information on the Tribe's executive, legislative, and judicial functions to assure that the Tribe has the capability to effectively administer an approved NPDES permit program.

EPA's evaluation of the Tribe's capability will also consider the relationship between the existing or proposed Tribal agency which will assume the NPDES permit program and any potential regulated Tribal entities. A common situation among Indian Tribes is that the Tribe is both the regulator and regulatee. Such a situation could

result in a conflict of interest if EPA authorized the Tribal program because the Tribe would be regulating itself. The Agency believes that independence of the regulator and regulatee is necessary to best assure effective and fair administration of these programs.

This approach is not meant to require the Tribes to divest themselves of ownership of any regulated entities it owns or operates. One possible solution to the problem could be the creation of an independent organization to regulate Tribal entities subject to CWA regulatory requirements. Similar arrangements could be established utilizing existing Tribal organizations.

Failure to resolve the regulator/regulatee conflict will not automatically preclude a Tribe from being eligible for Treatment in the Same Manner as a State but is intended to alert Tribes at an early date about a potential bar to regulatory program assumption that must be resolved. Resolution of the regulator/regulatee issue relative to the NPDES and State sludge management programs will be evaluated on a case-by-case basis and will be governed by the existing conflict-of-interest regulations applicable to those programs (40 CFR 123.25(c); 501.15(f)). EPA does not intend to limit Tribal flexibility in creating structures which will ensure adequate separation of the regulator and the regulated entity.

The Agency is aware that, in limited cases, States also are in a similar situation of being both regulator and regulatee. However, State infrastructures are typically such that the State agency operating the regulated entity is not the same State agency that has primary enforcement authority. This is in contrast to the typical situation exhibited by Indian Tribes which may own and operate most or all regulated entities.

The Agency encourages smaller Tribes to consider consortiums or inter-Tribal agencies as ways to obtain the necessary expertise to administer these programs and to make the attainment of authorization cost-effective and beneficial to the Tribe. The Agency will consider and evaluate all applications it receives, regardless of the applicant's size, on a case-by-case basis.

Although EPA will consider applications by a group or consortium of Tribes within the same geographical area, each applicant must still meet all the eligibility requirements to be treated in the same manner as a State, particularly the jurisdictional requirement.

5. Process for Evaluating Applications

Under § § 123.33(b) and 501.24(b), within thirty days after receipt of a Tribe's complete application for Treatment in the Same Manner as a State (which has all the information required in § 123.32 or § 501.23), the Regional Administrator will notify appropriate governmental entities of the receipt of the application and the substance of and basis for the Tribe's assertion of authority over reservation waters. EPA defines the phrase "governmental entities" as States, Tribes, and other Federal entities located contiguous to the reservation of the Tribe which is applying for Treatment in the Same Manner as a State. Neighboring Tribes will be treated as "governmental entities" regardless of whether the neighboring Tribe is treated in the same manner as a State for purposes of sections 402 or 405 of the CWA. Where such governmental entities are States, EPA intends to provide notice and an opportunity to comment to the most appropriate State contacts, which may include, for example, the Governor, Attorney General, or the appropriate environmental agency head. The rule requires only that the Agency solicit and consider comments from such "governmental entities." Local governments such as cities and counties or other local governments are not included in the definition of "governmental entities."

EPA recognizes that city and county governments which may be subject to or affected by Tribal standards may also want to comment on the Tribe's assertion of authority. Although EPA believes that the responsibility to coordinate with local governments falls primarily upon the State, the Agency will make an effort to provide notice to local governments by placing an announcement in appropriate newspapers. Since the rule requires only that EPA consider comments from governmental entities, such newspaper announcements will advise interested parties to direct comments on Tribal authority to appropriate State governments.

The process of notifying States and Tribes and consulting with the Department of the Interior, as delineated in this and other EPA regulations implementing the CWA and the SDWA, was and is intended merely to assist the Agency in making its determination whether a Tribe has adequate authority to justify Treatment in the Same Manner as a State by EPA. Such notification and consultation procedures were not and are not intended to establish any form of adjudication or arbitration process to resolve differences between State and Tribal governments. Rather, EPA has a duty to determine whether a Tribe has adequate authority, as defined by Federal law and EPA policy, to carry out the grant or program under consideration. The notification and consultation procedures assist EPA in making this determination by providing information and perspectives from the points of view of neighboring Tribal and State governments and the Federal agency having extensive experience in Federal Indian law.

Under § § 123.33(c) and 501.24(c), each of the governmental entities will have thirty days after receipt of the notice to submit comments to the Regional Administrator. Comments will be limited solely to the issue of the Tribe's showing under section 518(e)(2). EPA will not consider comments directed to whether the Tribe meets EPA's other requirements for Treatment in the Same Manner as a State.

If an Indian Tribe's assertion under section 518(e)(2) is subjected to a competing claim, § § 123.33(d) and 501.24(d) provide that the Regional Administrator will consult with the Tribe, the governmental entity submitting comments, and the Secretary of the Department of the Interior, or designee. Currently, the Associate Solicitor, Division of Indian Affairs and the Deputy to the Assistant Secretary–Indian Affairs (Trust and Economic Development) are the designees of the Secretary of the Interior. Upon receipt of a Tribal application, EPA will forward a copy of the application and any documents asserting a competing or conflicting claim of authority to such designees as soon as possible. Comments from the Interior Department will be primarily a discussion of the law applicable to the issue to assist EPA in its own deliberations. No EPA decision will be attributed to, or determined by, the legal analysis offered by Interior employees.

After consultation, and in consideration of comments received, the Regional Administrator will determine whether the Tribe has adequately demonstrated that it meets the requirements of CWA section 518(e)(2). If the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to certain reservation waters, then Tribal assumption of the program will be restricted accordingly. Any such determination by the Regional Administrator is not a determination of the Tribe's general regulatory authority but only with respect to administration of the NPDES and State sludge management programs. A dispute over a

certain area over which a Tribe is asserting authority will not necessarily delay the Agency's decision to treat a Tribe as a State for the non-disputed areas.

This procedure does not imply that States or Federal agencies have veto power over Tribal applications for Treatment in the Same Manner as a State. Rather, the procedure is simply intended to ensure that the Tribe has the necessary authority to administer the program it seeks to assume. The Agency will not rely solely on the assertions of a competing regulatory authority; it will make an independent evaluation of the Tribal showing.

The Agency does not believe it will be possible to approve or disapprove all applications for "Treatment in the Same Manner as a State" within a designated time frame. The Agency fully anticipates that there will be instances where the determinations under section 518(e)(2) and (e)(3) will require the Agency to go back to a Tribe for clarification or additional information. The Agency's experience with States applying for various EPA programs indicates that at times meetings and discussions between EPA and the State are necessary before all requirements are met. The Agency believes that the same process of communication with Tribes will be beneficial in ensuring that Tribes meet the criteria under section 518(e) in an expeditious manner.

If the Regional Administrator determines that a Tribe meets the requirements for Treatment in the Same Manner as a State, § § 123.33(e) and 501.24(e) provide that the Indian Tribe is eligible to apply for assumption of the NPDES or State sludge management program. It should be noted that a determination that a Tribe does not meet the requirements does not preclude the Tribe from resubmitting the application at a future date. If the Agency determines that a Tribal application is deficient or incomplete, the Tribe should consult with EPA on what changes are necessary.

Under § § 123.33(f) and 501.24(f), Indian Tribes which are found to be eligible for Treatment in the Same Manner as a State are eligible to request assumption of the NPDES or State sludge management program in accordance with the procedures and criteria applicable to State program submissions (40 CFR part 123 for NPDES (including NPDES sludge management programs); 40 CFR part 501 for non-NPDES State sludge management program). While not required by the regulations, as a practical matter EPA expects that the Indian Tribe's request for Treatment in the Same Manner as a State for NPDES or State sludge management program purposes and the Tribe's submission to actually assume these programs may occur simultaneously. The Agency encourages use of a single submission containing the necessary information in order to minimize paperwork burdens. In addition, EPA recognizes that information required for State program submissions may duplicate or overlap with information required for Treatment of an Indian Tribe in the Same Manner as a State. For example, § § 123.32(c) and 501.23(c) provide that requests for Treatment in the Same Manner as a State are to include a Tribal Attorney General's Statement and copies of relevant Tribal law, information which is similar to required elements of State program submissions under existing § § 123.21(a)(3) and (5) and § § 501.11(a)(3) and (5). The Agency wishes to emphasize that it does not seek duplicative information, and the final rule amends existing § § 123.21(b) and 501.11(b) to make clear that when considering the completeness of an Indian Tribe's request to assume the NPDES or State sludge management program, EPA will take into account any information already submitted as a part of the Tribe's request to be treated in the same manner as a State.

B. Transition in Permitting Authority

In order to avoid disruptions to the permitting process and competing assertions of authority, it is necessary to provide procedural arrangements to allow for the smooth transition from one permitting authority to another. In the case where the existing permitting authority is EPA, the existing regulations already contain provisions addressing transition from EPA-issued permits to State-issued permits. 40 CFR 123.1(d); 123.24(b); 501.1(f) and 501.14(b)(1). Since the final rule defines approved Indian Tribes as "States" for purposes of the regulations, these existing regulations would enable an efficient change from EPA's permitting authority to the Indian Tribe's permitting authority.

However, it is possible that a State, and not EPA, is the existing authorized permitting authority for activities on the reservation. Under 40 CFR 123.23(b) and 501.13, a State seeking to carry out either the NPDES or State sludge management programs on Indian lands must provide a specific analysis of its authority to do so in the Attorney General's Statement supporting its program submission, and can be authorized by EPA to issue permits on Indian lands as part of a State NPDES or State sludge management program. EPA is unaware of any State for which it made such an explicit authorization.

The existing regulations do not contain provisions addressing the procedures for arranging the transition from such State-issued permits (which are issued by a State which has made the requisite demonstration discussed in the previous paragraph and has been authorized to issue permits consistent with this demonstration) to Indian Tribe-issued permits. Today's final rule amends the regulations in various ways to provide for such an orderly transfer once an Indian Tribe is approved for program assumption. First, existing § § 123.22 and 501.12, which address State program submissions, are amended to provide that if a State has been authorized by EPA to issue NPDES permits in accordance with § 123.23(b) or § 501.13 and an Indian Tribe subsequently seeks program assumption, the Indian Tribe's program submission is to include a description of how the Indian Tribe and the State intend to accomplish the transition in permitting authority. To the maximum extent practicable, the amendments call for (but do not require) this submission to include a MOA between the Indian Tribe and the previously authorized State describing how the transition will be accomplished. These provisions are set forth in § § 123.22(g) and 501.12(g).

Second, the final rule makes conforming changes to the existing regulations governing the contents of the MOA between EPA and the Indian Tribe seeking program approval (§ § 123.24(b)(1) and 501.14(b)). The MOA between EPA and the Indian Tribe now must specify how the Tribe and previously authorized State will accomplish the transition of permitting authority when a State (rather than EPA) is the existing authorized permitting authority for reservation lands. See § § 123.24(b)(1)(ii) and 501.14(b)(1)(ii).

Third, today's final rule revises existing regulations governing the transfer of EPA's permitting authority upon a State's obtaining program approval (§ § 123.1(d) and 501.1(f)). Those regulations currently provide that upon a State's obtaining program approval, EPA will suspend issuing permits, and, absent agreement to the contrary stated in the MOA between EPA and the State, EPA will retain jurisdiction over its existing permits as specified there. The language of § § 123.1(d)(2) and 501.1(f)(2) extends the current procedures to cover the circumstance in which a State (rather than EPA) is the existing authorized permitting authority for the reservation lands. That is, a previously authorized State will retain jurisdiction over its

existing permits as described in §§ 123.1(d)(1) and 501.1(f)(1) absent a different arrangement provided in the MOA between EPA and the Tribe, as long as the authorized State agrees to the provisions relevant to permitting by the authorized State, in the Tribe's MOA with EPA (a State cannot be obligated by a Tribe's MOA agreements with EPA automatically).

The last mechanism for obtaining a smooth transfer to Tribal permitting authority would involve amending § 123.62(a), which addresses revisions to State programs. The final rule adds language to existing § 123.62(a) to make clear that if the State's approved program extends to a Federal Indian reservation and an Indian Tribe subsequently is approved for program assumption, this situation provides grounds for revision to the State program. The existing regulations governing revisions to State sludge management programs (40 CFR 501.32(b)) incorporate the revision procedures of § 123.62 by reference. Thus, the final rule's amendment to § 123.62(a) is also applicable to State sludge management programs.

In keeping with section 518(d) of the CWA, EPA strongly encourages Indian Tribes and States which have permitting authority on reservation lands to negotiate cooperative agreements to provide for a smooth and orderly transfer of permitting responsibility. Upon approval of the Indian Tribe's program assumption, EPA will promptly process any necessary revisions to the State's program or MOA with EPA to reflect the assumption of the program by the Indian Tribe.

Until Tribes qualify for the NPDES or State sludge management programs, however, EPA or an authorized State will administer those programs on Federal Indian reservations. EPA will, whenever possible, assume, without deciding, that existing permits on Federal Indian reservations issued by States without specific authorization under § 123.23(b) or § 501.13 contain enforceable limits. EPA's preliminary position on this issue was expressed in a September 9, 1988 letter from EPA's then General Counsel, Lawrence Jensen, to Dave Frohnmayer, Attorney General for the State of Oregon, a copy of which is available in the docket for today's rule. That letter provides:

> EPA is aware that some states have issued NPDES permits to certain dischargers on reservation lands. Until the NPDES program is delegated to a tribe, or until EPA otherwise determines in consultation with a state and tribe that a state lacks jurisdiction to issue NPDES permits on Indian lands, we will assume without deciding that those permits contain applicable effluent limits, in order to ensure that controls on discharges to reservation waters remain in place.

In other CWA rulemakings and for today's rule, EPA received comments on the interim statements made in Mr. Jensen's letter, and wishes to clarify that this policy is not an assertion that all State permits for reservations are necessarily valid as a matter of law. Rather, it is a mere recognition that fully implementing a role for Tribes under the CWA will require a period of transition. Were EPA simply to ignore all previously issued State permits in the interim period before the Tribes develop NPDES or State sludge management programs (or EPA issues a Federal permit), there would be a regulatory void which EPA believes would not be beneficial to preservation of water quality. EPA Regions will ensure in the future that NPDES States not authorized by EPA are not acting as the NPDES permit authority on reservations for any discharges. Prior to Tribal assumption of the NPDES or State sludge management programs previously administered by a State, EPA should issue or reissue permits on Federal Indian reservations, giving priority to Federal issuance of permits to reservation dischargers where it finds a particular need. Thus, EPA believes that the Agency's policy is the best approach to this issue, and one that best protects reservation environments in the interim period. To the extent that the interim guidance given in the Jensen letter implies a different intent in EPA's policy, today's statement supersedes it.

C. Additional Amendments

The final rule makes a number of other changes to the regulations to reflect definitions contained in CWA section 518 and make editorial and conforming changes as necessary to adjust the regulatory language to reflect that Indian Tribes would now be included in the definition of "State." A summary of these amendments is set forth below and all changes are as proposed on March 10, 1992 in the **Federal Register** (57 FR 8522).

With regard to definitions used in the regulations, the final rule revises §§ 122.2 and 501.2 of the regulations to incorporate the CWA section 518 definitions of "Indian Tribe" and "Federal Indian reservation," and also amends the existing definition of "State" to make clear that Indian Tribes may qualify for Treatment in the Same Manner as a State for purposes of assuming the NPDES and State sludge management programs.

The final rule also makes changes to the definitions set forth in § 124.2 as necessary to incorporate the CWA section 518(e) definitions into part 124, which establishes procedures for decision making in several Federal environmental programs. In this regard, the SDWA Primacy Rule amended § 124.2 to incorporate the definition of "Indian Tribe" used in that Act (53 FR 37410, September 26, 1988). The definition of Indian Tribe used in CWA section 518, however, differs from that used in the SDWA. The final rule leaves intact the SDWA definition, but adds separate definitions, for NPDES purposes, to incorporate the CWA's definitions of "Indian Tribe" and "Federal Indian reservation."

The SDWA Primacy Rule also amended the definition of "State" in § 124.2 to include "an Indian Tribe treated as a State * * *" See 53 FR 37410. This definition is also adequate for the CWA because the terms "Indian Tribe" and "Federal Indian reservation" added in today's rule reflect the different requirements of CWA section 518(e). In addition, new § 124.51(c) of this rule provides that an Indian Tribe qualified for Treatment in the Same Manner as a State for purposes of the Water Quality Standards program under 40 CFR 131.4 is qualified for Treatment in the Same Manner as a State for purposes of State certification of water quality standards pursuant to CWA section 401(a)(1).

Because the final rule adds Indian Tribes to the definition of "State," the final rule makes the necessary clarifying changes to §§ 123.1(h), 123.21(a)(1), 123.23(b), 501.11(a)(1), and 501.13 to clarify how their provisions apply in cases where the "State" is an approved Indian Tribe. For example, § 123.1(h) refers to the fact that a State's lack of authority over Indian lands does not impede assumption of the NPDES program; the final rule rewords that provision to make clear that the section's reference to a State means a State other than an approved Indian Tribe. Similarly, § 123.21 provides that requests for NPDES program assumption are to be submitted by the State Governor, and the final rule adds clarifying language to provide that in cases where the State seeking the program is an approved Indian Tribe, the submittal is to come from the Tribal authority equivalent to the Governor.

Finally, § 123.1(b), which sets forth the list of authorities under which part 123 is issued, adds to the list specific reference to CWA section 518(e).

III. Response to Comments

A. Response to Comments on Proposed Rule (3/10/92)

Section 518(e) of the CWA requires consultation with Indian Tribes during regulation development. In keeping with this requirement, the Agency decided a multi-faceted consultation approach would be most appropriate. Tribal and State representatives were appointed to serve on various CWA Indian workgroups. In some cases, workgroup meetings were noticed in the **Federal Register** inviting the public to observe and offer comment. Other efforts to consult with Tribes and States included national meetings across the country to discuss the regulatory approaches proposed in the various CWA regulations with attendance by EPA officials at both Tribal and State meetings. Regulatory approaches being considered were presented and draft proposed rule language was distributed.

On April 12, 1989, a draft of this final rule was circulated for preliminary comment to various persons, including States, Indian Tribes, and EPA personnel (following a mailing list of federally recognized Tribes obtained by the Office of Water) for review and comment prior to issuing the proposed rule.

EPA believes that many difficult issues were resolved during the consultation period prior to proposal, and that this explains why relatively few comments were received on the proposal and why no changes to the final regulations are being made.

EPA received ten comments upon the proposed regulation published on March 10, 1992. The ten commenters included: Chickasaw Nation (OK), Idaho Department of Health and Welfare, Pueblo of Isleta (NM), Conoco, Inc. (TX), Muscogee (Creek) Nation (OK), Cherokee Nation (OK), Navajo Nation (AZ), Attorney General's Office (MT), Flathead Joint Board of Control for Flathead Indian Reservation (MT), and Confederated Tribes/Bands of the Yakima Indian Nation (WA).

Part A is organized by topic, for the more significant comments, into five sections: (1) Tribal regulation of fee lands of nonmembers; (2) Tribal jurisdiction under CWA section 518(e)(2); (3) transition issues; (4) criminal enforcement authority issues; and (5) other comments. Part B summarizes the comments received which support the rule and its provisions. Some sections within Part A and B, as necessary, have been further categorized by subtopic(s). Also a separate "Response to Comments" document has been prepared and is part of the docket for this rule.

1. Tribal Regulation of Fee Lands of Nonmembers

These issues concern EPA's interpretation and application of the law concerning the scope of inherent Tribal civil regulatory authority over nonmember activity(s) on fee lands within reservations.

Comment: One commenter expressed concern regarding EPA's understanding and application of the law concerning the scope of inherent Tribal civil regulatory authority over nonmember activity on fee lands within reservations. The commenter suggested that EPA's continued reference to the second *Montana* exception, (see *Montana* v. *United States*, 450 U.S. 544, 565–66 (1981)), as the basis for Tribal regulatory authority over nonmembers is at odds with the case of *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989) and *Duro* v.*Reina*, 110 S. Ct. 2053 (1990). The commenter believes EPA's conclusion regarding the above mentioned *Montana* exception was applied overbroadly in determining the extent of Tribal regulatory authority. The commenter adds that EPA's "interim operating rule," at 57 FR 8528, coupled with its "generalized findings," *id.* at 57 FR 8529, creates a *de facto* presumption of Tribal authority. The commenter suggests that while EPA's *de facto* presumption may be preferable from an administrative standpoint, a careful analysis is required to determine whether, in a specific instance, Tribal authority over nonmember lands is essential to protect vital Tribal interests.

A related comment was also received which seriously questioned whether Congress intended in enacting section 518 to abolish nonmembers' Fifth Amendment (U.S. Constitution) property and due process rights by subjecting them to Tribal regulatory authority.

Similar comments and recommendations were submitted by others concerning EPA's interpretation of *Brendale* and Tribal regulatory authority over nonmembers and their fee lands.

Response: With regard to the first comment, EPA does not read the holding in *Brendale* as preventing EPA from recognizing Tribes as States for purposes of administering the NPDES and/or State sludge management program on fee land within the reservation (since section 518 is not an express delegation of authority). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision with regard to zoning authority over the two separate types of land. The decision reflects some difficult issues in this area of the law and has generated considerable controversy over the extent of Tribal authority. Given the lack of a majority rationale, EPA believes the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v.*United States*, which previously held that:

> To be sure, Indian Tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements * * * A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.

Montana, 450 U.S. at 565–66 (citations omitted).

In *Brendale*, the Court applied this test, finding Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id.* at 449–450 (Blackmun, J., concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * health and welfare." *Id.* at 432 (White, J., writing for the Court). The Agency therefore disagrees with commenters who argue that *Brendale* somehow overrules *Montana*.

Pending further judicial or Congressional guidance on the extent to which section 518 delegates additional authority to Tribes, it is EPA's opinion that the ultimate decision regarding Tribal authority must be made on a Tribe-by-Tribe basis and has finalized the proposed process for making these determinations. Therefore, EPA will not make a conclusive statement regarding the extent of Tribal jurisdiction over fee lands for all Tribes and all waters or even a statement regarding any particular reservation, except in the context of an actual Tribal application. This is consistent with the approach the Agency adopted under the SDWA, when

it determined that it would not "automatically assume," or adopt, in the first instance, a rebuttable presumption of Tribal authority over all water within a reservation that would operate even in absence of any factual evidence. See 53 FR 37396, 37399 (September 26, 1988). Nonetheless, EPA sees no reason in light of *Brendale* to assume that Tribes would be *per se* unable to demonstrate authority over water resource management on fee land within reservation borders for purposes of administering the NPDES and/or State sludge management programs. Rather, EPA believes that as a general matter there are substantial legal and factual reasons to assume that Tribes ordinarily have the legal authority to regulate water resources within a reservation for purposes of administering the NPDES and/or State sludge management program, as long as the Tribes make the requisite demonstration linking this authority to regulate as protecting the public health, safety and welfare of Tribal members.

In response to the second comment, EPA for the reasons discussed earlier in this section, does not read the holding in *Brendale* as preventing EPA from recognizing Tribes in the same manner as States for purposes of administering the NPDES and/or State sludge management programs on fee lands within the reservation, even if section 518 is not an express delegation of authority. EPA agrees that Congress, by allowing Tribes to administer environmental programs for areas on which they have civil regulatory authority, did not intend to waive any due process rights of nonmembers on Indian lands. EPA does not believe, however, that recognition of a Tribe's authority over its waters would waive any such rights.

Comment: Another commenter suggested that the Agency adopt regulations which consider factors related to the size, proximity, use, character, and historical legal status of nonmember lands on reservations in deciding whether the Tribe has civil authority over those lands.

Response: EPA does not believe that such further regulations are necessary or appropriate. The Agency believes that factual determinations of Tribal jurisdiction must be made on a case-by-case basis and therefore a strict regulatory approach, as suggested by the commenter, would not be practical. Each reservation is unique and the factors considered in each determination will be different.

Comment: One commenter expressed concern regarding the intrusion of State jurisdiction on Indian reservations which would result from the proposed rule. The commenter felt that putting fee lands under the jurisdiction of the State would be detrimental to the non-Indian and Indian residents, and people who are located below the reservation.

Response: EPA agrees with the commenter that Tribal jurisdiction over land owned in fee by nonmembers should be determined on a case-by-case basis. In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale*. EPA does not believe that this rule will cause any intrusion on Tribal jurisdiction over Indian lands.

2. Tribal Jurisdiction under CWA Section 518(e)(2)

Comment: One commenter strongly disagreed with EPA's interpretation of section 518(e) of the CWA, which sets out certain criteria for Indian Tribes to meet in order to be eligible for Treatment in the Same Manner as a State. Section 518(e)(2) lists as a requirement that:

> The functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation * * *

The commenter argues that EPA's interpretation of this language to allow a Tribe to seek CWA authorization only over surface waters within reservation boundaries, even if the Tribe owns water outside the reservation, is legally incorrect. The commenter suggests that EPA's interpretation of section 518 would mean that Tribes would not be able to obtain CWA program authorization over waters associated with land located outside the reservation boundaries, even if the land is held in trust. The commenter contends that if EPA's interpretation were correct, there would be no need to list the three areas covered by the statute; it would be sufficient to state simply that the Act applies to lands within the borders of the reservation. The commenter concluded with the recommendation that the listing of the three different types of land indicated Congressional intent to apply the statute to all of those lands, and not just those lands located within the reservation.

Response: For the reasons discussed above, EPA has consistently read the language of section 518(e)(2) as limiting the Tribe to acquiring Treatment in the Same Manner as a State status for the four specified categories of water resources within the borders of the reservation.

EPA believes that it was the intent of Congress to provide Tribes the opportunity to obtain Treatment in the Same Manner as a State status for land within a federally recognized Indian reservation as defined in CWA section 518(h)(1). However, EPA does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation if the Tribe can demonstrate the requisite authority over such water resources. In addition, the meaning of the term "reservation" must be determined in light of statutory law and with reference to relevant case law. EPA considers trust land formally set apart for the use of Indians to be "within a reservation" for the purposes of section 518(e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Comm'n v.Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S. Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within a reservation" rather than the label attached to it. EPA will take the status of the land into consideration on a case-by-case basis when evaluating a Tribe's application for Treatment in the Same Manner as a State.

Comment: One commenter also disagreed with EPA's statement that adopting a narrow interpretation of the language in section 518(e) "may reduce the potential for disputes since Tribal authority to regulate within the reservation's borders may be more readily determined." The commenter suggested that EPA may be arbitrarily limiting a Tribe's area of legal jurisdiction in the interest of minimizing potential disputes between Tribes and States. The commenter further added that if this were EPA's intent, then the Agency would clearly be stepping outside the bounds of its administrative authority.

Response: EPA recognizes the issue of Tribal jurisdiction outside the exterior boundaries of a reservation is potentially a very real problem. The Agency recognizes that jurisdictional disputes between Tribes and States could be complex and difficult and that the Agency will, in some circumstances, be forced to address such disputes. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems and the interdependence of various jurisdictions, EPA believes that

it is imperative that all sovereign affected parties work cooperatively for environmental protection, rather than engage in confrontations over jurisdiction. EPA's statement was not intended to be an administrative limitation on Tribal authority, but merely an acknowledgement of the language in section 518(e).

Comment: Another issue raised concerned the status and use of the land in defining what constitutes a "Federal Indian reservation." The comment questioned EPA's definition of "Federal Indian reservation" as contained in proposed § § 122.2, 124.2, and 501.2. The comment requested that an additional definition be added which reflects Tribal jurisdiction over water on lands not within the reservation boundaries, or that clarified *Potawatomi's* effect on the definition of "reservation."

Response: As discussed previously, the status and use of the land are intimately tied to the specific land being evaluated. EPA, therefore, does not believe that it would be practical to attempt to define the term "Federal Indian reservation" further within the scope of this rule. Whether specific land is considered within the boundaries of a reservation must be a factual determination made on a case-by-case basis at the time of application under section 518 based on applicable law at the time. EPA believes it is appropriate for the regulatory language to reflect the statutory definition, but will interpret that language in light of all appropriate case law.

3. Transition Issues

Comment: One commenter expressed several concerns about the transfer of an NPDES program(s) from an authorized State to an authorized Indian Tribe(s). The commenter indicated that this rule "will result in long delays, bordering upon complete shutdown, unless EPA maintains close oversight, particularly during the early stages of the transition from EPA to the Indian Tribe or State to the Indian Tribe." The commenter added that there must be "a very clear showing of immediate capability" of an Indian Tribe to assume NPDES and/or State sludge management program authority before an application is approved by EPA. "Otherwise serious delays would be inevitable."

The commenter further contended that detailed procedures for the transition from an authorized State to an authorized Indian Tribe must be developed and published for public scrutiny and comment before the proposed rule was finalized.

Response: EPA does not believe that "long delays, bordering upon complete shutdown" will occur during the transition from EPA or States to Tribal authority. EPA presumes an efficient transition will occur for three reasons: (1) Only those Tribes which have demonstrated capability to implement and manage the program in question will receive program authority; (2) the demonstration of capability does not release the Tribe from the traditional requirement imposed upon all States (except for criminal enforcement, for which the responsibility remains with EPA) for assumption of an NPDES or sludge program that the State program must be fully effective at the time of program approval; and (3) EPA is responsible for oversight of the NPDES programs it authorizes through its Regional offices. See, for example, 40 CFR 123.23(a) and 501.14. Therefore, EPA does not anticipate the serious delays envisioned by the commenter.

In response to the second concern, the transition will proceed according to the same regulatory procedures outlined for State program assumption as amended by this rule for Indian Tribes (see existing and revised 40 CFR 123.22 and 501.12). Since the number of cases of transfer of authority from an authorized State (with approved authorization to regulate on Federal Indian reservations) to an Indian tribe may be relatively few, particularly since EPA has not explicitly authorized States to issue permits on Indian lands, EPA will need to retain programmatic flexibility in order to deal with transitions on a case-by-case basis. In addition, EPA will be available for requested guidance and direction during the transition, especially at the time of program submission by the Indian Tribe. Also, NPDES/Sludge management applications by Tribe(s) will be public noticed and subject to comment upon receipt. It may be appropriate at that phase of the program authorization process to raise any specific case-by-case issue(s) (see existing 40 CFR 123.22 and 501.12).

Comment: One commenter suggested that EPA should never "assume" that a State permit for discharges on reservation lands contains applicable effluent limits. The commenter also disagreed with EPA's proposal that an authorized State retain jurisdiction over its existing permits absent a different arrangement stated in the MOA executed between EPA and the Tribe. The commenter asserted that this "can only result in a bifurcated program for Tribal lands that will exacerbate the problems already inherent with the NPDES program."

Response: In other CWA rulemakings, EPA has received comments on its assumption that existing permits on Federal Indian reservations issued by States without specific authorization for issuing permits on Federally recognized Indian reservations under § 123.23(b) or § 501.13 contain enforceable limits. As noted above, this policy is not an assertion that all State permits for discharging on reservations are necessarily valid as a matter of law. Rather, it is a mere recognition that fully implementing a role for Tribes under the CWA will require a period of transition. Were EPA to simply ignore all previously issued State permits in the interim period before Tribes develop NPDES or State sludge management programs (or EPA issues a Federal permit), there would be a regulatory void which EPA believes would not be beneficial to preservation of water quality. EPA intends to reissue and exercise Federal jurisdiction when previous State permits expire (if the State does not have the requisite jurisdiction and authorization on Federal Indian reservations).

The procedures outlined for State retention of jurisdiction over its existing permits parallel those currently in place for transition from EPA to State authority. In general, these procedures have proved very workable and EPA has no reason to believe that they will not work as well for transition from State to Tribal authority. Such a transition period will also allow the new Tribal program an opportunity to implement the program in stages and will promote cooperation and contacts between the Tribal and State authorities. For this reason, EPA does not believe that the above referenced statement will result in a "bifurcated program." In addition, as a practical matter, EPA has not expressly authorized States to operate an NPDES or sludge program on Indian lands.

Comment: Another commenter expressed concern over the proposed procedures in § 123.1 for transfer of existing permits between a State and a Tribe treated in the same manner as a State. The commenter expressed concern that EPA has allowed States to assume certain permitting responsibilities on Indian lands in the absence of Tribal permitting programs. The commenter believes that any necessary NPDES permits on Indian lands should have been issued by EPA and not by any State. The commenter asserted that any State-issued permit on an Indian reservation is null and void, and therefore EPA should immediately transfer any State-issued permits into

Federal permits until such time that Tribal permitting programs are in effect.

A second issue raised by the commenter concerns § 123.22(g), which provides that an authorized Indian Tribe and State should enter into a MOA to transfer the necessary files, applications, and other information, without any mention of the role of EPA. The commenter believes that EPA has a responsibility to administer all environmental regulatory programs in the absence of Tribal environmental programs, and, as such, should have a strong role in fulfilling this responsibility instead of leaving it to the Tribe and State to work out such an arrangement.

Response: EPA regulations allow for the possibility that a State may be authorized to issue NPDES permits on a Federal Indian reservation after adequate demonstration by the State of regulatory capability, although EPA recognizes that the threshold demonstration is high and that EPA has not expressly authorized a State to do so. Nonetheless, if such a situation were to occur and, if an Indian Tribe were subsequently to obtain approval for Treatment in the Same Manner as a State and NPDES program authorization, the regulatory authority would be transferred from the authorized State to the now authorized Tribe. As discussed above, EPA recognizes that certain States which have not been specifically authorized for issuing State permits on Federally recognized Indian reservations under § 123.23(b) or § 501.13 have nonetheless issued permits on Federal Indian reservations. As discussed in Section II.B, EPA will presume the State permits to be valid and contain enforceable limits. When the State-issued permit expires, EPA will reissue the permit on the Federal Indian reservation unless the Indian Tribe has been authorized to operate the NPDES program.

Any official transfer of authority will be from EPA to the authorized Indian Tribe(s). However, in instances where a State has been the *de facto* permitting authority on Federal Indian reservations there may be the potential for some transfer of NPDES State files to the authorized Tribe(s). A more effective administrative transfer of information may be to transmit the files directly from the NPDES State to the Tribe seeking program approval, rather than through EPA to the authorized Tribe. For this reason, EPA believes that the NPDES State and Tribe should consider entering into an MOA specifying how the Tribe and the previously authorized State will accomplish the transition of information and files relevant to permitting authority. This is not to say that EPA will have no role in this transition since EPA has ultimate oversight authority. EPA will be available for assistance to the Tribe or State as well as closely monitor the transition process. In addition, EPA will have the final review of the transition process between the Tribe and the State since it will be described in the Tribe's application for NPDES or sludge program authorization.

4. Criminal Enforcement Authority

Comment: A commenter expressed concern about the proposed amendment of § § 123.34 and 501.25 to allow Federal criminal prosecutions where the Tribe lacks jurisdiction. The commenter suggested that what may be legal under Federal or State regulation may be made criminal under Tribal regulation. Thus, it may not be an adequate substitute to have the Federal Government exercise criminal enforcement power.

Response: Section 518 of the CWA provides the opportunity for Tribes to apply for NPDES and sludge program management authorization(s). EPA may in some cases have to exercise criminal enforcement to the extent permitted under section 309 of the CWA. EPA also has oversight enforcement authority for both civil and criminal cases.

The commenter raises a valid point regarding the potential for criminal provisions in Indian programs. It is possible that a Tribe would wish to enact criminal provisions due to Tribal regulatory standards which may be different from previously established standards. The Agency is bound by its criminal enforcement authority under section 309 of the CWA. Therefore, the Agency likely would lack the authority to take a criminal enforcement action against a nonmember on a reservation subject to an authorized Indian Tribe's NPDES program in a situation where the Agency would not itself initiate action under section 309. In order to alleviate such potential conflicts, EPA will endeavor to make clear to Tribes drafting such programs this potential enforcement limitation.

Comment: One commenter disagreed with EPA's conclusion that Congressional failure to waive the criminal enforcement requirement was unintentional. The commenter noted that section 518 was enacted almost ten years after the Supreme Court decision in *Oliphant* and argued that Congress would be well aware of the relevant jurisdictional decisions of the Supreme Court. The commenter further suggested that examining the scope of a Tribe's criminal jurisdiction would not, as EPA had also concluded, prevent Tribes from implementing any program. Rather, the commenter asserted that on some reservations it would have no effect, while on others it would merely limit Tribal authority to activities by persons over which it possesses criminal jurisdiction. Therefore, in no way would the examination of the scope of Tribal authority completely eliminate the opportunity for a Tribe to implement any CWA program.

Response: EPA disagrees with the commenter's arguments. The existing NPDES regulations require States to have certain minimum criminal enforcement powers, however, this is not possible for Tribes for all possible classes of discharges on Federal Indian reservations. EPA disagrees that the proper solution is to limit the Tribal authorized program to persons over which the Tribe has criminal authority. This would mean that permits for some sources on reservations would be issued by the Tribe and others by EPA. EPA believes that this system would be less efficient than having the Tribe refer some criminal cases to EPA, but issue all permits on the reservation.

5. Other Comments

a. Simplification of Tribal Application for Treatment in the Same Manner as a State.

Comment: A commenter noted that, in the preamble to the proposed rule, EPA indicated that in most instances a Tribe need only qualify once for Treatment in the Same Manner as a State under either the SDWA or the CWA. The commenter suggested that this statement appears to be contrary to representations by EPA, in the context of section 106 grants under the CWA, that granting Treatment in the Same Manner as a State for one program did not equate to a finding that Treatment in the Same Manner as a State is appropriate for all programs designated in section 518. The commenter noted that since Tribes undoubtedly possess requisite authority to receive Federal grants, EPA's narrow explanation of the scope of Treatment in the Same Manner as a State determinations under section 106 made some sense. If in fact EPA is now deviating from its prior representations that the Agency would examine Tribal authorities when reviewing applications for Treatment in the Same Manner as a State for each distinct program, the statement in the proposed rule preamble should be revised.

Response: EPA has interpreted the required qualification criteria for Treatment in the Same Manner as a State as being basic requirements and, therefore, determined that an Indian Tribe need only demonstrate once that

it meets all of the criteria, at the time of initial application under the CWA, SDWA, or other EPA program. Since no statute compels the use of a formal Treatment in the Same Manner as a State or other prequalification process, the Agency also plans in the future to modify those portions of its existing and any later regulations that effectively treat Treatment in the Same Manner as a State approval as a discrete process. After a Tribe has been approved for Treatment in the Same Manner as a State under any statute, it will subsequently need to demonstrate only that it satisfies the "capability" criterion for the individual CWA program and may possibly need to show specific jurisdiction to administer a particular CWA or other program. For example, a Tribe applying for an NPDES or sludge program authorization will need only to provide the new or uniquely different program specific demonstration criteria required of all applicants for the respective program authorization being sought. To facilitate this process, EPA is in the process of establishing identical Agency requirements based on section 518 of the CWA for making the recognition and government demonstrations under each statute as directed by a November 10, 1992 memorandum from EPA's Deputy Administrator, a copy of which is in the docket for today's rule.

b. Tribal Funding.

Comment: Several comments were received from Tribal and other commenters regarding funding for Tribes and particularly how available funding or lack thereof could affect a Tribe's regulatory program implementation and administrative success.

One Tribe commented that establishing rules and procedures when "funds are limited," without adequate funding for implementation has minimal impact on Tribes.

Another commenter felt that it was incumbent upon EPA to fund the Tribe for the protection of member resources at the same level as the States are funded. The commenter suggested that the right to Treatment of the Tribe in the Same Manner as a State is virtually meaningless without the proper funds to carry out the provisions of the CWA. The commenter further asserted that any type of reduction or cap on the funds for Tribal enforcement would be unacceptable.

Response: EPA provides available funding to authorized permitting authorities such as States or Indian Tribes through a variety of programs such as grants under sections 106 and 104(b)(3) of the CWA depending on the available funding each fiscal year.

EPA agrees with the commenter that adequate funding is essential for program development and implementation, however, Federal budget constraints may limit funding. Some Indian Tribes may decide that it is not cost-effective to apply for various CWA program authorities, however, EPA encourages Tribes to consider submitting applications for program authorizations which may result in the greatest environmental benefits to the Tribe.

c. Tribal Standards Under the CWA.

Comment: One comment agreed that the CWA clearly allows certain Tribal organizations to be treated in the same manner as States, but questioned whether Indian Tribes can impose requirements which are more stringent than Federal requirements.

Response: According to CWA section 510, States have the authority to adopt or enforce any requirements for the control of water pollution which are no less stringent than those adopted by EPA.

Once an Indian Tribe qualifies for Treatment in the Same Manner as a State and is authorized to operate the NPDES or Sludge Management Program as outlined in this rule, the Tribe is treated as any other NPDES authorized State. Therefore, such Tribes may impose any standards that are not less stringent than Federal requirements under 40 CFR 122.44 and 501.15(b)(2).

d. EPA's "Regulatory Flexibility Act" Analysis.

Comment: One commenter disagreed with EPA's conclusion that only a small fraction of Tribes who apply would be significantly impacted.

Response: In evaluating the rule under the Regulatory Flexibility Act, EPA believes that the impact of the rule will not be significant for three reasons. First, Tribal assumption of these programs is entirely voluntary and EPA anticipates that relatively few Indian Tribes will decide that it would be beneficial to apply for these CWA program authorities. Therefore, the number of impacted small governmental entities (Tribes) will be smaller than the total number of Indian Tribes. Second, the information required by this rule is considered to be the minimum necessary to effectively evaluate applications to treat Indian Tribes in the same manner as States for the purposes of the NPDES and State sludge management programs.

Third, EPA intends to establish the least burdensome process possible for Tribes to demonstrate State eligibility under both the Clean Water Act and the Safe Drinking Water Act. The Agency is developing procedures to implement a single application procedure for the SDWA and CWA programs for those aspects of Treatment in the Same Manner as a State which are similar under both statutes. For example, the "Federal recognition" and "governmental duties and powers" criteria will almost always require the same demonstration, and under most circumstances need only be demonstrated once at the time of initial application for programs under either of the Acts. In addition, if a Tribe is authorized to operate another CWA program, the Tribe will likely already have the required infrastructure and capability when applying for additional CWA programs.

B. Supporting Comments

Several comments were received expressing support for the rule's Treatment in the Same Manner as States provisions. Other comments supported some of EPA's determinations regarding authorization flexibility and other related issues. Detailed responses to each of the supporting comments can be found in the "Response to Comments" document which is contained in the docket for today's rule.

IV. Other Regulatory Requirements

A. Compliance with Executive Order 12291 (Regulatory Impact Analysis)

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

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

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

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

Because the final rule does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis.

EPA believes the effect on the regulated community of promulgation of this final rule will be a substitution of one permitting authority (either EPA or an authorized NPDES State) for another (the newly authorized Indian Tribe).

Indian Tribe(s) who do apply will incur costs to complete the regulatory process for obtaining State NPDES and sludge program authorization. EPA considers the information required by this rule to be the minimum necessary to demonstrate the requirements of CWA section 518(e) in order to effectively evaluate applications to treat Indian Tribes in the same manner as States for the purposes of the NPDES and State sludge management programs.

The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. The final rule was submitted to OMB and was approved on September 24, 1993.

B. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0057.

This collection of information is estimated to have a public reporting burden averaging 155 hours per response, and to require 50 hours per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Please send any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Copies of the ICR may be obtained by writing to the same EPA address listed above, to the attention of Sandy Farmer, Information Policy Branch (2136); or by calling (202) 260–2740.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA generally must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

-Small governmental jurisdictions—any government of a district with a population of less than 50,000.

-Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

-Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).

Using the above definition of small entity, EPA has concluded that the final regulation will not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is unnecessary. EPA has reached this conclusion based on the following considerations.

The final rule will not have a significant impact on a substantial number of small governmental organizations. There are currently 542 Federally recognized Indian Tribes. EPA anticipates that 281 reservation governments may potentially apply for the NPDES or State sludge management programs. EPA believes that the number of Tribes subject to significant impacts as a result of this regulation will be a small fraction of the total that may apply. This determination is based on the best available information EPA currently has concerning the present status of Tribal resources and existing Tribal government infrastructures as a whole. EPA believes that NPDES program authorizations for Tribes will be an evolving process and that until the applications are actually submitted to the Agency for approval and evaluated on a case-by-case basis (thus possibly yielding new information), the best facts available support a conclusion that no significant impacts will result from promulgation of this final rule. EPA considers the information required by this rule to be the minimum necessary to effectively evaluate applications to treat Indian Tribes as States for the purpose of the NPDES and State sludge management programs.

The final rule will not have a significant impact on a substantial number of small businesses. Although it is conceivable that an Indian Tribe could impose greater requirements upon a permit applicant than the existing permitting authority, such situations will be rare.

The final rule will not have a significant impact on a substantial number of small organizations for the same reasons that the final rule will not have a significant impact on a substantial number of small businesses.

Accordingly, EPA certifies that this final rule will not have a significant economic impact on a number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 501

Administrative practice and procedure, Confidential business information, Environmental protection, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal.

Dated: December 10, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 of subpart A is amended by adding in alphabetical order, new definitions for "Federal Indian reservation" and "Indian Tribe"; and by revising the definition, "State" to read as follows:

§ 122.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian

reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of § 123.31 of this chapter.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

3. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 123.1 of subpart A is amended by revising paragraphs (b) and (h), by redesignating (d) as (d)(1), and by adding a new paragraph (d)(2) to read as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 304(i), 101(e), 405, and 518(e) of the CWA, and implement the requirements of those sections.

* * * * *

(d)(1) * * *

(2) The procedures outlined in the preceding paragraph (d)(1) of this section for suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State program and a State was the authorized permitting authority under § 123.23(b) for activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (d)(1) of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

* * * * *

(h) In many cases, States (other than Indian Tribes) will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if a State (or Indian Tribe treated as a State) does not seek or have authority to regulate activities on Indian lands.

* * * * *

5. Section 123.21 of subpart B is amended by revising paragraph (a)(1), by redesignating paragraph (b) as (b)(1), and by adding a new paragraph (b)(2) to read as follows:

§ 123.21 Elements of a program submission.

(a) * * *

(1) A letter from the Governor of the State (or in the case of an Indian Tribe eligible for treatment as a State in accordance with § 123.33(e), the Tribal authority exercising powers substantially similar to those of a State Governor) requesting program approval;

* * * * *

(b)(1) * * *

(2) In the case of an Indian Tribe eligible for treatment as a State under § 123.33(e), EPA shall take into consideration the contents of the Tribe's request for treatment as a State submitted under § 123.32, in determining if the program submission required by § 123.21(a) is complete.

* * * * *

6. Section 123.22 of subpart B is amended by adding a new paragraph (g) to read as follows:

§ 123.22 Program description.

* * * * *

(g) In the case of Indian Tribes eligible for treatment as a State under § 123.33(e), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 123.23(b), a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

7. Section 123.23 of subpart B is amended by revising paragraph (b) to read as follows:

§ 123.23 Attorney General's statement.

* * * * *

(b) If a State (which is not an Indian Tribe) seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

* * * * *

8. Section 123.24 of subpart B is amended by redesignating paragraph (b)(1) as (b)(1)(i) and by adding a new paragraph (b)(1)(ii) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

(1)(i) * * *

(ii) Where a State has been authorized by EPA to issue permits in accordance with § 123.23(b) on the Federal Indian reservation of the Indian Tribe seeking program approval, provisions describing how the transfer of pending permit applications, permits, and any other information relevant to the program operation not already in the possession of the Indian Tribe (support files for permit issuance, compliance reports, etc.) will be accomplished.

* * * * *

9. Section 123.25 of subpart B is amended by revising paragraph (a)(12) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(12) Section 122.41—(Applicable permit conditions)(Indian Tribes can satisfy enforcement authority requirements under § 123.34).

* * * * *

10. Section 123.27 of subpart A is amended by adding a new paragraph (e) to read as follows:

§ 123.27 Requirements for enforcement authority.

* * * * *

(e) Indian Tribes that cannot satisfy the criminal enforcement authority requirements of this section may still receive program approval if they meet the requirement for enforcement authority established under § 123.34.

11. Section 123.31 is added to subpart B to read as follows:

§ 123.31 Requirements for treatment of Indian Tribes as States.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Regional Administrator will treat an Indian Tribe as a State for purposes of making the Tribe eligible to apply for NPDES program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust

for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program. This capability may be demonstrated by the existence of management and technical skills necessary to administer an effective NPDES permit program; by the existence of institutions to exercise executive, legislative, and judicial functions; and by a history of successful managerial performance of public health or environmental programs. There must be sufficient independence of regulated entities and the agency of the Indian Tribe which assumes primary responsibility for establishing and administering an NPDES program necessary to assure effective and fair administration of the program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

12. Section 123.32 is added to subpart B to read as follows:

§ 123.32 Request by an Indian Tribe for a determination of eligibility for treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act for purposes of seeking NPDES permit program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 123.31. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion under section 518(e)(2) of the Act; and a description of the location of the surface waters for which the Tribe proposes to establish an NPDES permit program.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound NPDES permit program. The statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering an NPDES permit program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound NPDES permit program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his or her discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the requirements for "treatment as a State" for other programs authorized under the Safe Drinking Water Act or the Clean Water Act, then the Tribe need only provide that additional information unique to the NPDES program which is requested by the Regional Administrator.

13. Section 123.33 is added to subpart B to read as follows:

§ 123.33 Procedures for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 123.32 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's complete application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance of and bases for the Tribe's assertions that it meets the requirements of § 123.31(a)(3).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion under § 123.31(a)(3).

(d) If a Tribe's assertion under § 123.31(a)(3) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 123.31(a)(3).

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 123.31, the Indian Tribe is then eligible to be treated as a State for purposes of applying for assumption of the NPDES permit program.

(f) The Regional Administrator shall follow the procedures described in 40 CFR part 123, subpart D in processing a Tribe's request to assume the NPDES program.

14. Section 123.34 is added to subpart B to read as follows:

§ 123.34 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under § 123.27, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of § 123.27. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

15. Section 123.62 of subpart D is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(a) * * * Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 extending to those lands.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

16. The authority citation for part 124 is revised to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

17. Section 124.2 of subpart A is amended by adding in alphabetical order a definition for "Federal Indian reservation" and by revising the definition for "Indian Tribe" to read as follows:

§ 124.2 Definitions.

* * * * *

Federal Indian reservation (in the case of NPDES) means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means (in the case of UIC) any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area. For the NPDES program, the term "Indian Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

18. Section 124.51 of subpart D is amended by adding a new paragraph (c) to read as follows:

§ 124.51 Purpose and scope.

* * * * *

(c) As stated in 40 CFR 131.4, an Indian Tribe that is qualified for treatment as a State for purposes of the Water Quality Standards program is likewise qualified for treatment as a State for purposes of State certification of water quality standards pursuant to section 401(a)(1) of the Act and subpart D of this part.

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

19. The authority citation for part 501 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

20. Section 501.1 of subpart A is amended by revising paragraph (c)(5), by redesignating paragraph (f) as (f)(1), and by adding paragraph (f)(2) to read as follows:

§ 501.1 Purpose and scope.

* * * * *

(c) * * *

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement. Indian Tribes can satisfy criminal enforcement authority requirements under § 501.25.

* * * * *

(f)(1) * * *

(2) The procedures outlined in the preceding paragraph (f)(1) of this section for the suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State sludge management program and a State was the authorized permitting authority under § 501.13 for sludge management activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (f)(1) of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

* * * * *

21. Section 501.2 of subpart A is amended by adding in alphabetical order definitions for "Federal Indian reservation" and "Indian Tribe", and by revising the definition for "State" to read as follows:

§ 501.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, and an Indian Tribe as defined in these regulations which meets the requirements of § 501.22.

* * * * *

22. Section 501.11 of subpart B is amended by revising paragraph (a)(1), by redesignating paragraph (b) as (b)(1), and by adding a new paragraph (b)(2) to read as follows:

§ 501.11 Elements of a sludge management program submission.

(a) * * *

(1) A letter from the Governor of the State (or in the case of an Indian Tribe eligible for treatment as a State in accordance with § 501.24(e), the Tribal authority exercising powers substantially similar to those of a State Governor) requesting program approval;

* * * * *

(b)(1) * * *

(2) In the case of an Indian Tribe eligible for treatment as a State under § 501.24(e), EPA shall take into consideration the contents of the Tribe's request for treatment as a State submitted under § 501.22, in determining if the program submission required by § 501.11(a) is complete.

* * * * *

23. Section 501.12 of subpart B is amended by adding a new paragraph (g) to read as follows:

§ 501.12 Program description.

* * * * *

(g) In the case of Indian Tribes eligible for treatment as a State under § 501.24(e), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 501.13, a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

24. Section 501.13 of subpart B is amended by revising the last sentence of the paragraph to read as follows:

§ 501.13 Attorney General's statement.

* * * If a State (which is not an Indian Tribe) seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's legal authority.

25. Section 501.14 of subpart B is amended by redesignating paragraph (b)(1) as (b)(1)(i) and by adding paragraph (b)(1)(ii) to read as follows:

§ 501.14 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

(1)(i) * * *

(ii) Where a State has been authorized by EPA to issue permits in accordance with § 501.13 on the Federal Indian reservation of the Indian Tribe seeking program approval, provisions describing how the transfer of pending permit applications, permits, and any other information relevant to the program operation not already in the possession of the Indian Tribe (support files for permit issuance, compliance reports, etc.) will be accomplished.

* * * * *

26. Section 501.15 of subpart B is amended by adding new paragraph (b)(15) to read as follows:

§ 501.15 Requirements for permitting.

* * * * *

(b) * * *

(15) Indian Tribes can satisfy the criminal enforcement authority requirements of this section under § 501.25.

* * * * *

27. Section 501.17 of subpart B is amended by adding a new paragraph (e) to read as follows:

§ 501.17 Requirements for enforcement authority.

* * * * *

(e) Indian Tribes that cannot satisfy the criminal enforcement authority requirements of this section may still be approved under this part if they meet the requirements established in § 501.25.

28. Section 501.22 is added to subpart B to read as follows:

§ 501.22 Requirements for treatment of Indian Tribes as States.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Regional Administrator will treat an Indian Tribe as a State for purposes of making the Tribe eligible to apply for sludge management program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective sludge management program. This capability may be demonstrated by the existence of management and technical skills necessary to administer an effective sludge management program; by the existence of institutions to exercise executive, legislative, and judicial functions; and by a history of successful managerial performance of public health or environmental programs. There must be sufficient independence of the regulated entities and the agency of the Indian Tribe which will assume primary responsibility for establishing and administering a sludge management program necessary to assure effective and fair administration of the program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

29. Section 501.23 is added to subpart B to read as follows:

§ 501.23 Request by an Indian Tribe for a determination of eligibility for treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act for purposes of seeking sludge management program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 501.22. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion under section 518(e)(2) of the Act.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound sludge management program. The statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian

Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a sludge management program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound sludge management program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator or his delegatee has previously determined that a Tribe has met the requirements for "treatment as a State" for other programs authorized under the Safe Drinking Water Act or the Clean Water Act, then the Tribe need only provide that additional information unique to the sludge management program which is requested by the Regional Administrator.

30. Section 501.24 is added to subpart B to read as follows:

§ 501.24 Procedures for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 501.23 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's complete application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance and bases of the Tribe's assertions that it meets the requirements of § 501.22(a)(3).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion under § 501.22(a)(3).

(d) If a Tribe's assertion under § 501.22(a)(3) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 501.22(a)(3).

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 501.22, the Indian Tribe is then eligible to be treated as a State for purposes of applying for assumption of the sludge management program.

(f) The Regional Administrator shall follow the procedures described in subpart C of this part in processing a Tribe's request to assume the sludge management program.

31. Section 501.25 is added to subpart B to read as follows:

§ 501.25 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under § § 501.1(c)(5) and 501.17, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of § § 501.1(c)(5) and 501.17. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

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Wednesday
December 22, 1993

Part V

Department of Transportation

Coast Guard

33 CFR Part 155

Discharge Removal Equipment for Vessels Carrying Oil; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 90-068]

RIN 2115-AD66

Discharge Removal Equipment for Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is issuing regulations that require vessels carrying oil in bulk as cargo to carry discharge removal equipment, install spill prevention coamings, and install emergency towing arrangements. The Coast Guard also is requiring vessels to have a prearranged capability to calculate damage stability in the event of a casualty. Regulations requiring removal equipment are mandated by the Oil Pollution Act of 1990 (OPA 90). The purpose of the regulations is to reduce the risk of oil spills, improve vessel oil spill response capabilities, and minimize the impact of oil spills on the environment. The Coast Guard is issuing an interim final rule in order to solicit further public comment and information on emerging technologies that prevent, contain, or remove discharges of oil from vessels into the marine environment.

DATES: This rule is effective on January 21, 1994. The Director of the Federal Register approves as of January 21, 1994 publication the incorporation by reference of certain publications listed in the regulations. Comments on the interim final rule must be received on or before February 22, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-068), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Frank Wood, Project Manager, Office of Marine Environmental Protection (G-MEP), (202) 267-6414.

SUPPLEMENTARY INFORMATION:

Request for Comments

Because considerable interest has been expressed in emerging technologies for preventing and removing discharges of oil into the environment, the Coast Guard is soliciting further comment and information from the public on booms, skimmers, temporary storage devices, or other major oil spill prevention and response equipment designed to be carried on board. Comments should address the appropriateness of the equipment, the technological and economic feasibility of requiring the equipment, and the compatibility of the equipment with safe vessel operation. Some comments on the notice of proposed rulemaking (NPRM) stated that recent technological developments have made the carriage of booms and skimmers more feasible than when the rulemaking process began. The comments noted that an intent of OPA 90 was to encourage the development of new response technologies and that final regulations should be issued without further consideration of this new technology. To this end, persons interested in demonstrating such equipment and technologies for preventing or removing oil spills should contact the project manager for this rulemaking.

Persons submitting comments should include their names and addresses, identify this rulemaking (90-068) and the specific section of the rulemaking to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons waiting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The principal persons involved in drafting this document are Frank Wood, Project Manager, G-MEP, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purpose

Section 4202(a)(6) of OPA 90 (P.L. 101-380, August 18, 1990) amended section 311(j) of the Federal Water Pollution Act (FWPCA) (33 U.S.C. 1321(j)) by, among other things, adding a new paragraph (6) to require vessels that are operating on the navigable waters of the U.S. and that are carrying oil or a hazardous substance in bulk as cargo to carry appropriate discharge removal equipment on board. OPA 90 explicitly states that this equipment must employ the best technology economically feasible and be compatible with the safe operation of the vessel.

Section 311(a)(8) of the FWPCA defines the term "remove or removal" as the containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare. For purposes of the regulations, removal equipment includes salvage equipment, lightering equipment, towing arrangements, sorbents, and other equipment, such as booms and skimmers, that may be used to minimize or mitigate environmental damage from oil spills.

The regulations issued under section 311(j)(6) for equipment carriage apply to all vessels carrying oil in bulk as cargo or cargo residue that are certificated as tank vessels under 46 CFR chapter I, subchapter D; all other certificated vessels that are permitted to carry limited quantities of oil, as defined in section 311(a)(1) of the FWPCA; and uninspected vessels, including foreign flag vessels, that carry oil in bulk as cargo or cargo residue. "Oil" includes, but is not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils.

On November 4, 1992, Congress passed the Coast Guard Authorization Act of 1992 (the Act) (Pub. L. 102-587). Section 5209(b) of the Act states that the following vessels are not tank vessels for the purposes of any law:

(1) An offshore supply vessel.

(2) A fishing or fish tender vessel of not more than 750 gross tons that transfers oil, without charge, to a fishing vessel owned by the same person.

The result of the Act is that the covered vessels are not subject to the discharge removal requirements applicable to tank vessels. However, the vessels covered by the Act are still subject to the requirements in § 155.220, "Discharge removal equipment for vessels carrying oil as secondary cargo."

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on August 30, 1991, and held a public workshop on November 14, 1991, to address issues related to vessel response plans and on-board carriage of discharge removal equipment. Because the OPA 90 requirements for vessels to carry discharge removal equipment for oil spills are related to the requirements for vessels to have response plans (58 FR 7376, February 5, 1993), the Coast

Guard considered both statutory provisions concurrently. In January 1992, the Coast Guard convened the Oil Spill Response Plan Negotiated Rulemaking Committee (the Committee), comprised of 26 members from the marine, oil, and transportation industries; State and Federal governments; environmental organizations; and other public associations. The Committee discussed issues concerning both vessel response plans and the carriage of discharge removal equipment.

The Coast Guard considered all comments to the ANPRM and included the Committee recommendations in developing the NPRM on Discharge Removal Equipment for Vessels Carrying Oil (57 FR 44912, September 29, 1992). The Coast Guard is limiting this rulemaking to requirements for vessels carrying oil in bulk as cargo. Regulations requiring carriage of discharge removal equipment for vessels that carry hazardous substances in bulk as cargo will be developed in a separate rulemaking.

Discussion of Comments and Changes

The Coast Guard received 107 comments on the NPRM. Seven additional letters arrived after the close of the comment period and were considered in drafting the interim final rule.

Twenty-five comments requested a public hearing on the subject of requiring tank vessels to warehouse booms and skimmers on board. The Coast Guard has determined that delaying publication of the interim final rule to hold further public hearings is not in the public's interest. The Coast Guard is soliciting further comment on the rule. If it appears that a public hearing will help the Coast Guard reach a decision on the final rule, a public hearing will be held.

One letter discussed the designation or certification of dedicated and dual-purpose oil spill response vessels and their inclusion in response plans. The comment relates to a separate rulemaking and has been forwarded for inclusion in the appropriate docket.

Definitions

In the NPRM, the Coast Guard separated vessels that carry oil as primary cargo into four categories: tankers, offshore tank barges, coastal tank barges, and inland tank barges. One comment indicated that the requirements for coastal and offshore tank barges are duplicative. The Coast Guard agrees and is combining coastal tank barges and offshore tank barges into one category, "offshore oil barge," to simplify the regulations and eliminate confusion on this issue.

The regulations define an offshore oil barge as any tank barge, carrying oil in bulk as cargo, that is certificated by the Coast Guard under 46 CFR chapter I, subchapter D, for navigation in waters outside the "Boundary Lines," as defined in 46 CFR part 7, in any ocean or the Gulf of Mexico; any tank barge in Great Lakes service; or any foreign flag tank barge. This definition includes integrated tug-barges (ITBs) that are designed for dual-mode navigation.

The Coast Guard has revised the definition of an inland tank barge in § 155.200. The term "inland tank barge" has been changed to "inland oil barge" and now includes any tank barge certificated under 46 CFR chapter I, subchapter D, for river or canal service. The Coast Guard has also changed the term "tanker" to "oil tanker," and the definition now includes self-propelled vessels carrying oil in bulk as cargo, including ITBs designed for push-mode operation. The following preamble discussion refers to the new terms.

Discharge Removal Equipment for On-Deck Spills

In the NPRM, §§ 155.205, 155.210, 155.215, and 155.220 require oil tankers, oil barges, and vessels carrying oil as a secondary cargo to carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills. To provide the regulated community with adequate time to prepare for compliance, under the IFR, these sections will become effective 180 days after the date of publication of the IFR in the **Federal Register**.

Several comments requested a definition of the phrase "on-deck spill." An on-deck spill is a discharge of oil on the deck of a vessel during loading, unloading, transfer, or other shipboard operation. An on-deck spill could result from a leaking fitting, an overfill, a bad connection, or similar operational mishap. This phrase is used to differentiate operational discharges from discharges caused by collision or grounding in which the hull is punctured and a tank ruptures, resulting in an uncontrolled discharge of oil into the marine environment.

The Coast Guard received 53 comments on the proposed requirements for vessels to carry sufficient discharge removal equipment to remove on-deck spills and prevent a discharge of oil into the water. Thirty-five of these comments stated that the proposed requirements were redundant because the tanker industry is already substantially in compliance with the requirements. The Coast Guard recognizes that the majority of reported tank vessel spills are relatively small and occur mostly during routine operations. However, the purpose of the rule is to ensure that oil tankers and offshore oil barges carry a sufficient amount of equipment to contain and remove an appropriate volume of oil. The fact that many oil tankers already may be in compliance indicates that the requirements are appropriate, that all tank vessels should comply with the rule, and that the cost to comply should be minimal. The Coast Guard has retained the requirements for vessels to carry the levels of discharge removal equipment as proposed.

The Coast Guard proposed in §§ 155.205, 155.210, 155.215, and 155.220 that equipment required for on-board carriage by oil tankers and offshore oil barges must be non-sparking to be safe for use in a volatile atmosphere. One comment suggested that the term "non-sparking" is overused and meaningless and suggested a definition of non-sparking to specify that hand tools and other equipment must not be a source of ignition in a volatile atmosphere. The comment suggested that the Coast Guard should require that hand tools, such as shovels and scoops, be manufactured of resin or other non-ferrous, composite material.

The Coast Guard has determined not to add a regulatory definition of non-sparking because the term reflects common maritime practice. For the purposes of this rulemaking, the Coast Guard considers non-sparking material to mean non-ferrous metals (such as brass or aluminum), plastics, resins, or other composite materials. Portable pumps that are non-sparking could be hydraulically or pneumatically powered, or otherwise made intrinsically safe, to prevent an ignition hazard.

The Coast Guard proposed in §§ 155.205 and 155.210 that pumping equipment for removing on-deck spills be on deck, rigged, and ready for immediate use on the vessel during transfer operations. Several comments suggested that the Coast Guard reconsider the proposed requirement that portable pumps be rigged. One comment stated that coamings are the first line of defense in the event of an on-deck spill and explained that before the pump can be used, oil must first be collected in a sufficient quantity. The comment also stated that stanching the discharge is the first priority and that there is adequate time to rig a pump, without risking loss of oil over the side, when the discharge is stanched.

Several other comments stated that transporting and maneuvering a pump already rigged with hoses is awkward and potentially unsafe. One comment also noted that a rigged pump may be less useful or accessible than an unrigged pump that is readily available. Other comments noted that the rigged pump would have to be repositioned frequently because of changes in vessel heel and trim that occur during normal loading and unloading operations. The Coast Guard agrees with these comments and has changed the rule to require only that portable pumps be readily available for use.

The rule requires in §§ 155.205, 155.210, 155.215, and 155.220 that containers, scoops, buckets, and shovels be readily available to aid the crew in removing and containing the waste from an on-deck spill. In §§ 155.205 and 155.210, oil tankers and offshore oil barges also are required to carry a minimum of one non-sparking portable pump with hoses. Three comments asked that the Coast Guard require specific, standard quantities of sorbents and hand tools and specific sizes and capacities of portable pumps to ensure that all vessels meet the same standards and that the rules are clear and consistently applied. In response to these comments, the Coast Guard has revised the rule to require vessel owners or operators to have at least one non-sparking, portable pump, with hoses, capable of transferring, within one-half hour, the number of barrels of oil specified for each vessel type.

The Coast Guard has determined not to require carriage of specified quantities of sorbents and hand tools because vessel owners or operators are best able to determine the quantity and location of necessary removal equipment. The interim final rule continues to require vessel owners or operators to have sufficient quantities of hand tools, sorbents, and other items to contain and remove the specified amount of oil and residue. Owners or operators also must be able to demonstrate compliance with the requirements upon random inspection by the Coast Guard.

One comment stated that the rule should apply equally to offshore oil barges and inland oil barges. The proposed requirements for inland oil barges differed from those for oil tankers and oil barges that navigate in coastwise and ocean service because inland oil barges are constructed differently. Inland oil barges have little or no secure stowage capacity for carried equipment and are typically unmanned. Therefore, for inland oil barges, the interim final rule continues to provide that the equipment for containing and removing on-deck spills must be immediately available during cargo transfer operations, but does not require the equipment to be carried on board at other times. The regulations also permit the owner or operator of inland oil barges to rely on equipment available at the transfer facility receiving from or discharging to the barge, provided the barge owner or operator has prearranged the use of equipment for vessel spills by contract or other means approved by the Coast Guard.

Deck Edge Coamings for On-Deck Spills

Nine comments addressed the proposed requirements for coamings in § 155.310. Most of the comments supported the proposed requirements. One comment expressed serious concerns about safety, stating that the coamings would collect water in rough seas or heavy rains and diminish the vessel's stability by adding topside weight, with a free surface, above the vessel's center of gravity. The Coast Guard does not believe that the requirements to install peripheral coamings endanger ocean and coastwise vessels from topside weight. Drainage through drains and scuppers can be provided; however, there must be a mechanical means of closing each scupper and drain.

Another comment suggested that the rule allow peripheral coamings to be installed within two to three feet of the deck-edge, as is common practice, and not require installation exactly at the deck edge. The Coast Guard concurs and has eliminated the term "deck edge" from paragraph (c) of § 155.310.

One comment raised specific concerns about the difficulties and hazards of having a coaming on deck when operating for prolonged periods in freezing weather. The Coast Guard recognizes the special difficulties and hazards posed by the buildup of ice through prolonged periods of operation in freezing weather and will consider requests for exemption from these requirements in accordance with the provisions of 33 CFR 155.130. Section 33 CFR 155.130 sets out the authority and process for exempting tank vessels from any of the requirements under part 155 of title 33 of the Code of Federal Regulations. With the exceptions noted, the Coast Guard has retained the requirements for peripheral coamings as proposed.

One comment stated that the proposed rule amends an existing rule that applies to vessels carrying hazardous materials as well as oil. The comment stated that the Coast Guard inadvertently proposed to require peripheral coamings on the main deck of a liquefied natural gas (LNG) carrier. LNG is not defined as oil or a hazardous material. Nothing in this rulemaking applies to or affects the regulatory status of vessels that carry LNG cargoes.

On-Water Containment and Removal Equipment

The Coast Guard received 72 comments on the issue of requiring the carriage of booms and skimmers on board tank vessels to facilitate the containment and removal of oil from the water and shorelines. The majority of the comments received on this issue were in favor of carrying this equipment aboard tank vessels. Almost two-thirds of these comments favoring equipment carriage were copies of one of three separate form letters. The letters were signed by different individuals, many of whom were small manufacturers or distributors of pollution response equipment. The majority of the comments stated that they believe Congress intended OPA 90 to require booms and skimmers aboard these vessels, and argued that they are economically feasible because the apparent cost to benefit ratio justifies carrying booms and skimmers. However, none of these comments supplied data to calculate costs and benefits or identified citations in the Conference Report for OPA 90 supporting their conclusions on Congressional intent.

Most of the comments that opposed requirements to carry equipment on board tank vessels strongly supported the conclusions reached by the Committee and adopted by the Coast Guard in the NPRM.

In OPA 90, Congress directed the Coast Guard to require the carriage of (1) appropriate removal equipment that, (2) employs the best technology economically feasible, and (3) that is compatible with the safe operation of the vessel. The Coast Guard has interpreted this requirement to be conditional and conjunctive in that any required equipment must meet all three tests.

The majority of the participants in both the public workshop and the negotiated rulemaking process, and the majority of comments on the ANPRM and NPRM, stated that the Coast Guard should not compromise safety by requiring crew deployment from the vessel to operate booms and skimmers for recovery of oil discharged into the marine environment. This is also the Coast Guard's conclusion.

Many comments argued that in any major discharge caused by fire, explosion, collision, or grounding, the

crew's primary responsibility is the safety of the vessel and crew and containment of the cargo. These comments stated that requiring crew members to deploy from the vessel with equipment suitable for carriage aboard ship in anything but a benign environment would jeopardize the safety of the crew and the vessel.

Many of the comments supporting the warehousing of booms and skimmers on board tank vessels indicated that an advantage of carrying response equipment on board the vessel for deployment and use by others is that the equipment would be readily available in the event of a discharge, without transportation delays and without compromising the safety of vessel crew members.

Seventeen of the comments that advocated warehousing specifically recommended that the Coast Guard require remote control technology to facilitate deploying the equipment with minimal involvement by the crew. At least one manufacturer has developed a system which includes self-inflating boom, a remotely controlled vessel to tow the boom into place, and an anchoring system which can be remotely activated. Other manufacturers have developed or adapted technology to contain and remove oil from the water without deploying crew members from the vessel.

OPA 90 requires the carriage of discharge removal equipment that is appropriate, represents the best technology economically feasible, and is compatible with the safe operation of the vessel. The Coast Guard has considered the comments and finds that information available to date does not support a regulatory requirement for vessels to carry booms, skimmers, vessels, temporary storage devices, and other oil spill response equipment.

Given the development of emerging technology that has occurred since the regulatory process began and the controversial nature of the issues related to the carriage of booms and skimmers on board tank vessels, the Coast Guard is soliciting further public comment on these issues. The Coast Guard will consider this information in deciding whether to promulgate a final rule requiring vessels to carry booms and skimmers.

Persons who have developed oil spill prevention or response equipment or technology for carriage aboard tank vessels are invited to prepare and submit a proposal and a draft protocol for a test or demonstration of the equipment or technology for evaluation by the Coast Guard. The test or demonstration proposal should address the following: the appropriateness of the equipment for its intended use, the technological feasibility of the equipment and any advantages or disadvantages that could affect its deployment and operation from a tank vessel, and the equipment's compatibility with the safety of the crew and the safe operation of any vessel that carries it on board. The proposal also should address how the equipment or technology will be used to prevent spills or remove the various grades of oil cargo identified in 33 CFR 155.1050, within the range of environmental conditions for which the equipment or technology is designed to operate. The proposal should address the application and use of the equipment in the event of a vessel casualty.

The Coast Guard will evaluate each proposal against test standards developed by consensus organizations, such as the American Society for Testing and Materials (ASTM), and against the requirements of OPA 90. The Coast Guard may suggest amendments to each test proposal in order to evaluate more fairly the equipment or technology in accordance with established consensus standards or statutory or regulatory requirements. Persons submitting proposals for tests or demonstrations should understand that the primary measure of the technological and economic feasibility of any equipment or technology designed for oil spill response, whether carried aboard ship or prepositioned ashore, is whether it will effectively contain or recover oil or otherwise minimize or mitigate the impact of an oil spill on the environment.

If persons submitting a proposal are intending the Coast Guard to require the carriage of this equipment on board or to give credit for the equipment against some other requirement based on satisfactory performance, they also must show that the equipment performs as designed and that it is superior to equipment that is already available and required in these regulations. Economic cost and benefit data, as well as environmental impact information, also must be provided to the Coast Guard. The Coast Guard reserves the right to witness tests and demonstrations proposed to it and will consider all equipment and technologies in developing the final rule.

The interim final rule does not require the carriage of booms and skimmers or other prevention or response equipment not expressly provided for in the regulations. Nothing in the regulations precludes an owner or operator from choosing to carry the equipment, if the owner or operator determines that the equipment is compatible with the safe operation of the vessel. Booms, skimmers, temporary storage devices, or other major equipment carried on board a tank vessel may be counted toward the vessel owner's or operator's planning responsibilities, in accordance with the vessel response plan regulations at 33 CFR 155.1050.

Internal Cargo Transfer Capability and Lightering

In the NPRM, the Coast Guard proposed in § 155.225 that oil tankers and offshore oil barges carry hoses and reducers to facilitate internal transfer of cargo unless the vessel's existing cargo piping system is designed to facilitate cargo transfer in the event of damage to the vessel or the piping system. Inland oil barges are not required to carry additional hoses and reducers. The IFR maintains the provisions of § 155.220 as proposed in the NPRM, but provides that its requirements do not become effective until 180 days after the date of publication of the IFR in the **Federal Register**. This will provide the regulated community adequate time to prepare for compliance.

The Coast Guard received six comments relating to internal cargo transfer. Four comments agreed with the requirements as proposed. One comment questioned why inland oil barges are not required to have additional hoses and reducers. Another comment stated that all vessels should be required to carry emergency pumps because existing pumps could be easily disabled, preventing internal transfer.

The Coast Guard has decided to continue to exclude inland oil barges from the requirement to carry hoses and reducers because the Coast Guard finds that the environment in which these oil barges operate, and the limited capacity of these vessels to store equipment, make carriage inappropriate.

The Coast Guard recognizes the value of high-capacity, portable, submersible pumps in lightering and salvage operations and in the intraship transfer of cargo, but also recognizes that pumping equipment is often available from shore-based locations. The Coast Guard has determined that requiring a vessel to carry these pumps on board is not economically feasible. Further, the pumps may be incompatible with the safe operation of the vessel, if the pumps are employed before adequate stability information is available. Considering the time required to assess damage adequately and perform the necessary stability calculations, the difference in availability of pumps carried on board and those brought from shore may not be significant.

One comment suggested that the Coast Guard refer to the vessel response plan (VRP) requirements for owners or operators to identify and plan for lightering capability. The Coast Guard has addressed the requirements for lightering equipment and the requirements for lightering plans in the interim final rule on VRPs (58 FR 7376, February 5, 1993).

Spill Tracking Devices

The Coast Guard received five comments on spill tracking devices. Two comments supported the Committee recommendation to use OPA 90 funds for researching the feasibility of such a device. Four comments supported requiring a spill tracking device and made suggestions on the type of device that should be required. One comment stated that the device should have sufficient power to last several days, and another suggested requiring the drifting and positioning equipment that many vessels already carry on board. One comment indicated that to be effective, a tracking device must not be bulky because the device must move with the spill. This comment also stated that the Coast Guard must thoroughly test a device before requiring it to be carried. Another comment submitted detailed information on a particular device. The interim final rule does not require the carriage of a spill tracking device. If the Coast Guard decides to evaluate a design for a spill tracking device, it will consider all reasonable suggestions.

Damage Stability Information

In § 155.240, the Coast Guard proposed that an owner or operator of an oil tanker or offshore oil barge have prearranged, prompt access to computerized on-board or shore-based damage stability and residual structural strength calculation programs. The intent of the requirement was to require an owner or operator to maintain vessel strength and stability characteristics on file in the program. The Coast Guard proposed that the means of access to this program be identified in the VRP required under §§ 155.1035 or 155.1040 of title 33 of the Code of Federal Regulations.

The Coast Guard received nine comments on this proposed requirement. Four comments supported the proposed requirements and suggested that there be a one-year implementation period. The Coast Guard agrees and has changed § 155.240 accordingly.

Two writers commented that the proposed rules were in conflict with existing regulations in 46 CFR 170.001 that set out applicability requirements for part 170, "Stability Requirements For All Inspected Vessels." The Coast Guard disagrees. One comment stated that the requirements should not apply to double-hull vessels because these vessels pose less risk to the environment than other vessels. The Coast Guard is requiring owners and operators of oil tankers and offshore oil barges to prearrange access to a computerized system for calculating damage stability, because this information will facilitate salvage in the event of a casualty. In a damaged and weakened condition, single-hulled and double-hulled vessels may each pose difficult problems to a salvor who must know the vessel's stability and remaining hull girder strength. Vessel characteristics and stability data that are pre-entered into a computerized calculation program will help owners, operators, and salvors to quickly calculate damage stability and residual structural strength.

The Coast Guard intends the requirements to provide a system for producing information that will assist salvors in solving at least the following salvage problems:

a. Calculating residual hull girder strength based on the reported extent of damage.

b. Calculating residual stability when the vessel's compartments are breached.

c. Calculating the most favorable off-loading, ballasting, or cargo transfer sequences to improve residual stability, reduce hull girder stresses, and reduce ground-force reaction.

d. Calculating bending and shear stresses due to pinnacle loads from grounding or stranding.

The owner or operator of an oil tanker or offshore oil barge will have to provide a minimum amount of information for pre-entry into the computerized program to ensure the program will provide useful information to the owner, operator, salvor, and Coast Guard and to enable salvors to make the calculations rapidly in the event of a casualty. The Coast Guard is requiring that owners or operators provide sufficient information to the computer program manager to enable these calculations to be made. The program manager may be a classification society, a part of the vessel owner's or operator's organization, or another organization which, along with the means of access, is identified in the VRP in accordance with the provisions of §§ 155.1035 or 155.1040 of title 33 of the Code of Federal Regulations.

One writer commented that there should be a size limit on vessels that must meet the requirements of this section. The Coast Guard believes that any tank vessel certificated for ocean or coastwise-service under 46 CFR chapter I, subchapter D should meet these requirements.

One comment strongly suggested that the Coast Guard be more definitive in the minimum requirements necessary for the damage stability and residual structural strength programs. The Coast Guard has decided not to require specific information for damage-stability calculations because the process of calculating damage stability and residual structural strength requires the following information: The specific nature of which varies from ship to ship: The general arrangement plan; a midships section plan; the location of the draft marks; the lines plan or table of offsets; the tank or ullage tables; and the light ship characteristics. Other information that may be helpful includes the trim and stability book, the loading manual, and the load line assignment.

One comment stated that there was no need for a computerized program because damage stability and residual structural strength calculations can be made without using a computerized system. The Coast Guard believes that the value of the computerized system is its speed and accuracy. A preloaded, computerized system will facilitate the rapid development of complex stability and residual hull strength calculations that are necessary to provide decision makers with a complete range of alternatives in a short time.

Existing §§ 155.1035 and 155.1040 of title 33 of the Code of Federal Regulations require owners or operators to maintain a copy of the vessel plans necessary to perform salvage, stability, and hull stress assessments, unless the vessel has prearranged for computerized, shore-based damage stability and residual hull strength calculation capability. The Coast Guard is amending the provisions of 33 CFR 155.1035 and 155.1040 to require all oil tankers and offshore oil barges to have prearranged access to a computerized capability to compute damage stability and residual hull strength.

The Coast Guard believes that emergency actions to salvage an ocean-going oil tanker or oil barge and its cargo and to prevent injury, loss of life, and damage to the environment must be taken promptly and without the delay required to manually calculate damage stability characteristics and residual hull strength. The Coast Guard also believes that this capability must be maintained ashore, even if the owner or operator also chooses to maintain the capability on board the vessel.

Inland oil barges must maintain, at a shore-based location, a copy of the vessel plans necessary to perform salvage, stability, and hull stress assessments.

Emergency Towing Capability for Certain Oil Barges

The Coast Guard proposed that offshore oil barges carry an emergency tow wire rigged and ready for use. Two writers commented that oil barges already carried an emergency towing pendant as an industry practice. They asked whether the Coast Guard intended to require a backup tow wire which duplicates the primary wire or to simply require that a pendant, which is capable of serving as the towing pendant in an emergency, be maintained on board the barge.

Section 155.230 requires barges to carry an emergency towing pendant for use in the event that the primary pendant fails. The Coast Guard is requiring the emergency pendant to have the same towing characteristics, but not necessarily the same physical characteristics, as the primary pendant. The requirement is intended to ensure that all oil barges, whether manned or unmanned, have a suitable pendant for use in an emergency so that the towing vessel can maintain or regain control of the barge. Under the IFR, the requirements of § 155.230 do not become effective until 180 days after the date of publication of the IFR in the **Federal Register**. This will provide the regulated community with adequate time to prepare for compliance.

The Coast Guard requested comments from the public on proposed requirements for ITBs to have emergency towing arrangements. The Coast Guard received no comments on this issue. The regulations continue to require dual mode ITBs to install an emergency towing pendant. ITBs designed for push-mode only must install the same towing arrangements required for tankers in § 155.235.

Emergency Towing Capability for Oil Tankers

The Coast Guard proposed two options in the NPRM for emergency towing arrangements for oil tankers and asked for public comment on which option is best. The Coast Guard received 36 comments on these options; 25 of the comments supported Option 1 and 11 comments supported Option 2.

Option 1 proposed requiring oil tankers to meet major provisions of Navigation and Inspection Circular (NVIC) No. 8–89, which endorses International Maritime Organization (IMO) Resolution A.535(13), *Recommendations on Emergency Towing Requirements for Tankers.* Resolution A.535(13) recommends strong points, chafing chains, and fairleads at the bow and stern of a tanker. Second, it requires fittings to facilitate passing the towing pendant from the rescue vessel using the rescue vessel's power. The Resolution recommends installation of these components on all tankers greater than 50,000 deadweight tons (dwt) built after adoption of the Resolution, and on tankers greater than 100,000 dwt built before adoption of the Resolution. Option 1, as proposed, extends the applicability of these requirements to oil tankers of 20,000 dwt or greater but less than 50,000 dwt, irrespective of when the oil tankers were built.

Option 2 combine features of IMO Resolution A.535(13) and the towing arrangements described in the Prince William Sound Tanker Spill Prevention and Response Plan, Volume 2. Option 2 also includes unique features that were installed by certain vessel owners. Under Option 2, oil tankers of 20,000 dwt and above would be required to comply with the recommendations of IMO Resolution A.535(13) regarding the provisions for strong points, fairleads, and chafing chains. In addition, oil tankers must have a 400 foot long towing wire pendant on one end; a 600 foot long floating, polypropylene pickup line; and a floating pickup buoy.

Option 2, as proposed, would require the towing pendant to be constructed of 2½ to 3 inch diameter, 6x37 to 6x41, extra-improved plow steel, IWRC (independent wire rope core), galvanized wire. This option also would require vessels to preconnect and store the chafing chain, pendant wire, and polypropylene line to facilitate the deployment of the pendant by no more than three crew members on a vessel with no power (deadship).

The Coast Guard recognizes the relative merits of each option. A disabled oil tanker that is adrift and uncontrolled poses an environmental hazard and endangers the lives and safety of the crew. Both options recognize that an emergency towing bridle is a preventive measure that may not only minimize or mitigate damage from oil pollution but may also save human life.

After considering all of the comments, the Coast Guard has decided to require oil tanker owners or operators to install an emergency towing bridle as identified in IMO Resolution A.535(13) (Option 1). The IMO is a specialized agency of the United Nations with a charter to focus international attention on common issues of marine safety and environmental protection, achieve international consensus on these issues, and develop international regulations. The United States participated in the development and adoption of Resolution A.535(13). The Resolution represents the best, most recent international consensus on emergency towing packages. Further, the IMO package was subject to international technological scrutiny. The Cost Guard also believes that owners or operators have had sufficient notice of the IMO provisions and, therefore, should be familiar with most of the requirements contained in Option 1. Some vessels already have installed this emergency towing package, and others are in the process of doing so.

The Coast Guard believes that a general requirement to implement the provisions of Option 2 is premature. Option 1 is an international standard while Option 2, as specifically proposed, reflects a proprietary system that has not been universally tested or accepted. Both options were proposed by the Committee for consideration by the public in the NPRM. The Coast Guard will not preclude oil tankers from installing the additional pendant, messenger, or marker buoy recommended in Option 2, as long as the oil tanker also complies with the requirements of IMO Resolution A.535(13). Under the regulations, a strong point, fairlead, and chafing chain, as a minimum, must be installed on each end of the vessel.

The Coast Guard believes that the issues raised by the comments supporting Option 2 are valid and merit international consideration and a consensus recommendation. The Coast Guard will propose that the international shipping and salvage communities, through the Marine Safety Committee of the IMO, evaluate alternative designs for an emergency towing assembly. The evaluation should consider costs, maintenance, stowage, and retrofitting requirements. Alternative designs should facilitate a rescue vessel taking a disabled, unpowered tanker under tow, in less than one hour, in adverse weather conditions, with minimum involvement by the tanker crew.

The Coast Guard proposed in § 155.235 that the applicability of IMO Resolution A.535(13) be extended to include vessels between 20,000 and 50,000 dwt. A number of comments disagreed with this proposal because the design approved by IMO includes somewhat larger components than those used by smaller vessels, and because extending the applicability is a

unilateral action not recommended by international consensus.

The Coast Guard does recognize a difference in the relative environmental risks posed by vessels of 20,000 to 50,000 dwt and vessels of 50,000 dwt and greater. Therefore, vessels of 20,000 dwt to 50,000 dwt are required under the regulations to have a towing pendant on at least one end. The Coast Guard will consider a scaled-down version of the structural dimensions for application to smaller vessels, so long as the strong point, fairlead, and chafing chain are sufficient for their intended use.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Assessment

This rule has been reviewed under Executive Order 12866 "Regulatory Planning and Review" and is significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). An interim Regulatory Assessment is available in the docket for inspection or copying where indicated under **ADDRESSES**. Present value costs and barrels of oil are discounted at a rate of seven percent for the period from 1993 to 2015. The following table summarizes the present value of the costs and the benefits in terms of discounted barrels of oil of this interim final rule. The table is grouped by those measures which mitigate spills and those which potentially prevent spills.

PRESENT VALUE COMPLIANCE COSTS AND BENEFITS OF DISCHARGE REMOVAL EQUIPMENT

Equipment	Cost ($M)	Benefit (bbls)
Prevention:		
On Deck Spill (includes coamings, sorbents, etc.).	11.00	397
Towing Package.	92.07	Not quantifiable.
Mitigation:		
Source Control	100.25	7,544
Damage Stability Program.	7.68	Not quantifiable.
Total	211.00	7,941

The Coast Guard does not expect this rule to impose substantial new costs on oil tanker owners or operators for acquiring discharge removal equipment to carry on board. Equipment to contain and remove on-deck spills includes peripheral coamings, sorbents, hand scoops, mops, buckets, and small portable pumps. Oil tankers already are in substantial compliance with the requirements for on-board equipment. For owners or operators of offshore oil barges, the annualized costs of on-board spill response equipment is approximately $0.11 million. Initial outfitting costs for inland oil barges is $4.51 million and $4.84 million for vessels carrying oil in bulk as secondary cargo. The present value of the costs of this discharge-removal equipment is $1.65 million for offshore oil barges, $4.51 million for inland oil barges, and $4.84 million for secondary cargo carriers. This requirement is estimated to prevent spillage of 397 discounted barrels of oil. The present value of the cost per barrel of oil not spilled is estimated to be $27,708.

The Coast Guard projects that the annualized cost of equipping oil tankers with an emergency towing package will be about $6.66 million. The annualized cost of equipping offshore oil barges will be about $.029 million. The present value of the cost of the towing equipment requirement is $89.48 million for oil tankers and $2.59 million for offshore oil barges. The proposed emergency towing package requirements will minimize the risk of a spill from a disabled or drifting vessel. Monetary benefits cannot be directly calculated for an emergency towing package. Historically, the ability to quickly and safely rig a tow for a stricken or disabled vessel has served to reestablish control; prevent grounding, collision, or foundering; save human life; and prevent or minimize damage to the environment that could arise from the breakup of the vessel. The development of IMO Resolution A.535(13) was a result of a corrective recommendation in response to lessons learned from the AMOCO CADIZ incident in 1978.

The Coast Guard intends that the required towing assemblies will help to prevent vessel disasters resulting in the total loss of cargo, as in the AMOCO CADIZ and BRAER incidents. In drafting this interim final rule, the Coast Guard examined data on 46 major spills occurring between 1980–1990. The size of the spillage ranged from just under 2,400 barrels to nearly 250,000 barrels.

Pre-unit clean-up costs of these 46 spills averaged significantly lower than the clean-up costs of smaller spills. While the clean-up costs per barrel of oil spilled for the 46-spill group averaged $777 per barrel, the most costly cleanup from among the data was $12,012 per barrel. These marked contrasts arose because a few very costly cleanups skewed the distribution sharply to the right. Standard deviation statistics cannot reliably measure the probable spill incidence because the analysis included a few very costly clean-ups.

When the 46-spill group was stratified into sub-groups based on the size of the spillage (2,380 barrels to 11,904 barrels; 11,905 barrels to 23,809 barrels; and 23,810 barrels to 250,000 barrels), the average clean-up costs per strata ranged from $135 per barrel to $1,555 per barrel.

The Coast Guard recognizes that a wide range of factors, such as vessel design, spill cause, and spill location directly affect clean-up costs. However, at the reported aggregate sample mean cost, if only one major spill in excess of 118,000 barrels from an oil tanker the size of the OCEAN EAGLE, ARGO MERCHANT, EXXON VALDEZ, MEGA BORG, or the BRAER can be averted by using a towing bridle, the benefits accrued in avoiding clean-up expenses would exceed the costs of compliance with this provision.

Requirements for source control equipment (hoses) will impose an annualized cost of $7.37 million on the owners of oil tankers and $0.72 million on the owners of offshore oil barges. The present value of the costs for source control equipment is $91.33 million for oil tankers and $8.92 million for offshore oil barges. But this requirement is estimated to result in 7,544 discounted barrels of oil not spilled, at a present value of $13,289 for each of those barrels.

Annual costs of the damage stability and structural strength calculation programs will be approximately $0.56 million for oil tankers and $0.07 million for offshore oil barges. The present value of the costs of those programs is $6.89 million for the owners of oil tankers and $0.79 million for the owners of offshore oil barges. While the direct benefits of this requirement cannot be quantified, fast and accurate salvage analysis will facilitate a critical decision-making process and reduce vessel and cargo loss. The result will be to minimize environmental damage and the loss of real and financial assets.

The Coast Guard analyzed alternative measures, including the requirement to warehouse fixed-flotation booms and remotely-deployed and operated workboats on board tank vessels. The present value of the cost of warehousing fixed-flotation booms is $825.8 million, while these booms could prevent 2,232 discounted barrels of oil spillage. The present value of the cost to carry

warehoused booms is $369,982 per barrel of oil not lost to the environment.

Requiring operators to carry reel-mounted inflatable boom could be even more costly. Remotely-controlled boom deployment capability would cost the owners of tank vessels, in present value, an additional $170.9 million. But requiring oil tankers to carry remotely-controlled workboats to deploy boom could improve the effectiveness of "warehoused" boom by 25% and, therefore, could result in an additional 558 discounted barrels of oil not lost to the environment. The requirement to carry remotely-controlled workboats to deploy boom from tank vessels would result in an additional present value of the cost of $306,272 per barrel of oil not spilled.

Although some vessel operators do carry equipment on board for on-water response to oil spills, the Coast Guard has determined that current information does not support a broad requirement for all tank vessels to warehouse oil spill response equipment, such as booms and skimmers, for use off of the tank vessel. This equipment does not appear to be economically feasible at present because the identifiable costs significantly outweigh the estimated benefits.

In the case of remotely-controlled workboats to deploy boom, the system appears to give the vessel the capability to deploy and set boom more rapidly without jeopardizing crew safety; however, the technology has not been accepted in the marketplace and has not been tested or demonstrated sufficiently to determine accurately its effectiveness or warrant its cost. At the recommendation of the Committee, the Coast Guard has decided to set strict response requirements, but will allow the vessel owner or operator to select a method of compliance, either warehoused or shore-based oil spill response equipment. The owner or operator is not precluded from carrying spill response equipment for on-water containment and removal operations, as long as the equipment is compatible with the safe operation of the vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Most of the small businesses affected by this rule operate inland oil barges and vessels which carry oil in bulk as secondary cargo. This interim final rule imposes total annual costs of less than $1.2 million for offshore oil barges and initial outfitting costs of $4.51 million for inland oil barges and $4.84 million for secondary vessel industries. After initial outlays, ninety-one percent or $14.7 million of the total annual costs will be paid by the oil tanker industry, which does not have a substantial number of small entities. Because it expects the impact of this rule on small entities to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements. Damage stability information required in § 155.240 is already required under 46 CFR chapter I, subchapter S, which has an approved collection of information (OMB control number 2115–0559) that expires October 31, 1995.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule establishes regulations requiring certain vessels to carry discharge removal equipment. In *Ray* v. *Atlantic Richfield*, (435 U.S. 51, 98 S. Ct. 988, [1978]), the Supreme Court found that vessel design and equipment standards fall within the exclusive province of the Federal Government. The OPA 90 Conference Report explicitly says that provisions in section 1018 of OPA 90 preserving certain State authority are not meant to disturb this Supreme Court decision (House Conf. Rep., p. 122). Therefore, the Coast Guard intends this rule to preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard has concluded that these regulations, when considered independently, are not expected to result in a significant impact on the quality of the human environment, as defined by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Requiring vessels to carry adequate on-deck spill containment and removal equipment and cargo transfer and emergency towing capability would provide enhanced protection to the environment. An Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) are available in the docket for this rulemaking. No comments were received on the EA or the FONSI.

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, and 155.1010 through 155.1070 also issued under 33 U.S.C. 1903(b); and §§ 155.1110 and 155.1150 also issued under 33 U.S.C. 2735.

2. In § 155.140, revise paragraph (a), and in paragraph (b), add, in alphabetical order, a new entry to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard Marine Environmental Protection Division (G–MEP), room 2100, 2100 Second Street SW., Washington, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) * * *

* * * * *

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 75R, United Kingdom, Telex 23588.

Resolution A.535(13), Recommendations on Emergency Towing Requirements for Tankers, November 17, 1983 ..... 155.235

* * * * *

3. Sections 155.200, 155.205, 155.215, 155.220, 155.225, 155.230, 155.235, 155.240, and 155.245 are added to subpart B to read as follows:

§ 155.200 Definitions.

As used in this subpart:

Inland oil barge means a tank barge carrying oil in bulk as cargo certificated by the Coast Guard under 46 CFR chapter I, subchapter D for river or canal service or lakes, bays, and sounds service.

On-deck spill means a discharge of oil on the deck of a vessel during loading, unloading, transfer, or other shipboard operations. An on-deck spill could result from a leaking fitting, an overfill, a bad connection, or similar operational mishap. The term *on-deck spill* is used to differentiate these operational discharges from those caused by collision or grounding where the hull is punctured and a tank is ruptured, resulting in an uncontrolled discharge of oil into the marine environment.

Offshore oil barge means a tank barge carrying oil in bulk as cargo, including dual-mode integrated tug-barges, certificated by the Coast Guard under 46 CFR chapter I, subchapter D, for navigation in waters outside the Boundary Lines, as defined in 46 CFR part 7, in any ocean or the Gulf of Mexico; any tank barge in Great Lakes service; or any foreign flag tank barge.

Oil tanker means a self-propelled vessel carrying oil in bulk as cargo, including integrated tug-barges designed for push-mode operation.

Vessel carrying oil as secondary cargo means a vessel carrying oil pursuant to a permit issued under 46 CFR 30.01–5, 46 CFR 70.05–30, or 46 CFR 90.05–35 or pursuant to an international Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by §§ 151.33 or 151.35 of this chapter; or any uninspected vessel that carries oil in bulk as cargo.

§ 155.205 Discharge removal equipment for vessels 400 feet or greater in length.

(a) By June 20, 1994, oil tankers and offshore oil barges with an overall length of 400 feet or more must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least 12 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing;

(6) A minimum of one non-sparking portable pump with hoses; and

(7) Scupper plugs.

(c) During cargo transfer operations, the equipment and supplies must remain ready for immediate use.

§ 155.210 Discharge removal equipment for vessels less than 400 feet in length.

(a) By June 20, 1994, oil tankers and offshore oil barges with an overall length of less than 400 feet must carry appropriate equipment and supplies for the containment and removal of on-deck oil spills of at least 7 barrels.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning;

(5) Protective clothing;

(6) A minimum of one non-sparking portable pump with hoses; and

(7) Scupper plugs.

(c) During cargo transfer operations, the equipment and supplies must remain ready for immediate use.

§ 155.215 Discharge removal equipment for inland oil barges.

(a) By June 20, 1994, during cargo transfer operations, inland oil barges must have appropriate equipment and supplies ready for immediate use to control and remove on-deck oil cargo spills of at least one barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning; and

(5) Protective clothing.

(c) The oil barge owner or operator may rely on equipment available at the transfer facility receiving from or discharging to the barge, provided the barge owner or operator has prearranged for the use of the equipment by contract or other means approved by the Coast Guard.

§ 155.220 Discharge removal equipment for vessels carrying oil as secondary cargo.

(a) By June 20, 1994, vessels carrying oil as secondary cargo must carry appropriate equipment and supplies for the containment and removal of on-deck oil cargo spills of at least one-half barrel.

(b) The equipment and supplies must include—

(1) Sorbents;

(2) Non-sparking hand scoops, shovels, and buckets;

(3) Containers suitable for holding recovered waste;

(4) Emulsifiers for deck cleaning; and

(5) Protective clothing

(c) The equipment and supplies must be ready for immediate use during cargo transfer operations.

§ 155.225 Internal cargo transfer capability.

By June 20, 1994, oil tankers and offshore oil barges must carry suitable hoses and reducers for internal transfer of cargo to tanks or other spaces within the cargo block, unless the vessel's installed cargo piping system is capable of performing this function.

§ 155.230 Emergency towing capability for oil barges.

(a) By June 20, 1994, offshore oil barges must carry an emergency tow wire or tow line rigged and ready for use.

(b) The emergency tow wire or tow line must have the same towing characteristics as the primary tow wire or tow line.

§ 155.235 Emergency towing capability for oil tankers.

(a) Except as provided in paragraph (c) of this section, by January 21, 1997, oil tankers of 20,000 deadweight tons (dwt) or more but less than 50,000 dwt must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on at least one end of the vessel.

(b) Except as provided in paragraph (c) of this section, by January 21, 1997, oil tankers of 50,000 dwt or more must comply with the emergency towing provisions of sections 2.2 through 2.7 of IMO Resolution A.535(13) on both ends of the vessel.

(c) Oil tankers that are at least 20 years old (calculated from the keel laying date, as defined in 46 CFR 30.10–37) as of January 21, 1994, must comply with the requirements of paragraphs (a) and (b) of this section by January 21, 1999.

§ 155.240 Damage stability information for oil tankers and offshore oil barges.

(a) Owners or operators of oil tankers and offshore oil barges shall ensure by no later than January 21, 1995, that their vessels have prearranged, prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

(b) Vessel baseline strength and stability characteristics must be pre-

entered into such programs and be consistent with the vessel's existing configuration.

(c) Access to the shore-based calculation program must be available 24 hours a day.

(d) At a minimum, the program must facilitate calculation of the following:

(i) Residual hull girder strength based on the reported extent of damage.

(ii) Residual stability when the vessel's compartments are breached.

(iii) The most favorable off-loading, ballasting, or cargo transfer sequences to improve residual stability, reduce hull girder stresses, and reduce ground-force reaction.

(iv) The bending and shear stresses caused by pinnacle loads from grounding or stranding.

§ 155.245 Damage stability information for inland oil barges.

(a) Owners or operators of inland oil barges shall ensure by no later than January 21, 1995, that the vessel plans necessary to perform salvage, stability, and residual hull strength assessments are maintained at a shore-based location.

(b) Access to the plans must be available 24 hours a day.

4. In § 155.310, the section heading and the introductory text to paragraph (b) are revised and paragraphs (c) and (d) are added to read as follows:

§ 155.310 Containment of oil and hazardous material cargo discharges.

* * * * *

(b) An offshore tank barge with a cargo capacity of 250 or more barrels that is carrying hazardous material as cargo and an inland tank barge with the capacity of 250 or more barrels that is carrying oil or a hazardous material as cargo must meet paragraph (a) of this section or be equipped with—

* * * * *

(c) By January 21, 1997, all oil tankers and offshore oil barges with a cargo capacity of 250 or more barrels must have peripheral coamings, including port and starboard coamings and forward and aft athwartships coamings, completely enclosing the cargo deck area, cargo hatches, manifolds, transfer connections, and any other openings where cargo may overflow or leak.

(1) Coamings must be at least 4 inches high except in the aft corners.

(2) In the aft corners (port and starboard) of a vessel, the coamings must be at least 8 inches high and extend—

(i) Forward at least 14 feet from each corner; and

(ii) Inboard at least 8 feet from each corner.

(3) Each area enclosed by the coaming required under this paragraph must have—

(i) A means of draining or removing oil from the enclosed deck area without discharging oil into the water; and

(ii) A mechanical means of closing each drain and scupper in the enclosed deck-area.

(4) For a tankship, as defined in 46 CFR 30.10–67, the coaming or other barrier required in 46 CFR 32.56–15 may serve as the aft athwartships coaming if the tankship is otherwise in compliance with the requirements of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, an offshore oil barge with a cargo capacity of 250 or more barrels must have—

(1) A fixed or portable container that holds at least one-half barrel under each oil loading manifold and each oil transfer connection within the coaming;

(2) A mechanical means of closing each drain and scupper within the coaming; and

(3) A means of draining or removing discharged oil from the fixed or portable container and from within the coaming without discharging the oil into the water.

Dated: December 10, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–30701 Filed 12–21–93; 8:45 am]

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December 22, 1993

Part VI

Department of Housing and Urban Development

Submission of Proposed Information Collection to OMB for NOFA for Fair Housing Initiatives Program; Competitive Solicitation; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-93-3683; FR-3560-N-01]

NOFA for Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces HUD's 1993 Fiscal Year (FY) funding of $8.8 million for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the Notice. Applications may be submitted until the application due date at any time after the publication of this Notice. The actual application due date and time will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until February 22, 1994, to submit their applications.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1-800-343-3442.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529-0033. This NOFA adds new collection of information requirements at section I.(c)(4), related to the new Fair Housing Organization Initiative, which was added by section 905 of the Housing and Community Development Act of 1992. In addition to other information collections previously authorized, to avoid an appearance of a conflict of interest in the implementation of projects and activities funded under FHIP, section III.(a)(9) of this NOFA requires all applicants to list any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or real estate-related transactions. This listing must include the name of the entity or organization, a brief description of the services being performed for which negotiations are pending, and the dates of performance of the services. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

Expedited review has been requested with a twenty day public comment period, so that the application process described in this notice may be carried out after approval of the described collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Section of NOFA affected	Number of respondents	Hours per response	Total hours
I.(c)(4)	300	18	5400
III.(a)(9)	300	1	300
Total Annual Reporting Burden			5,700

I. Purpose and Substantive Description:

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organization Initiative.

More significantly, section 905 has established FHIP as a permanent program. As originally promulgated by section 561, FHIP was a demonstration program authorized to expire on September 30, 1992. Since this demonstration period has passed, and FHIP is now a permanent program, the Department has determined that the requirements specifically tied to the demonstration period, namely, the testing guidelines at § 125.405, are no longer applicable to FHIP. Accordingly, the use of these testing guidelines is not required under this NOFA. The Department has executed a waiver of § 125.405 for the purposes of this

NOFA, pending the elimination of this provision in the revision of 24 CFR part 125. Because section 905 does not eliminate any FHIP provisions other than those related to its status as a demonstration program, the Initiatives, activities, and applicants currently eligible under 24 CFR part 125 remain eligible under this NOFA.

This NOFA further incorporates the HCDA 1992 section 905 FHIP additions to the extent of listing the new eligible applicants and activities. The new Fair Housing Organization Initiative is also funded. For the purpose of future funding rounds, the Department is soliciting in a separate proposed rule comments on the amendment of 24 CFR part 125 by section 905. The proposed rule will be published shortly in the **Federal Register**. However, applications for FY 1993 funds will be subject to the requirements and deadlines in this NOFA. Eligible applicants should not wait for the rule's publication to prepare and submit their FY 1993 applications in response to this NOFA.

Two of the new eligible applicants, fair housing enforcement organizations and qualified fair housing enforcement organizations, are given specific definitions, which apply to this NOFA, in section 905:

Fair housing enforcement organization (FHO-E) means any organization that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Qualified fair housing enforcement organization means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative.

(b) Allocation Amounts

For FY 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (approved October 6, 1992, Pub. L. 102-389), (93 App. Act) appropriated $10.6 million for the FHIP program. Of this amount, $1.8 of Education and Outreach Initiative funds will be made available in a NOFA to be published separately for an affirmative fair housing marketing project. The remaining $8.8 million is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information. The Department retains the right to shift funds between FHIP Initiatives, listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total amount available under this NOFA will be divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of $1 million in FY 1993 funds is available under this NOFA for the Administrative Enforcement Initiative. The minimum amount of funding applied for under the Administrative Enforcement Initiative must be at least $75,000.

(2) *Education and Outreach Initiative.* The amount of $1.2 million in FY 1993 funds is available under this NOFA for the Education and Outreach Initiative. Half of this amount, $600,000, is available for national programs, of which $200,000 is designated for Fair Housing Month activities. National program applications under the Education and Outreach Initiative must be for not more than $200,000 and not less than $100,000 of FHIP funding or they will not be considered. The remaining $0.6 million is available for regional, local, and community-based programs. The minimum amount of funding applied for under the Education and Outreach Initiative for regional/local/community-based program activities must be at least $50,000.

(3) *Private Enforcement Initiative.* The amount of $4 million in FY 1993 funds is available under this NOFA for the Private Enforcement Initiative. Half of this amount, $2 million, will be available for two-year projects, with the commitment of second year funding, in an amount not to exceed the first year's funding, subject to annual appropriations and annual performance reviews. The remaining $2 million is for single year projects. The minimum amount of funding applied for under the Private Enforcement Initiative must be at least $75,000. For two-year projects, the minimum amount of funding must be at least $75,000 for the first year of the project.

(4) *Fair Housing Organization Initiative.* This NOFA makes $2.6 million in FY 1993 funds available for activities under the Fair Housing Organization Initiative. Of this amount, $1 million is available for the purpose of the continued development of existing organizations, and applications under this purpose are not subject to any minimum or maximum funding limitations within the total amount available. The remaining $1.6 million will be available for two-year projects for the purpose of establishing new organizations, with the commitment of second year funding subject to annual appropriations and annual performance reviews. The minimum funding amount for two-year projects for the purpose of establishing new organizations must be at least $200,000 for the first year of the project.

(c) Eligibility

(1) *Administrative Enforcement Initiative.*

(i) *Eligible applicants.* The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws certified by the Secretary as providing rights and remedies that are substantially equivalent to those provided in the Fair Housing Act. A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent under 24 CFR part 115, or have entered into an agreement with the Department for interim referrals, as provided in 24 CFR 115.11.

(ii) *Eligible activities.* Funding will be available to support enforcement and compliance activities conducted by eligible State and local agencies. Eligible activities may include (but are not limited to) the following:

(A) The Department is particularly interested in projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices;

(B) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions,

including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(C) Implementing fair housing testing and other related enforcement activity programs;

(D) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice; and

(E) Developing new procedures to increase the efficiency of operations, such as the use of computers for case processing, tracking, and Home Mortgage Disclosure Act (HMDA) analysis.

(iii) *Term of contract.* Administrative Enforcement Initiative funding is only available for single year projects, which may be for up to eighteen months in duration.

(iv) *Case tracking log requirement.* Recipients of funds under the Administrative Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(2) *Education and Outreach Initiative.*

(i) *Eligible applicants.* The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(A) State or local governments;

(B) Qualified fair housing enforcement organizations (QFHO–Es);

(C) Fair housing enforcement organizations (FHO–Es);

(D) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(E) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and

(F) Community Housing Resource Boards (CHRBs).

(ii) *Eligible activities.* (A) *In general.* Each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, or regional/local/community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(*1*) The Department particularly wishes to encourage, for this round of FHIP funding, applications for projects that will provide housing, mortgage lending, appraisal, and insurance counseling services;

(*2*) Developing informative material on fair housing rights and responsibilities;

(*3*) Developing fair housing and affirmative marketing instructional material for educational programs for national, regional and local housing industry groups;

(*4*) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups;

(*5*) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights;

(*6*) Developing national, regional or local media campaigns regarding fair housing;

(*7*) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(*8*) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(*9*) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices; and

(*10*) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm.

(B) *National programs.* (*1*) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products that may appropriately be used on a nationwide basis, including:

(*i*) Public service announcements, both audio and video;

(*ii*) Television, radio and print advertisements;

(*iii*) Posters; and

(*iv*) Pamphlets and brochures.

(*2*) Applicants must separately indicate if they are applying for funding of activities related to the annual National Fair Housing Month. Fair Housing Month activities must be directed toward all protected class members.

(*3*) National program applications, including those for Fair Housing Month funding, will receive a preference of up to ten additional points if they:

(*i*) Demonstrate cooperation with real estate industry organizations (five points); and/or

(*ii*) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (five points).

(C) *Regional/local/community-based programs.*

(*1*) Activities eligible to be funded as regional/local/community-based programs include any of the activities, to be implemented on a regional/local/community-based level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(*1*), above, of this NOFA. Community-based programs include school, church and community presentations, conferences or other educational activities.

(*2*) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a state. Activities that are "community-based" in scope are those which are primarily focused on a particular area or population within a unit of general local government.

(*3*) Every regional/local/community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(*4*) Community-based program applications from eligible applicants that are also community-based organizations will receive a preference of ten additional points. For the purposes of this NOFA, a community-based organization is an organization whose members come primarily from a particular area or population within a unit of general local government.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from six to eighteen months in duration.

(C) A data gathering activity will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(3) *Private Enforcement Initiative.*

(i) *Eligible applicants.* Organizations that are eligible to receive assistance under the Private Enforcement Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(C) Private non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Organizations which can be eligible include, for example, private nonprofit fair housing, disability and civil rights groups. To be eligible for funding of testing activities, these organizations must have at least one year of experience in carrying out a program to prevent or eliminate housing discrimination practices and sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully.

(ii) *Eligible activities.* Applications are solicited for one- and two-year project proposals as described in 24 CFR 125.403 and in this NOFA. The Department is particularly interested in projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices. Applications may designate up to 10% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(B) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(C) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(D) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(E) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(F) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(G) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(H) Providing funds for the costs and expenses of litigation, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with Private Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Single year projects may be for up to eighteen months in duration. Two-year projects may not exceed twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.404, no recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Act Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(4) *Fair Housing Organization (FHO) Initiative.*

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(*1*) Qualified fair housing enforcement organizations;

(*2*) Other private nonprofit fair housing enforcement organizations; and

(*3*) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA.

(C) *Operating budget limitation. (1)* Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year.

(2) For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(D) *Term of contract.* Single year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Any applicants eligible under any of the other FHIP Initiatives in this NOFA are eligible applicants for funding under this purpose of the FHO Initiative.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are two-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in section I.(c)(4)(ii)(C), below, of this NOFA. The Department has considered a number a factors to identify the targeted areas eligible for this purpose of the FHO Initiative under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas. (1)* A preference of ten additional points will be given for

applications that propose to establish new fair housing enforcement organizations in any of the following unserved areas:

(i) Arkansas;
(ii) Idaho;
(iii) Mississippi;
(iv) New Mexico;
(v) North Dakota; and
(vi) Wyoming.

(2) Applications that propose to establish new fair housing enforcement organizations in any of the following underserved areas will also be considered for funding:

(i) Georgia;
(ii) Iowa;
(iii) Kansas;
(iv) Louisiana;
(v) Missouri;
(vi) Nebraska;
(vii) Oklahoma;
(viii) South Carolina;
(ix) Texas;
(x) Utah; and
(xi) Washington.

(D) *Term of contract.* Two-year projects may not exceed twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(d) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance. In addition to the preference points indicated in section I.(c) for particular activities, all projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (25 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(1), III.(a)(2) and III.(a)(6) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (25 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) demonstrated through previous FHIP or other civil rights project management will be taken into account as part of the assessment. HUD also will consider the degree to which the applicant proposes to use funds for program costs, as opposed to administrative costs. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), III.(a)(5) and, in part, III.(a)(3) and III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (20 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the General Selection Criteria identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for each Initiative. In addition, the rank ordering will be done separately for each type of program (national, regional/local/community-based, and national fair housing month) of the Education and Outreach Initiative, and each purpose (continued development of existing organizations, or establishing new organizations) under the Fair Housing Organization Initiative. Awards for each Initiative will be made as follows:

(i) *Administrative Enforcement Initiative.* Acceptable applications will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(ii) *Education and Outreach Initiative.* (A) National programs. Acceptable applications will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(B) National Fair Housing Month. Acceptable applications will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(C) Regional/local/community-based programs. Acceptable applications will be funded in rank order, by HUD Region, for the top application in each such Region. This selection will be based on the location of the proposed activity, not the location of the applicant. Where activities are proposed for sites in two or more HUD Regions, the site with the greatest amount of activity will be the location for the Regional selection purposes. If any funds remain after funding the top applications on a Regional basis, they will be awarded in rank order on a nation-wide basis.

(iii) *Private Enforcement Initiative.* Acceptable applications will be funded in rank order, by HUD Region, for the top application recommended for funding in each such Region. If any funds remain after funding the top application on a Regional basis, they will be awarded in rank order on a nation-wide basis.

(iv) *Fair Housing Organization Initiative.* (A) Continued Development of Existing Organizations. Acceptable applications will be funded in rank order, by HUD Region, for the top application in each Region. If any funds remain after funding the top application on a Regional basis, they will be awarded in rank order on a nation-wide basis.

(B) Establishing New Organizations. Acceptable applications will be funded in national rank order until all available funds have been obligated, or until there are no acceptable applications. The only exception to national rank order funding will be if more than one high ranking application proposes activities for the same location, then only the highest ranked application for that location will be funded.

(3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, S.W., Washington, DC 20410.

The application due date and time will be specified in the application kit. Applications may be submitted until the application due date at any time after the publication of this NOFA. However, applicants will be given at least 60 days from today's date, until [insert date 60 days from **Federal Register** publication], to submit their applications.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be

submitted for each of the following categories of funding:

(1) Administrative Enforcement Initiative activities;

(2) National programs under the Education and Outreach Initiative;

(3) National Fair Housing Month activities under the Education and Outreach Initiative;

(4) Regional/local/community-based activities under the Education and Outreach Initiative;

(5) Private Enforcement Initiative activities;

(6) Continued development of existing organizations under the Fair Housing Organization Initiative; and

(7) Establishing new organizations under the Fair Housing Organization Initiative.

Although a separate application is required for each funding category, an application may propose more than one type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) General requirements. The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include a realistic amount, not to exceed $2,000, in travel costs for training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for Federal funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured, and;

(7) A description of the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed;

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and 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. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF-LLL).

(11) The applicant must submit a certification that it will comply with:

(i) The work to be performed under this award is on a project which provides direct Federal financial assistance from the Department of Housing and Urban Development. As such, it is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701a), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area within the unit of local government or metropolitan area (or nonmetropolitan county) and for work in connection with the project to be awarded to eligible businesses located in or owned in substantial part by persons residing in the area.

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(b) Additional Education and Outreach Initiative requirements.

(1) In addition to meeting the application requirements contained in section III.(a) of this NOFA, all applications for Education and Outreach Initiative funding must describe how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, documentation that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(3) Every regional/local/community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(c) Additional Private Enforcement Initiative requirements. In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

(d) Additional Fair Housing Organization Initiative requirements. Each applicant under the continued development of existing organizations purpose of the Fair Housing Organization Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

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 sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which 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 between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule 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 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that 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 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

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 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 subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule 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 limited 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 under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (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.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act 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.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 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.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 14, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–31239 Filed 12–21–93; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3683; FR–3560–N–02]

Submission of Proposed Information Collection to OMB for NOFA for Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comment due date is January 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Joseph Lackey, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503,

Joan Campion, Rules Docket Clerk, Department of HUD, 451 Seventh Street, room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4178, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program.

The NOFA announces HUD's 1993 Fiscal Year (FY) funding of $8.8 million for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws.

In addition to giving the amounts available for funding the Fair Housing Initiatives Program for FY 1993, the NOFA describes: (1) The nature and scope of eligible program activities; (2) the requirements and procedures for applicants to follow; (3) the selection criteria for applications.

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529–0033. The NOFA adds new collection of information

requirements at section I.(c)(4), related to the new Fair Housing Organization Initiative, which was added by section 905 of the Housing and Community Development Act of 1992. In addition to other information collections previously authorized, to avoid an appearance of a conflict of interest in the implementation of projects and activities funded under FHIP, section III.(a)(9) of this NOFA requires all applicants to list any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or real estate-related transactions. This listing must include the name of the entity or organization, a brief description of the services being performed for which negotiations are pending, and the dates of performance of the services. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

Expedited review has been requested with a twenty day public comment period, so that the application process described in this NOFA may be carried out after approval of the described collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Section of NOFA affected	Number of respondents	Hours per response	Total hours
I.(c)(4)	300	18	5,400
III.(a)(9)	300	1	300
Total annual reporting burden			5,700

The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) Title of the information collection proposal: Fair Housing Initiatives Program Notice of Funding Availability.

(2) Office of the Agency to collect the information: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

(3) Description of the need for the information and its proposed use: The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

(4) Agency form number: Not applicable at this time.

(5) Members of the public who will be affected by the proposal (eligible applicants, depending upon the activity for which funding is sought): State and local fair housing agencies; State or local governments; qualified fair housing enforcement organizations; fair housing enforcement organizations; public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices; Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); Community Housing Resource Boards (CHRBs); Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(6) How frequently information submissions will be required: One time.

(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response: See the Chart under the heading "Reporting Burden" below.

(8) Type of request: Additional requirements request.

(9) The name and telephone number of an agency official familiar with the proposal: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

A summary of the information collection requirements for which approval has been requested is set forth following the signature in this notice as an exhibit only. The paperwork burden is stated on a chart under the heading "Reporting Burden".

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 14, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Proposal: Notice of Funding Availability for 1993—Fair Housing Initiatives Program.

Office: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with the issuance of a Notice of Funding Availability (NOFA) that announces the availability of $8.8 million for the Fair Housing Initiatives Program. The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

Form Number: None.

Respondents: State and local fair housing agencies; State or local governments; qualified fair housing enforcement organizations; fair housing enforcement organizations; public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices; Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); Community Housing Resource Boards (CHRBs); Nonprofit

groups organizing to build their capacity to provide fair housing enforcement.

Frequency of Submission: One time.

REPORTING BURDEN

Section of NOFA affected	Number of respondents	Hours per response	Total hours
I.(c)(4)	300	18	5,400
III.(a)(9)	300	1	300
Total annual reporting burden			5,700

Status: Additional requirements request.

Contact: Jacquelyn J. Shelton, HUD, (202) 708–0800; Joseph Lackey, OMB, (202) 395–7316.

The following is an excerpt from an as-yet unpublished Notice of Funding Availability (NOFA) for the FY 1993 Fair Housing Initiatives Program. The NOFA announces HUD's FY 1993 funding of $8,800,000 for the Fair Housing Initiatives Program (FHIP) to be used for projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. The NOFA will contain information concerning the purpose of the program, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made. The purpose of publishing the following excerpt from the NOFA is to inform the public of the information collection requirements that will be contained in the NOFA.

Section I.(c)(4)

Excerpts From the Fair Housing Initiatives Program Notice of Funding Availability—FY 1993:

(4) *Fair Housing Organization (FHO) Initiative.*

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(*1*) Qualified fair housing enforcement organizations;

(*2*) Other private nonprofit fair housing enforcement organizations; and

(*3*) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA.

(C) *Operating budget limitation.* (*1*) Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year.

(*2*) For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(D) *Term of contract.* Single year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Any applicants eligible under any of the other FHIP Initiatives in this NOFA are eligible applicants for funding under this purpose of the FHO Initiative.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are two-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in section I.(c)(4)(ii)(C), below, of this NOFA. The Department has considered a number of factors to identify the targeted areas eligible for this purpose of the FHO Initiative under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas.* (*1*) A preference of ten additional points will be given for applications that propose to establish new fair housing enforcement organizations in any of the following unserved areas:

(*i*) Arkansas;

(*ii*) Idaho;

(*iii*) Mississippi;

(*iv*) New Mexico;

(*v*) North Dakota; and

(*vi*) Wyoming.

(*2*) Applications that propose to establish new fair housing enforcement organizations in any of the following underserved areas will also be considered for funding:

(*i*) Georgia;

(*ii*) Iowa;

(*iii*) Kansas;

(*iv*) Louisiana;

(*v*) Missouri;

(*vi*) Nebraska;

(*vii*) Oklahoma;

(*viii*) South Carolina;

(*ix*) Texas;

(*x*) Utah; and

(*xi*) Washington.

(D) *Term of contract.* Two-year projects may not exceed twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

Section III.(a)(9)

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

[FR Doc. 93–31238 Filed 12–21–93; 8:45 am]

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federal register

Wednesday
December 22, 1993

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Regulations Prohibiting Taking of Free Ranging Wolves and Wolverines on Alaska National Wildlife Refuges; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC16

Regulations Prohibiting Taking of Free Ranging Wolves and Wolverines on Alaska National Wildlife Refuges on the Same Day the Trapper or Hunter Is Airborne

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes a rulemaking to prohibit trappers and hunters from shooting free ranging wolves and wolverines in national wildlife refuges (refuges) in Alaska on the same day in which the person is airborne. Trapping and hunting will continue to be allowed on Alaska refuges pursuant to applicable, non-conflicting State of Alaska (State) and Federal laws and regulations, as specifically authorized by the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. Aircraft access to and within Alaska refuges for sport or subsistence hunting, trapping, fishing and other traditional activities, and for travel to and from villages and homesites will continue to be allowed subject to reasonable regulations to protect refuge resources and ensure that uses are compatible with refuge purposes.

DATES: Written comments will be accepted on or before February 22, 1994.

ADDRESSES: Comments should be addressed to: George Constantino, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: George Constantino, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199, Telephone: (907) 786–3357.

SUPPLEMENTARY INFORMATION: The State has recently promulgated a regulation that would allow trappers to take wolves with firearms the same-day-airborne as long as the trapper is 300 feet from the aircraft.

This proposed rule would—

1. prohibit the same-day-airborne taking of wolves and wolverines except that trappers could use firearms to dispatch legally caught wolves or wolverines in a trap or snare on the same-day-airborne and this prohibition would not apply to people transported on regularly scheduled commercial airlines between public airports;

2. satisfy the legal mandates to provide for subsistence and sport hunting and trapping on Alaska refuges;

3. maintain compatibility between hunting and trapping and legislative purposes, the mission of the National Wildlife Refuge System, and established refuge policies; and

4. provide more effective enforcement of hunting and trapping laws and regulations.

Regulatory Background

The National Wildlife Refuge Administration Act of 1966 (Pub. L. 89–669; 16 U.S.C. 668dd–668ee) provides guidelines and directives for the use of the National Wildlife Refuge System and authorizes the Secretary of the Interior to regulate uses within any area of the refuge system provided "such uses are compatible with the major purposes for which such areas were established."

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96–487) which established new, and added to existing, national wildlife refuges in Alaska. Section 302 of ANILCA established purposes for which each refuge shall be managed. Section 304 of ANILCA prohibits the Secretary, subject to valid existing rights, from permitting any use for any purpose unless such use or purpose is compatible with the purposes of the refuge. That section also requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that activities carried out under any use granted under any authority are so compatible. Section 1110 of ANILCA directs the Secretary to permit the use of airplanes on Alaska refuges for traditional activities and that such access shall be subject to reasonable regulation to protect the natural and other values of the refuge. The intent of Congress to allow subsistence and sport trapping and hunting on Alaska refuges is reflected in the special regulations for Alaska National Wildlife Refuges contained in title 50, part 36 of the Code of Federal Regulations (CFR).

In 1992, after many years of controversy, the State prohibited the land and shoot method of taking wolves by making it illegal to shoot a wolf until 3 a.m. on the day following the day the hunter or trapper was airborne. The State's decision to prohibit same-day-airborne wolf taking has been accepted by most hunters. It allows adequate access to wildlife resources while at the same time prevents abuses that could result from hunters being able to spot and drive or track wolves from the air and then land and immediately shoot the animal. However, some Alaska trappers and hunters have pressed the Alaska Board of Game (Board) to reconsider the same-day-airborne prohibition.

In July 1993, the Board adopted a regulation that allows trappers to shoot wolves the same-day airborne, provided the person is at least 300 feet from the airplane. Under State law, any resident over age 16 who pays a $15 fee qualifies as a trapper and can engage in the land and shoot method, whether the wolf is free ranging or trapped. State hunting regulations continue to prohibit hunters from shooting wolves and wolverines until 3 a.m. on the day after the hunter flew. The new State trapping regulations became effective October 1, 1993.

The Service has long maintained a policy that hunting and trapping on national wildlife refuges should incorporate elements of fair chase and ethical conduct. The Service Refuge Manual (8 RM 5.5) states that refuge hunting programs should be administered to "promote positive hunting values and hunter ethics such as fair chase and sportsmanship. In general, hunting on refuges should be superior to that available on other public or private lands and should provide participants with * * * relatively undisturbed wildlife, and limited interference from or dependence on mechanized aspects of the sport." The Service Refuge Manual also states that "land vehicles should only be used to provide access to the hunting area and not as a technique to make hunting easier, put wildlife at a disadvantage, or increase hunter success." Because aircraft are commonly used by hunters and trappers as a vehicle of access to Alaska refuges, the Service feels the standards that limit use of land vehicles for hunting on refuges should be applicable to use of aircraft for taking wildlife on Alaska refuges.

Aircraft provide a means by which animals can be efficiently detected and quickly killed in relatively large numbers, if not adequately regulated. Consequently, the Service has recommended that the State not allow land-and-shoot or same-day-airborne shooting of free-ranging wolves (i.e., animals that have not been caught in a trap or snare). In addition, the Service supports the existing protections found in the Federal Airborne Hunting Act (16 U.S.C. 742j–1) and its associated regulations that generally prohibit harassment as well as hunting of wildlife with aircraft.

This proposed rule would prohibit hunters and trappers from shooting wolves and wolverines the same-day-

airborne on all Alaska refuges, regardless of how State regulations may change in the future. However, this proposed rule would not prohibit a trapper from humanely dispatching an animal which has already been legally caught in a trap or snare on the same day the trapper flew. This proposed rule also would not apply to hunters or trappers who have flown on regularly scheduled commercial airlines between regularly maintained public airports.

This proposed rule is consistent with the 1993–1994 Subsistence Management Regulations for Federal Public Lands in Alaska (50 CFR part 100), published on June 1, 1993, (59 FR 31244) which prohibit subsistence trappers and hunters from using firearms to take wolves and wolverines the same-day-airborne. This proposed rule would not affect the adoption of non-conflicting State laws and regulations and in fact would be consistent with existing State hunting regulations.

The Problem of Enforcement

Past law enforcement experience indicates a correlation between legalization of same-day-airborne taking and abuse by associated unethical and illegal actions. In March 1989, the Service investigated a case on the Kanuti National Wildlife Refuge where wolves had been chased by several aircraft operating under State land and shoot regulations. Further investigation established that aircraft radios were used along with aircraft harassment to manipulate and drive wolves to a location where the aircraft could land and hunters could shoot the wolves. Three persons were convicted of illegal use of aircraft to take and harass wildlife.

In a similar case in March 1990, one person was convicted for violation of the Federal laws prohibiting use of aircraft to harass wildlife on the Koyukuk National Wildlife Refuge. Eye witnesses observed hunters in two airplanes drive a wolf to a suitable area, land, and kill the wolf. In another large scale investigation that ended in 1990, Service special agents found numerous wolves reported as legal kills by one pilot and ten of his partners, in fact, were actually killed in violation of the Airborne Hunting Act. Further evidence of harassing of wolves with aircraft has been illustrated in a variety of scientific and conservation journals.

Unless observed directly, it is difficult to determine whether a trapper or hunter has harassed an animal before landing and shooting. Also, as a practical matter, it is nearly impossible to enforce Federal subsistence regulations prohibiting same-day-airborne shooting of wolves and wolverines if State regulations allow such a practice.

The Service included wolverines in this proposed rule because they are similarly classified under State regulations as both a furbearer and a big game species and, until recently, were subject to the same airborne hunting restrictions. Also, Federal subsistence regulations provide the same airborne hunting and trapping restrictions to wolves and wolverines. The problems with using aircraft to hunt and trap wolves same-day-airborne also apply to wolverines. Wolverines are highly vulnerable to over-exploitation if subjected to same-day-airborne shooting because of naturally low population densities, low reproductive capabilities and their habitat preferences for open country. While not currently authorized under State regulations, a Federal rule on same-day-airborne take of wolverines will reaffirm this prohibition.

The Service is committed to administering hunting and trapping on Alaska refuges in a way that does not unnecessarily interfere with the State of Alaska's ability to manage resident wildlife. However, the Service proposes this rulemaking because it takes the position that same-day airborne taking of wolves and wolverines (1) Invites abuse and violations of the Federal Airborne Hunting Act; (2) contravenes the Refuge Recreation Act (Pub. L. 87–714, as amended, 16 U.S.C. 460k *et seq.*) as it would require a significant diversion of resource management funds to ensure compliance with State and Federal laws and regulations and is incompatible with refuge purposes; (3) violates accepted standards and Service policy for ethical hunting and trapping on refuges; and (4) creates inconsistency with existing Federal subsistence regulations that prohibit shooting wolves and wolverines the same-day airborne.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A 60 day comment period is specified in order to both facilitate public input and move forward to protect resources on Alaska refuges. Accordingly, interested persons may submit written comments concerning this proposed rule to George Constantino, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199. All substantive comments will be reviewed and considered before a final rule is published.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

This rulemaking is categorically excluded under 40 Code of Federal Regulations 1508.4 from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) as an activity directly related to the enforcement of fish and wildlife laws and as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

This rulemaking has been reviewed under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rulemaking would have no significant effect on such entities as it maintains the status quo prior to the change in Alaska state law.

List of Subjects in 50 CFR Part 36

Aircraft, Alaska, Alaska National Wildlife Refuge System, Hunting, Trapping, Wildlife, Wildlife Refuges.

Accordingly, part 36 of Chapter I of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

2. § 36.32 is amended by removing the period at the end of paragraph (c)(1)(iii) and adding a semicolon in its place and by adding subparagraph (c)(1)(iv) to read as follows:

§ 36.32 Taking of fish and wildlife.

* * * * *

(c) * * *

(1) * * *

(iv) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking a wolf or wolverine until after 3 a.m. on the day following the day in which the flying occurred, except that a trapper may use a firearm or any other

weapon to dispatch a legally caught wolf or wolverine in a trap or snare on the same day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

* * * * *

Dated: November 26, 1993.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 93–31093 Filed 12–21–93; 8:45 am]

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